

Part 4
Notice, Parties, and Representation in Estate Litigation and Other Matters

75-1-401 Notice -- Method and time of giving.

- (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney. Notice shall be given by the clerk posting a copy of the notice for the 10 consecutive days immediately preceding the time set for the hearing in at least three public places in the county, one of which must be at the courthouse of the county and:
 - (a)
 - (i) by the clerk mailing a copy thereof at least 10 days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post-office address given in the demand for notice, if any, or at the person's office or place of residence, if known; or
 - (ii) by delivering a copy thereof to the person being notified personally at least 10 days before the time set for the hearing; and
 - (b) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing:
 - (i) at least once a week for three consecutive weeks a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least 10 days before the time set for the hearing; and
 - (ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks.
- (2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.
- (3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Amended by Chapter 90, 2010 General Session

75-1-402 Notice -- Waiver.

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may waive notice for his minor child.

Enacted by Chapter 150, 1975 General Session

75-1-403 Pleadings -- Notice.

In formal proceedings involving inter vivos or testamentary trusts, including proceedings to modify or terminate a trust, estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

- (1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in any other appropriate manner.
- (2) Notice is required as follows:
 - (a) Notice as prescribed by Section 75-1-401 shall be given to every interested person. Notice may be given both to a person and to another who may bind him.

- (b) Whenever notice to a person is required or permitted under this chapter, notice to another person who may represent and bind the person represented under this section constitutes notice to the person represented.
- (3) Persons are bound by orders binding others in the following cases:
 - (a) To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to a particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.
 - (b) To the extent there is no conflict of interest between the representative and the person represented with respect to a particular question or dispute:
 - (i) a conservator may represent and bind the person whose estate he controls;
 - (ii) a guardian may represent and bind the ward if no conservator of the ward's estate has been appointed;
 - (iii) an agent having authority to do so may represent and bind the principal;
 - (iv) a trustee may represent and bind the beneficiaries of the trust;
 - (v) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and
 - (vi) if no conservator or guardian has been appointed, a parent may represent and bind the parent's minor or unborn child.
 - (c) Unless otherwise represented, a minor, incapacitated or unborn person, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.
- (4) Even if there is representation under this section, if the court determines that representation of the interest might otherwise be inadequate, the court may appoint a guardian ad litem to represent the interest of, and approve an agreement on behalf of, a minor, incapacitated or unborn person, or a person whose identity or location is unknown.
- (5) If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. In approving an agreement, a guardian ad litem may consider the general family benefit accruing to the living members of the family of the person represented.
- (6) Whenever consent may be given by a person pursuant to this chapter, the consent of a person who may represent and bind the person represented under this section is the consent of, and is binding on, the person represented unless the person represented objects to the representation before the consent would otherwise become effective.

Amended by Chapter 93, 2010 General Session

75-1-404 Publication in newspapers.

Newspapers shall publish all notices of proceedings under the code under the heading "Probate, Guardianship, Conservator and Trust Notices. Consult clerk of the court or the respective signers for further information." These notices shall be published as often during the prescribed period as the paper is regularly issued, unless otherwise provided by law or directed by the court, and as far as possible in one column in the alphabetical order of the surnames of decedents, wards, incapacitated persons, and creators of trusts.

Enacted by Chapter 150, 1975 General Session

