

4B-002. Probate definitions.

A. **General.** The following is a list of simplified definitions of certain legal terms that you may need to understand in your probate action. Under certain circumstances you may need more than the simplified definitions listed below. In those cases, you may need to consult an attorney or review the New Mexico law to more fully understand the terms listed below. Section 45-1-201 NMSA 1978 also includes definitions of terms used in the Uniform Probate Code.

"NMSA 1978" refers to the New Mexico Statutes Annotated 1978, which is the official compilation of New Mexico statutory law. The first number listed is the chapter, the second number listed is the article and the third number is the specific section of law enacted by the legislature. The Uniform Probate Code is published in the NMSA 1978 as Chapter 45 NMSA 1978. A law librarian can guide you to sources for reviewing or obtaining a copy of the Uniform Probate Code as well as a copy of these forms.

B. **Definitions.** As used in these instructions and forms:

(1) "administration of an estate" means to go through the process of managing and settling the estate of a deceased person. This usually involves four steps:

- (a) collecting the assets of an estate;
- (b) paying the valid debts of an estate and expenses of administration;
- (c) paying any taxes owed; and
- (d) distributing the remainder of the estate to those who are entitled to it;

(2) "applicant" means a person who makes a written request to the probate court

for an informal probate or appointment. If you need more information on an "applicant", *see* Section 45-1-201(2) NMSA 1978;

(3) "application" means a written request to the probate court for an informal probate or appointment. If you need more information on an Application, *see* Section 45-1-201(2) NMSA 1978;

(4) "beneficiary" is a person who is given a gift by a will. The probate code uses a different word, "devisee", to mean the same thing. The forms use the word "devisee" rather than "beneficiary" because the probate code uses "devisee";

(5) "bond" means a financial security provided to the court by the personal representative and a bonding company to ensure that the personal representative of the estate faithfully does the job of personal representative. A bond is usually not required in an informal probate proceeding. However, a bond may be required if the will requires it, or if a person with an interest in the estate asks the court to require it and the court orders that a bond be posted. If you need more information on bonds, *see* Sections 45-3-603 to 45-3-606 NMSA 1978;

(6) "claim" means a debt of the decedent that can arise before or after the death of the decedent, including the last medical bills and the funeral costs. The time period during which a claim can be made against the estate can be shortened from one year from the death of the decedent to two (2) months after a Notice to Creditors is published in a newspaper. (*See* Step 3 of Probate Form 4B-012 NMRA for more information on shortening the time period for making a claim. *See also* Probate Form 4B-302 NMRA. If you need more information on claims, *see*

Sections 45-1-201(6), 45-3-801, 45-3-802 and 45-3-803 NMSA 1978;

(7) "claimant" means a person who is making a claim. Also called a "creditor";

(8) "creditor" means a person to whom a debt is owed by the decedent. The decedent would be the "debtor". In order to collect against an estate, the creditor files a "claim" as described above. The time period during which a creditor can make a claim against the estate can be shortened from one (1) year from the death of the decedent to two (2) months after a Notice to Creditors, Probate Form 4B-301 NMRA, is sent to a known creditor or published in a newspaper. *See* Step 3 of the instructions in Probate Form 4B-012 NMRA, for more information on shortening the time period for making a claim;

(9) "decedent" means the person who has died and whose will is being probated or whose estate is being administered;

(10) "descendant" means all of the children, grandchildren, great-grandchildren, etc. of a decedent. If you need more information on a Descendant, *see* Section 45-1-201(8) NMSA 1978;

(11) "demand for notice" means a written document filed in the district court where a probate is or should be filed. The document must state the name of the decedent, the nature of the filing person's interest in the decedent's estate and that person's address. A personal representative filing an action in Probate Court *must* ask the district court clerk for that county if any person has filed a demand for notice relating to the decedent's estate. If someone has filed a demand for notice, you must send a copy of everything you file and every order the judge signs to the person who has

demanded notice. If you need more information on a demand for notice, *see* 45-3-204 NMSA 1978;

(12) "devise", if used as a noun, means a gift of land (also called "real property") or other assets (also called "personal property") given by a will. If used as a verb, "devise" means to give a gift by a will of land or other assets. If you need more information on a devise, *see* Section 45-1-201(9) NMSA 1978.

