

75-3-412 Formal testacy proceedings -- Effect of order -- Vacation.

- (1) Subject to appeal and subject to vacation as provided in this section and in Section 75-3-413, a formal testacy order under this part, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:
 - (a) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice of it, except by publication.
 - (b) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate, except by publication.
 - (c) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.
 - (d) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under Subsection 75-3-403(2) was made.
- (2) If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.
- (3) A petition for vacation under either Subsections (1)(a) or (b) must be filed prior to the earlier of the following time limits:
 - (a) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement.
 - (b) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 75-3-107 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.
 - (c) Twelve months after the entry of the order sought to be vacated.

Enacted by Chapter 150, 1975 General Session