

**PROBATE COURT
RULE 1B-102**

**Supreme Court Approved
November 1, 2021**

1B-102. Probate definitions.

A. **General.** The following is a list of simplified definitions of certain legal terms that you, as the personal representative, may need to understand in your probate action. Under certain circumstances, you may need to understand more than the simplified definitions listed below. In those cases, you may need to consult a lawyer 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 (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 Probate Code is published in the NMSA 1978 as Chapter 45 NMSA 1978. “NMRA” refers to the New Mexico Rules Annotated, which contains rules, forms, and jury instructions of the New Mexico courts. Probate forms are included in the NMRA and are also available electronically through the New Mexico Supreme Court website. Additional information may be obtained from your county probate court.

B. **Definitions.** As used in the Probate Court Rules, Rules 1B-101 to 1B-701 NMRA, and the Probate Court Forms, Forms 4B-101 to 4B-1001 NMRA

(1) “accounting” means any written statement that sets forth accurately the assets of an estate, the liabilities of an estate, and the receipts and disbursements for

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1 an estate;

2 (2) “administration of an estate” means to go through the process of
3 managing and settling the estate of a decedent. This usually involves the following four
4 steps:

5 (a) collecting and valuing the assets of an estate;

6 (b) paying the family and personal property allowances;

7 (c) paying the costs and expenses of administration and the
8 valid debts of the estate, including all taxes; and

9 (d) distributing the remainder of the estate to those who are
10 entitled to it;

11 (3) “applicant” means a person who makes a written request to the
12 probate court for an informal probate or appointment;

13 (4) “application” means a written request to the probate court for an
14 informal probate or appointment. If you need more information on an
15 application, *see* Section 45-1-201(A)(2) NMSA 1978;

16 (5) “beneficiary” is a person who is given a gift (devise) by a will. The
17 Probate Code uses a different word, “devisee,” to mean the same thing. The forms use the
18 word “devisee” rather than “beneficiary” because the Probate Code uses “devisee.” If you

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1 need more information on a beneficiary, *see* Section 45-1-201(A)(4) NMSA 1978;

2 (6) “bond” means a financial security provided to the court by the
3 personal representative and a bonding company to ensure that the personal representative
4 of the estate faithfully does the job of personal representative. A bond is usually not
5 required in an informal probate proceeding. However, a bond may be required if the will
6 requires it, or if a person with an interest in the estate requests the court to require it and
7 the court orders that a bond be posted. If you need more information on
8 bonds, *see* Sections 45-3-601 and 45-3-603 to 45-3-606 NMSA 1978;

9 (7) “claim” means a debt of the decedent that ~~can~~ may arise before or
10 after the death of the decedent, including the last medical bills and funeral costs;

11 (8) “claimant,” also called “creditor,” means a person who is making a
12 claim;

13 (9) “creditor” means a person to whom a debt is owed. The debt might
14 be owed by the decedent or the estate, also called the “debtor.” In order to collect against
15 an estate, the creditor files a “claim”;

16 (10) “decedent” means the person who has died and whose will is being
17 probated or whose estate is being administered;

18 (11) “descendant” means all of the children, grandchildren, great-
19 grandchildren, etc., of a decedent. If you need more information on a

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1 descendant, *see* Section 45-1-201(A)(9) NMSA 1978;

2 (12) “demand for notice” means a written document filed in the district
3 court where a probate is or should be filed requesting notice of any order or filing
4 pertaining to a decedent’s estate. The document must state the name of the decedent, the
5 nature of the filing person’s interest in the decedent’s estate, and the filing person’s
6 address or the address of the filing person’s lawyer. You, as the personal representative,
7 filing an action in probate court, must contact the district court clerk in the county where
8 the decedent was domiciled and ask if any person has filed a demand for notice relating
9 to the decedent’s estate. If someone has filed a demand for notice, you must send a copy
10 of everything you file and ~~[every]~~ each order the judge signs to the person who has
11 demanded notice. If you need more information on a demand for notice, *see* Section 45-
12 3-204 NMSA 1978;

13 (13) “devise,” if used as a noun, means a gift of land (also called “real
14 property”) or other assets (also called “personal property”) given by a will. If used as a
15 verb, “devise” means to give a gift by a will of land or other assets. If you need more
16 information on a devise, *see* Section 45-1-201(A)(10) NMSA 1978;

