

2011 -- H 5367

LC00759

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO PROBATE PRACTICE AND PROCEDURE - PRACTICE IN PROBATE COURTS

Introduced By: Representatives Jackson, Gallison, Lally, and JP O'Neill

Date Introduced: February 15, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 33-22-4, 33-22-8, 33-22-19 and 33-22-23 of the General Laws in  
2 Chapter 33-22 entitled "Practice in Probate Courts" are hereby repealed.

3 ~~**33-22-4. Listing of and notice to legatees and devisees in will contests.** — Whenever, in~~  
4 ~~any proceeding pending in a probate court for the probate of a will, it appears to the court that the~~  
5 ~~probate of the will or the appointment of an executor or administrator with the will annexed is to~~  
6 ~~be contested in the probate court, then and in that event, the court shall forthwith cause to be~~  
7 ~~entered upon its records an order requiring the petitioner to file with the clerk of court the same~~  
8 ~~information relative to legatees and devisees, if any, named in the will or their representatives as~~  
9 ~~is required relative to a surviving spouse and heirs at law; and the petitioner or his or her attorney~~  
10 ~~shall give or cause notice to be given to those legatees and devisees in the same manner and under~~  
11 ~~the same conditions as provided in this title for notice to a surviving spouse and heirs at law.~~

12 ~~**33-22-8. Notice of authority to sell or mortgage real estate.** — Authority to sell or~~  
13 ~~mortgage real estate shall not be given to a guardian until notice by public advertisement or~~  
14 ~~otherwise, as the court may order, has been given to the husband or wife and the next of kin of the~~  
15 ~~ward, and authority to mortgage shall not be given to an executor or administrator until after~~  
16 ~~personal notice shall have been given by citation to all known parties interested.~~

17 ~~**33-22-19. Decrees and orders in writing -- Recording.** — All the decrees and orders of~~  
18 ~~probate courts shall be made in writing, and shall be recorded by the clerk in books kept for that~~

1 ~~purpose.~~

2 ~~**33-22-23. Division of fees.** -- The fees provided for in section 33-22-21 shall inure, one-~~  
3 ~~half (1/2) to and for the use of the probate court, and one half (1/2) to and for the use of the~~  
4 ~~probate clerk, unless provision is made to the contrary as provided in this chapter.~~

5 SECTION 2. Sections 33-22-5, 33-22-6, 33-22-7, 33-22-11, 33-22-14 and 33-22-21 of  
6 the General Laws in Chapter 33-22 entitled "Practice in Probate Courts" are hereby amended to  
7 read as follows:

8 ~~**33-22-5. Waiver of notice.** -- If all interested parties, not including, however, the~~  
9 ~~legatees and devisees named in the will unless they shall have become entitled to notice under the~~  
10 ~~provisions of section 33-22-4, shall, in writing, waive the notice required by section 33-22-3 or~~  
11 ~~section 33-22-4, and assent to action upon the petition by the court at any time, the court may~~  
12 proceed to hear the cause without publication or further notice and any decree entered in the  
13 proceeding shall be of the same force and effect as if notice had been given in the manner  
14 provided by this chapter.

15 ~~**33-22-6. Additional notice given -- Failure to comply.** -- The notice prescribed by~~  
16 section 33-7-9 and the notice by publication in the manner as prescribed by section 33-22-11 shall  
17 also be given in all cases in which notice by mail is required by section 33-22-3, unless waived in  
18 writing by the persons entitled to such notice ~~surviving spouse and heirs at law~~, but failure to  
19 comply with any of the provisions in sections 33-22-2 and 33-22-3 ~~33-22-4~~ shall not defeat the  
20 jurisdiction of the court or affect adversely the regularity of any proceedings in which the failure  
21 shall have occurred, and upon discovery of the failure the court may make such further orders as  
22 the circumstances may require.

23 ~~**33-22-7. Proceedings in which notice given by court.** -- Every probate court shall,~~  
24 before proceeding, give notice to all parties known to be interested in the following cases:

- 25 (1) In the granting of letters of administration.
- 26 (2) In the probate of a will.
- 27 (3) In the appointment or approval of a conservator or guardian.
- 28 ~~(4) In any complaint for the removal of an executor, administrator, conservator, or~~  
29 ~~guardian.~~
- 30 ~~(5) In the acceptance of the resignation of an executor, administrator, conservator, or~~  
31 ~~guardian.~~
- 32 ~~(4)~~(6) In the making of any decree upon the account of an executor, conservator, or  
33 guardian.
- 34 ~~(7) In the appointment of commissioners and in the making of any order upon the report~~

1 ~~of commissioners on any estate.~~

2 ~~-(8) In the making of any order of distribution among the next of kin of a deceased~~  
3 ~~person.~~

4 ~~(5)(9)~~ In any petition of an executor, administrator, conservator, or guardian for leave to  
5 sell real estate of the testator, intestate, or ward.

6 ~~(10) In the granting of any petition of a conservator or guardian for leave to make a~~  
7 ~~mortgage or written lease of real estate of his or her ward.~~

8 ~~(11) In canceling the bond of an executor, administrator, conservator, or guardian.~~

9 ~~(12) In making an allowance out of the estate of a deceased person for the support of his~~  
10 ~~or her family.~~

11 ~~(13) In any petition of an executor or administrator for leave to mortgage real estate of~~  
12 ~~the testator or intestate.~~

13 (14) In setting off and allowing real estate in fee, or the proceeds of sale thereof, to a  
14 widow or surviving husband.

15 Nothing contained in this section shall be deemed to limit the court's discretion to order  
16 whatever notice it considers appropriate given the circumstances of the matter before it, and  
17 whose interests may be affected by the court's action.