(13) "devisee" means a person listed in a will to receive assets from an estate. If you need more information on a devisee, *see* 45-1-201(10) NMSA 1978. A common word for "devisee" is "beneficiary." The forms use the word "devisee" rather than "beneficiary" because the probate code uses "devisee";

(14) "distributee" means any person who receives property from a decedent who is not a creditor or purchaser. If you need more information on a distributee, *see* Section 45-1-201(11) NMSA 1978;

(15) "estate" means all property of the decedent that is subject to the Uniform Probate Code, Chapter 45 NMSA 1978. For the purposes of probate, an estate generally does not include things that pass automatically to a listed beneficiary, such as land held as joint tenants, life insurance proceeds or retirement benefits that have a beneficiary designation. If you need more information on an estate, *see* Section 45-1-201(12) NMSA 1978;

(16) "fiduciary" includes a person serving as a personal representative, who acts primarily for another's benefit in matters connected with that role. A fiduciary is held to the highest degree of good faith in performing the duties of the fiduciary. A personal representative is a

fiduciary. *See* Section 45-1-201(14) NMSA 1978 for the definition of "fiduciary";

(17) "heirs", means those persons who are entitled to the property of the decedent if the decedent dies intestate. The priority of the people who are entitled to the property is listed in Sections 45-2-102 to 45-2-108 NMSA 1978;

(18) "intestate" means to die:

- (a) without leaving a will;
- (b) without leaving a valid will; or
- (c) with an incomplete will;

(19) "notice" or "giving notice" means the process of sending written information to people interested in the estate telling them about events occurring that relate to the estate. The courts operate under a principle that people are entitled to "notice and an opportunity to be heard". This means that people are entitled to know what is happening in a case and are then given an opportunity to tell a judge what that person wants the judge to know about a case. When you complete the notice requirements in a case, you have told people about the important events happening in a case. Generally, if you mail a copy of everything that is filed with the court on the same day as you file the document with the court to the correct address for:

- (a) all the heirs or devisees of an estate;
- (b) persons who have or may have an interest in the estate of the decedent;
- (c) anyone who asks for notice; and
- (d) anyone who has filed a demand for notice you will have met your

notice obligations.

See Section 45-3-705 and Sections 45-3-306 and 45-3-310 NMSA 1978;

(20) "personal representative" means the person appointed by the court to pay claims of the estate and distribute the estate according to the will or to the heirs if there is no will. This person may be called an "executor" or an "executrix" or "administrator" in a will;

(21) "personal property" means property that is not land, real estate or real property. Examples of personal property include bank accounts, stocks, bonds, insurance policies, pension plans, jewelry, furniture and motor vehicles. Some personal property may have a designation regarding who receives the property after death (a "beneficiary designation") and is not governed by a will. A common example is an insurance policy;

(22) "probate" technically means the court procedure by which a will is proved to be valid or invalid. Common usage of this term now means all matters relating to the administration of an estate;

(23) "real property" includes land, houses, farms, ranches, leases, mineral, water and timber rights;

(24) "revoked", when used with these forms, means a will or other document that the decedent has canceled. If a will is revoked, it has no effect;

(25) "testate" means to die leaving a valid will;

(26) "testator" means someone who has made a will or someone who dies leaving

a valid will. A "testatrix" is a female testator, although this term is no longer used in the Uniform Probate Code;

(27) "unrevoked", when used in these forms, means a will or other document that the decedent has not canceled;

(28) "venue" means the place where the case should be filed. Generally, either the probate court or the district court in the county where the decedent died or, if the decedent did not live in New Mexico, it is the probate court in the county where the decedent owned property. If you need more information on venue, *see* Section 45-3-201 NMSA 1978; and

(29) "will" means a document done according to certain formalities that usually distributes the assets of a person's estate upon death. A will also typically designates a personal representative and can appoint a guardian for minor children. A will is sometimes referred to as "last will and testament". If you need more information on a will, *see* Section 45-1-201(53) NMSA 1978.

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