17 (14) “devisee” means a person listed in a will to receive assets from an
18 estate. A common word for “devisee” is “beneficiary.” The forms use the word “devisee”

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1 rather than “beneficiary” because the Probate Code uses “devisee.” If you need more
2 information on a devisee, *see* Section 45-1-201(A)(11) NMSA 1978;

3 (15) “distributee” means any person who receives property from a
4 decedent who is not a creditor or purchaser. If you need more information on a
5 distributee, *see* Section 45-1-201(A)(12) NMSA 1978;

6 (16) “domicile” means the last place the decedent had a true, fixed
7 home, in a permanent establishment to which the decedent intended to return after an
8 absence, and it is the place where the decedent voluntarily fixed his or her home with the
9 intention of making it permanent;

10 (17) “estate” means all property of the decedent that is subject to the
11 Probate Code. For ~~[the]~~ purposes of probate, an estate generally does not include property
12 that passes automatically to a listed beneficiary, such as land held as joint tenants, land
13 subject to transfer on death deeds, life insurance proceeds, payable on death accounts,
14 transfer on death accounts, or retirement benefits that have a beneficiary designation. If
15 you need more information on an estate, *see* Section 45-1-201(A)(15) NMSA 1978;

16 (18) “family allowance” means an allowance of thirty thousand dollars
17 (\$30,000) from the decedent’s estate to which the decedent’s surviving spouse is entitled.
18 If ~~[there is]~~ the decedent has no surviving spouse, then the family allowance is payable to
19 the decedent’s minor and dependent children. This allowance is exempt from, and has

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1 priority over, all claims against the estate. The family allowance must be paid if the estate
2 has sufficient assets. *See* Section 45-2-402 NMSA 1978;

3 (19) “fiduciary” includes a person serving as a personal representative,
4 who acts primarily for another person’s benefit in matters connected with that role. A
5 fiduciary is held to the highest degree of good faith in performing the duties of the
6 fiduciary. A personal representative is a fiduciary. *See* Section 45-1-201(A)(17) NMSA
7 1978 for the definition of “fiduciary”;

8 (20) “formal proceeding” means a proceeding that must be conducted
9 before a district court judge with notice to interested persons;

10 (21) “heirs” means those persons who are entitled to the property of the
11 decedent if the decedent dies intestate. The priority of the people who are entitled to the
12 property is listed in Sections 45-2-101 to 45-2-107 NMSA 1978;

13 (22) “informal proceeding” means a proceeding commenced before the
14 probate court without prior notice to interested persons for probate of a will or
15 appointment of a personal representative, except as provided in Section 45-3-306 NMSA
16 1978;

17 (23) “intestate” means to die

18 (a) without leaving a will;

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1 (b) without leaving a valid will; or

2 (c) with an incomplete will;

3 (24) “notice” or “giving notice” means the process of sending written
4 information to people interested in the estate telling them about events occurring that
5 relate to the estate or administration of the estate. *See also* the specific requirements for
6 notice to creditors in ~~[Paragraph]~~ Subparagraph (B)(25) below. The courts operate under
7 a principle that people are entitled to “notice and an opportunity to be heard.” This means
8 that people are entitled to know what is happening in a case and are then given an
9 opportunity to tell a judge what that person wants the judge to know about a case. When
10 you complete the notice requirements in a case, you have told people about the important
11 events happening in a case. You will meet your notice obligations if you mail a copy of
12 everything that is filed with the court on the same day the document is filed with the
13 court to the correct address for the following:

14 (a) all the heirs or devisees of an estate;

15 (b) persons who have or may have an interest in the estate of
16 the decedent;

17 (c) anyone who asks for notice; and

18 (d) anyone who has filed a demand for notice.