18 **33-22-11. Notice by advertisement.** -- In all cases in which notice is required and special  
19 provision is not made for it, it shall be given by advertisement of a notice once a week for at least  
20 two (2) weeks, the first advertisement to be published at least fourteen (14) days before the first  
21 of any hearing dates contained in such notice, in a newspaper printed in English and published in  
22 the ~~county~~ city or town or in a ~~Providence~~ newspaper having general circulation within the  
23 county in which the matter is to be acted upon, as the probate court by general rule or special  
24 order may designate for that purpose; provided, however, that when a probate court shall give, or  
25 order to be given, notice by advertisement in a newspaper which has furnished the court with a  
26 definite schedule of prices for this advertising, the court shall require the cost of the advertising to  
27 be paid to the clerk of the court in advance, and the court shall pay over each month to the  
28 newspaper the sums so paid in, upon proof that the notice has been advertised as ordered;  
29 provided, however, that any advertisement affecting probate matters in the town of New  
30 Shoreham shall be given in a newspaper printed in English and published in the counties of  
31 Washington and/or Providence.

32 **33-22-14. Findings of court as to notice.** -- If it shall appear to the court, before  
33 proceeding, that notice has been given to all known parties interested, ~~by the clerk, upon~~  
34 ~~application to him or her made,~~ in accordance with the foregoing provisions, and in a manner

1 satisfactory to the court, it shall be sufficient to warrant proceeding; and its findings as to notice,  
2 unless appealed from, shall be conclusive. Notice by telephone, facsimile, e-mail or other  
3 electronic transmission may supplement, but shall not discharge any party's obligation under this  
4 chapter to give notice by service or mail.

5 **33-22-21. Fees enumerated -- Hearing date to be noted on receipt.** -- (a) The fees in  
6 probate courts shall be as follows: for every petition for the appointment of a ~~receiver~~, custodian,  
7 administrator, guardian, or conservator, or for the probate of ~~and recording of~~ a will, one percent  
8 (1.0%) of the personal property of the decedent or ward over which the court has jurisdiction, but  
9 in no event shall the fee be less than thirty dollars (\$30.00) nor more than one thousand five  
10 hundred dollars (\$1,500); ~~for every petition for the change of name, thirty dollars (\$30.00); for~~  
11 ~~every petition for adoption, thirty dollars (\$30.00);~~ for every petition of a foreign administrator,  
12 executor, or guardian to transfer or sell real or personal estate, one percent (1.0%) of the personal  
13 property of the decedent, or ward located in Rhode Island, but in no event shall the fee be less  
14 than thirty dollars (\$30.00) nor more than one thousand five hundred dollars (\$1,500) which fees  
15 shall be in lieu of all subsequent filing and recording fees in the same proceedings, except as  
16 hereinafter provided, and shall be paid before the petition is filed, and shall be based upon  
17 estimates submitted by the petitioner or someone in his or her behalf, and shall be subject to  
18 revision whenever it appears that the estimates were incorrect, and upon revision a further  
19 payment or rebate shall be made promptly. In the event that the appointment of a ~~receiver or~~  
20 custodian, pending the appointment of an administrator, guardian, or conservator, or the probate  
21 of ~~or recording of~~ a will, is necessary, the fee so paid for the petition shall be applied on the  
22 amount to be paid upon the filing of a petition for the appointment of the administrator, guardian,  
23 or conservator, or for the probate of ~~or recording of~~ the will. The court at any time may cite in and  
24 examine any ~~receiver~~, custodian, executor, administrator, guardian, or conservator for the purpose  
25 of determining the full fee due and payable. Also, the following fees shall be charged:

26 (1) For every petition to file a claim out of time, thirty dollars (\$30.00);

27 (2) For every petition for the removal of an executor, administrator, guardian,  
28 conservator, or other fiduciary, thirty dollars (\$30.00);

29 (3) For every petition for appointment of a successor guardian under the uniform gifts to  
30 minors act, thirty dollars (\$30.00);

31 (4) For every petition to file a will with no probate, thirty dollars (\$30.00);

32 (5) ~~An~~ For every affidavit of complete administration, thirty dollars (\$30.00);

33 (6) For every certificate of appointment, five dollars (\$5.00);

34 (7) For every petition to remove or fill a vacancy of a trustee of any trust established

1 under a will, or the termination of such trust, thirty dollars (\$30.00); ~~and~~

2 (8) For every petition for tax minimization or estate planning, thirty dollars (\$30.00);

3 (9) For every petition for change of name, thirty dollars (\$30.00); and

4 (10) For every petition for adoption, thirty dollars (\$30.00).

5 (b) Upon payment of any fee enumerated in this section, the clerk of the court shall issue  
6 a written receipt to the person making payment. In the event that the matter filed with the court  
7 calls for a hearing, the clerk of the court shall note the hearing date and time on the receipt  
8 whenever possible; otherwise as soon as is practicable after the filing of the matter, the clerk of  
9 the court shall provide written notice of the hearing date and time directly to the person filing the  
10 matter.

11 (c) The clerk of the court shall charge one dollar and fifty cents (\$1.50) per page and  
12 three dollars (\$3.00) to certify any probate documents on file with the probate court.

13 SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PROBATE PRACTICE AND PROCEDURE - PRACTICE IN PROBATE  
COURTS

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1           This act would eliminate certain notice requirements to parties in interest in the probate  
2 of a will or letters of administration but in no way would limit the discretion of the court to order  
3 any notice it deems necessary. This act would also eliminate some minimum fees for adoption  
4 petitions.

5           This act would take effect upon passage.

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