

PROBATE AND TRUST AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kelly B. Miles

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to notice in probate and trust matters.

Highlighted Provisions:

This bill:

- ▶ clarifies notice requirements related to probate and trust matters;
- ▶ allows an individual to file a motion with the court to participate in a pending probate or trust matter when the individual did not have notice of the matter;
- ▶ allows an individual to file a motion with the court to reopen a resolved probate or trust matter when the individual did not have notice of the matter;
- ▶ clarifies when the rules of civil procedure apply to probate and trust matters; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-1-401, as last amended by Laws of Utah 2021, Chapters 84 and 345

75-7-109, as enacted by Laws of Utah 2004, Chapter 89



28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **75-1-401** is amended to read:

30 **75-1-401. Notice -- Method and time of giving -- Lack of notice procedure --**

31 **Objections.**

32 (1) If notice of a hearing on any petition is required, and except for specific notice
33 [~~requirements as otherwise provided, the petitioner shall cause notice of the time and place of~~
34 ~~hearing of any petition to be given to any interested person or the person's attorney if the person~~
35 ~~has appeared by attorney or requested that notice be sent to the person's attorney]~~ requirements
36 as otherwise provided in this title or court order, the court clerk shall provide notice of the time
37 and place of any petition hearing to any interested person or the person's attorney if the attorney
38 has appeared in the matter for the person or the person has requested that notice be sent to the
39 person's attorney. Notice shall be given by the clerk posting a copy of the notice for the 10
40 consecutive days immediately preceding the time set for the hearing in at least three public
41 places in the county, one of which must be at the courthouse of the county and:

42 (a) (i) by the clerk mailing a copy thereof at least 10 days before the time set for the
43 hearing by certified, registered, or ordinary first class mail addressed to the person being
44 notified at the post-office address given in the demand for notice, if any, or at the person's
45 office or place of residence, if known; or

46 (ii) by delivering a copy thereof to the person being notified personally at least 10 days
47 before the time set for the hearing; and

48 (b) if the address, or identity of any person is not known and cannot be ascertained with
49 reasonable diligence, by the petitioner publishing:

50 (i) at least once a week for three consecutive weeks a copy thereof in a newspaper
51 having general circulation in the county where the hearing is to be held, the last publication of
52 which is to be at least 10 days before the time set for the hearing; and

53 (ii) on the Utah Public Notice Website created in Section [63A-16-601](#), for three weeks.

54 (2) The court for good cause shown may provide for a different method or time of
55 giving notice for any hearing.

56 (3) Proof of the giving of notice shall be made on or before the hearing and filed in the
57 proceeding.

58 (4) A person may file a motion described in Subsection (5) or (6) if:

59 (a) the person can establish by competent evidence that the person did not receive
60 notice under Subsection (1)(a);

61 (b) the person would be entitled to participate in the matter had the person received
62 notice; and

63 (c) the petitioner did not publish notice in accordance with Subsection (1)(b).

64 (5) (a) For a pending petition described in Subsection (1), a person described in
65 Subsection (4) may file a motion to participate in the matter with any rights that would be
66 available to the person had the person received notice under Subsection (1).

67 (b) A court may grant a motion described in Subsection (5)(a):

68 (i) after a hearing where any party to the petition may participate; and

69 (ii) if the court determines that:

70 (A) the person did not receive notice in accordance with Subsection (1)(a); and

71 (B) the person's substantial rights are implicated if the person is not allowed to
72 participate in the matter.

73 (6) (a) For a resolved petition described in Subsection (1), a person described in
74 Subsection (4) may file a motion with the court to reopen the matter.

75 (b) The court may grant the motion described in Subsection (6)(a):

76 (i) after a hearing where any party to the granted petition may participate; and

77 (ii) if the court determines that the person:

78 (A) did not receive notice as described in Subsection (1)(a); and

79 (B) will be substantially prejudiced if the matter is not reopened.

80 (7) The Utah Rules of Civil Procedure shall govern court filings and hearings under
81 this title once a party files an objection.

82 Section 2. Section **75-7-109** is amended to read:

83 **75-7-109. Methods and waiver of notice.**

84 (1) Notice to a person under this chapter or the sending of a document to a person
85 under this chapter must be accomplished in a manner reasonably suitable under the
86 circumstances and likely to result in receipt of the notice or document. Permissible methods of
87 notice or for sending a document include first-class mail, personal delivery, delivery to the
88 person's last known place of residence or place of business, or a properly directed electronic
89 message.

90 (2) Notice under this chapter or the sending of a document under this chapter may be
91 waived by the person to be notified or sent the document.

92 [~~(3) Notice of a judicial proceeding must be given as provided in the applicable rules of~~
93 ~~civil procedure.]~~

94 (3) Unless otherwise ordered by the court, for a judicial proceeding under this chapter,
95 notice of a judicial proceeding shall be provided as described in Section [75-1-401](#), including
96 notice of any petition filed under this chapter.