19 *See* Sections 45-3-705, 45-3-306, and 45-3-310 NMSA 1978;

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1 (25) “notice to creditors” or “giving notice to creditors” means
2 notifying creditors that you are in the process of probating the estate. If you choose to
3 give notice to creditors, you may publish notice in the newspaper, deliver written notice
4 by mail or other delivery, or both. *See* Section 45-3-801 NMSA 1978;

5 (26) “personal representative” means the person appointed by the court
6 to administer the estate as defined in ~~[Paragraph]~~ Subparagraph (B)(2) above. ~~[This~~
7 ~~person]~~ A personal representative may be called an “executor,” an “executrix,” or an
8 “administrator” in a will;

9 (27) “personal property” means property that is not land, real estate, or
10 real property. Examples of personal property include bank accounts, stocks, bonds,
11 insurance policies, pension plans, jewelry, furniture, and motor vehicles. Some personal
12 property may have a designation ~~[regarding]~~ about who receives the property after death
13 (a “beneficiary designation”) and is not governed by a statute of distribution or by a will.
14 A common example is an ~~[IRA]~~ individual retirement account (IRA) or pension plan;

15 (28) “personal property allowance” means an allowance valued at
16 fifteen thousand dollars (\$15,000) or less from the decedent’s estate in household
17 furniture, automobiles, furnishings, appliances, and personal effects, to which the
18 decedent’s surviving spouse is entitled. If the value of ~~[such]~~ the items is less than the

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1 personal property allowance of fifteen thousand dollars (\$15,000), the value of the
2 personal property allowance shall be paid from other assets to make up any deficiency. If
3 ~~[there is]~~ the decedent has no surviving spouse, then the personal property allowance is
4 payable to the decedent's children who are devisees under the will or who are entitled to
5 a share of the estate under Section 45-2-302 NMSA 1978, or if ~~[there is]~~ the decedent has
6 no will, the allowance is payable to the decedent's intestate heirs. This allowance is
7 payable in all events, if the estate has sufficient assets remaining after the family
8 allowance has been paid. *See* Section 45-2-403 NMSA 1978;

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

12 (30) "probate case" means a court case originally commenced for one
13 or more of the following purposes:

14 (a) to informally administer a decedent's estate;

15 (b) to informally appoint a personal representative or special
16 administrator; or

17 (c) to provide for proof of authority for a domiciliary foreign
18 personal representative, which includes a tribal court appointee designated by a tribal
19 court or the Bureau of Indian Affairs;

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1 (31) “Probate Code” means the Uniform Probate Code, Chapter 45
2 NMSA 1978;

3 (32) “real property” includes land, houses, farms, ranches, leases,
4 minerals, water rights, and timber rights;

5 (33) “revoked,” when used with these forms, means a will or other
6 document that the decedent has canceled. If a will is revoked, it has no effect;

7 (34) “testate” means to die leaving a valid will;

8 (35) “testator” means someone who has made a will or someone who
9 dies leaving a valid will. A “testatrix” is a female testator, although this term is no longer
10 used in the Probate Code;

11 (36) “unrevoked,” when used in these forms, means a will or other
12 document that the decedent has not canceled;

13 (37) “venue” means the place where the case should be filed. Generally,
14 the case should be filed in either the probate court or the district court in the county
15 where the decedent was domiciled at the time of death, or, if the decedent did not live in
16 New Mexico, the probate court or the district court in the county where the decedent
17 owned real property. If you need more information on venue, *see* Section 45-3-201
18 NMSA 1978; and

1 (38) “will” means a document prepared and executed according to
2 certain formalities that usually describes the distribution of the decedent’s probate assets
3 ~~[upon]~~ on death. A will also typically designates a personal representative and may
4 appoint a guardian for minor children. A will is sometimes referred to as “last will and
5 testament.” If you need more information on a will, *see* Section 45-1-201(A)(57) NMSA
6 1978.

7 [Approved, effective September 15, 2000; 4B-002 recompiled and amended as 1B-102
8 by Supreme Court Order No. 18-8300-014, effective for all cases pending or filed on or
9 after December 31, 2018; as amended by Supreme Court Order No. 21-8300-019,
10 effective for all cases pending or filed on or after December 31, 2021.]

11 Committee commentary. — In 2021, the Supreme Court approved an
12 amendment to Rule 1B-102(B)(30)(c) NMRA to clarify that “domiciliary foreign
13 personal representative” includes a tribal court appointee designated by a tribal court or
14 the Bureau of Indian Affairs.

15 [As adopted by Supreme Court Order No. 21-8300-019, effective for all cases pending or
16 filed on or after December 31, 2021.]