

**72-5-310 Notice of acknowledgment -- Court determination -- Presumption of acceptance.**

- (1) The governor or the governor's designee shall provide a copy of the notice of acknowledgement by certified mail and return receipt requested to:
  - (a) the last known owner of the servient estate in land over which the right-of-way or rights-of-way subject to the notice runs; and
  - (b) any person known to have a competing dominant estate ownership claim.
- (2)
  - (a) A person with a servient estate or competing dominant estate ownership claim to the right-of-way may petition for a decision of the district court as to the correctness of the acknowledgment of acceptance of the R.S. 2477 grant issued under Section 72-5-309.
  - (b) Venue for the court action shall be the district court for Salt Lake County.
  - (c) The petition shall be filed no later than 60 days after the date on which the petitioner received a copy of the notice of acknowledgment.
  - (d) The state, through the governor or the governor's designee, shall be named as a respondent and served with a copy of the petition in accordance with the Utah Rules of Civil Procedure.
  - (e) No one other than a person with a servient estate ownership claim in land over which the right-of-way or rights-of-way subject to the notice runs or a competing dominant estate claim may challenge the correctness of a notice of acknowledgment.
- (3) The petition for a court decision of the correctness of the notice of acknowledgment shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:
  - (a) the petitioner's name and mailing address;
  - (b) a copy of the notice of acknowledgment the petitioner asserts is incorrect;
  - (c) a request for relief specifying the type and extent of relief requested; and
  - (d) a statement of the reasons why the petitioner is entitled to relief.
- (4) Except as provided under this Part 3, Rights-Of-Way Across Federal Lands Act, all pleadings and proceedings to determine the correctness of a notice of acknowledgment in the district court are governed by the Utah Rules of Civil Procedure.
- (5) The court shall make its decision without deference to the notice of acknowledgment.
- (6)
  - (a) In accordance with Section 72-5-302, a rebuttable presumption that the R.S. 2477 grant has been accepted is created when:
    - (i) a highway existed on public lands not reserved for public uses as of the cut-off date under Section 72-5-301; and
    - (ii) the highway currently exists in a condition suitable for public use.
  - (b) The proponent of the R.S. 2477 status of the highway bears the burden of proving acceptance of the grant by a preponderance of the evidence for all decisions that are not subject to Subsection (6)(a).

Amended by Chapter 9, 2006 General Session