

## Personal Representatives Duties, Responsibilities, and Liabilities

A person named to administer an estate used to be called an “executor.” Now, the administrator of a decedent’s estate is called a personal representative regardless of whether he or she is nominated in a will or qualifies under the laws of intestacy (when someone dies without a will).

The personal representative (PR) is issued “letters” from the court which reflect that person’s appointment as personal representative. These letters are evidence to third parties of the PR’s authority to act on behalf of the estate. The PR may need to order certified copies of these letters to present to banks, insurance companies, and others.

### General Duties

The personal representative has three kinds of duties to the estate and its beneficiaries:

- the duty to be impartial (that is, not to favor the interests of one party over another);
- the duty of undivided loyalty (not to put one’s own interests in conflict with the interests of the estate); and
- the duty to administer the estate with care and prudence.

### Specific Duties

The PR also has specific duties, including:

- collecting and taking an inventory of the assets of the estate;
- managing these assets during the period of administration and paying the estate bills, including claims of creditors, expenses of administration and any taxes; and
- making distribution to the heirs or the beneficiaries under a will.

Colorado has a flexible system of estate administration that allows the personal representative, in consultation with his or her attorney, several options. Generally the PR can choose the degree of formality with which he or she opens or closes the estate, as well as the extent of court supervision over activities as personal representative.

Formal proceedings, which result in final and binding court orders, involve notice to interested parties as to the action to be taken, and hearings by the court if somebody objects.

Informal proceedings, where there’s no notice and no binding orders, are more in the nature of administrative proceedings before the Registrar of the court.

Normally, estates may be opened and closed formally or informally. Many are opened informally but closed formally, in order to get the protection of a court order for the personal representative confirming that the administration and distribution of the estate was done correctly.

### Detail of Responsibilities

**1. Prior to appointment:** A person named personal representative in a will has the power, prior to appointment by the court, to carry out written instructions of the deceased relating to his body, funeral, and burial arrangements. The PR may begin to take and protect the decedent’s property. No property should be removed or distributed prior to the opening of the estate.

**2. Inventory:** Within three months of appointment, the PR must prepare a written inventory of the assets of the estate on the court approved form. If it’s a supervised administration with a formal closing, the inventory must be filed with the court. Otherwise, the PR can simply give it to the interested parties without court filing.

**3. Accounting:** The PR sets up an estate accounting system at the beginning of the administration of the estate. The PR must keep records of all cash and other financial transactions of the estate and provide written accounting to the beneficiaries. For supervised administration or formal closing, the account is filed with the court.

**4. Notice of appointment:** Promptly after appointment, the PR must prepare a notice of appointment and mail it to all those interested in the estate. The purpose of this notice is to acquaint the interested persons with facts and ground rules of the estate administration, including the name and address of the PR, whether a bond has been filed, and the location of the court where the papers relating to the estate are on file.

**5. Creditor’s claims:** The PR sends a notice to known creditors and publishes a notice according to the law. Claims that arose before the decedent’s death are barred if not presented within four months after the date of the first publication of this notice. Failure to publish extends the claim period to one year from the date of death. A claim rising at or after death must be filed no later than four months following the date when the claim arose.

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A claim may be filed with the court or given to the personal representative. No specific form is required, but oral claims should not be honored. If the PR disagrees with a claim, he or she has 60 days to dispute the claim by giving notice of disallowance to the claimant, who then has 60 days to begin proceedings to enforce the claim.

**6. Family protection allowances:** Monetary allowances for certain family members (a surviving spouse or minor children) during the period of administration are set by probate code but may be modified by court order. Where the family is entitled to these allowances, they are paid ahead of creditors.

**7. Management and investment:** The personal representative is responsible for collecting and managing all probate assets prior to distribution. The will may specify what the PR can and cannot do. Once the PR is appointed, he or she has full authority and control over the assets which the decedent owned in his name alone or as co-tenant with others. Property held in joint tenancy with right of survivorship is not a probate asset, nor are the proceeds of life insurance payable to a named beneficiary other than the estate.

**8. Tax responsibilities:** The personal representative files the final income tax returns for the decedent as well as any gift tax returns. Both Federal and Colorado estate tax returns must be filed if the estate is of sufficient size. There is also a separate income tax return that must be filed for the estate. When a person dies, his taxable year ends on the date of death and his income and deductions are reported through that date. The estate is a separate income tax paying entity and the PR must get a separate tax identification from the IRS.

**9. Bond:** A surety bond may be required by the terms of the will or by court order. Bond premiums are payable out of the estate as an expense of administration.

**10. Compensation:** Under the Colorado Probate Code, the PR's compensation is subject to a reasonableness test that takes into consideration time spent and responsibility. Many individuals, especially family members, choose to serve without compensation (other than reimbursement of out-of-pocket expenses) and can file a fee waiver with the court. If a personal representative accepts compensation, it will be taxable as ordinary income.

**11. Distribution:** The assets of the estate belong ultimately to the beneficiaries and not the personal representative, and it is good practice for the PR to make distributions to beneficiaries as soon as possible.

Generally, the assets of the estate are paid in the following order:

1. distribute assets held by the decedent in the decedent's capacity as a trustee or other fiduciary;
2. pay the statutory exempt property and family allowances, if claimed and allowed, to close family members;
3. pay expenses of administration;
4. pay funeral costs;
5. pay debts and taxes preferred under Federal law;
6. pay expenses of last illness;

7. pay debts and taxes preferred under state law;
8. pay general unsecured creditors;
9. satisfy specific gifts under a will;
10. satisfy the residuary beneficiaries under a will or heirs at law in the case of intestacy.

Distributions need not wait until the closing of the estate. Payments may be made as priority is determined. Even partial distributions may be made to beneficiaries during administration. If administration is supervised, distribution may be made only following a court hearing and order.

**12. Termination:** When the administration is complete, the estate does not terminate automatically. Estates may be closed either informally or by a formal court order.

In formal closings, the administration and proposed distribution of the estate is approved by the court and the personal representative is discharged or released from liability by court order.

In informal closings, a closing statement is filed with the court, indicating that the estate has been fully administered. This procedure does not result in a court order of discharge but does limit the time to one year within which distributees and creditors can challenge the administration and distribution of the estate.

**13. Time involved:** The Colorado Probate Code is intended to speed up the process of administration of estates. Since Colorado has no inheritance tax, many smaller estates may be administered and distributed following the end of the creditors' period (usually within six to twelve months). The Federal Estate Tax Return is not due until nine months after the date of death and larger estates will not be closed until accounts are settled with the taxing authorities. If the tax and probate aspects are handled in a timely and careful manner, the great majority of larger taxable estates can be closed within a two-year period.

## Liability

A personal representative is liable to the beneficiaries for any loss to the estate, and for any gain the estate should have realized but did not, if:

- he or she failed to exercise the care and skill of a person of ordinary prudence in managing the property of another;
- he or she negligently or intentionally did something he or she ought not to have done; or
- he or she negligently or intentionally failed to do something that should have been done.

In certain matters, the personal representative may be liable even though improper action was not intentional or negligent.

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