

### Part 3 Informal Probate and Appointment Proceedings

#### **75-3-301 Informal probate or appointment proceedings -- Application -- Contents.**

- (1) Applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the appropriate information required under this section.
- (2) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:
  - (a) a statement of the interest of the applicant;
  - (b) the name and date of death of the decedent, the decedent's age, the county and state of the decedent's domicile at the time of death, and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
  - (c) if the decedent was not domiciled in the state at the time of the decedent's death, a statement showing venue;
  - (d) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated; and
  - (e) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.
- (3) An application for informal probate of a will shall state the following in addition to the statements required by Subsection (2):
  - (a) that the original of the decedent's last will:
    - (i) is in the possession of the court;
    - (ii) was filed with the court's electronic filing system and is now in the possession of the applicant or the applicant's attorney; or
    - (iii) is an authenticated copy of a will probated in another jurisdiction accompanies the application or was filed with the court's electronic filing system and the authenticated copy is now in the possession of the applicant or the applicant's attorney;
  - (b) that the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed;
  - (c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will; and
  - (d) that the time limit for informal probate as provided in this chapter has not expired either because three years or less have passed since the decedent's death, or if more than three years have passed since the decedent's death, circumstances as described by Section 75-3-107 authorizing tardy probate have occurred.
- (4) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate, state the name, address and priority for appointment of the person whose appointment is sought, state whether or not bond is required, and, if required, unless specified by the will, state the estimated value of the personal and real

estate of the decedent and of the income expected from the personal and real estate during the next year.

- (5) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by Subsection (2):
  - (a) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under Section 75-1-301, or, a statement why any such instrument of which he may be aware is not being probated;
  - (b) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under Section 75-3-203;
  - (c) If bond is required, the estimated value of the personal and real estate of the decedent and of the income expected from the personal and real estate during the next year.
- (6) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.
- (7) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Subsection 75-3-610(3), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded, except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Amended by Chapter 142, 2014 General Session

**75-3-302 Informal probate -- Duty of registrar -- Effect of informal probate.**

After receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by Section 75-3-303 shall issue a written statement of informal probate if at least 10 days have elapsed since the date of the notice required by Section 75-3-306, or if at least 120 hours have elapsed since the decedent's death and all persons entitled to notice under Section 75-3-306 have waived such notice in writing. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

Amended by Chapter 194, 1977 General Session

**75-3-303 Informal probate -- Proof and findings required.**

- (1) In an informal proceeding for original probate of a will, the registrar shall determine whether:
  - (a) the application is complete;
  - (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
  - (c) the applicant appears from the application to be an interested person as defined in Subsection 75-1-201(24);
  - (d) on the basis of the statements in the application, venue is proper;
  - (e) an original, duly executed and apparently unrevoked will was presented to the court for electronic storage and electronic filing and is now in the possession of the applicant or the applicant's attorney, or is in the registrar's possession;

- (f) any notice required by Section 75-3-204 has been given and that the application is not within Section 75-3-304; and
  - (g) it appears from the application that the time limit for original probate has not expired.
- (2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in Subsection (4), if it appears that this or another will of the decedent has been the subject of a previous probate order.
  - (3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under Section 75-2-502, 75-2-503, or 75-2-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.
  - (4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.
  - (5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under Subsection (1) above may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Amended by Chapter 364, 2013 General Session

**75-3-304 Informal probate -- Unavailable in certain cases.**

Applications for informal probate which relate to one or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

Enacted by Chapter 150, 1975 General Session

**75-3-305 Informal probate -- Registrar not satisfied.**

If the registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of Sections 75-3-303 and 75-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

Enacted by Chapter 150, 1975 General Session

**75-3-306 Informal probate -- Notice requirements.**

- (1) The moving party must give notice as described by Section 75-1-401 of his application for informal probate:
  - (a) To any person demanding it pursuant to Section 75-3-204.
  - (b) To any personal representative of the decedent whose appointment has not been terminated.
- (2) Upon receipt of an application for informal probate of a will, the clerk shall give written notice of the application to the heirs and devisees who have not waived notice. The notice shall include the name and address of the applicant, the name and location of the court in which the application was filed, the date on which the application was filed, and a statement to the

effect that the requested probate will be granted after the elapse of 10 days from the date of the notice. The notice shall be delivered or sent by ordinary mail to each of the heirs and devisees at his address as shown on the application. The failure of an heir or devisee to object to the granting of the probate within the prescribed period of time shall not affect his right to petition the court to set the probate aside under Section 75-3-401.

Amended by Chapter 194, 1977 General Session

**75-3-307 Informal appointment proceedings -- Delay in order -- Duty of registrar -- Effect of appointment.**

- (1) After receipt of an application for informal appointment of a personal representative other than a special administrator as provided in Section 75-3-614, the registrar, after making the findings required by Section 75-3-308, shall appoint the applicant subject to qualification and acceptance, if at least 10 days have elapsed since the date of the notice required by Section 75-3-310, or if at least 120 hours have elapsed since the decedent's death and all persons entitled to notice under Section 75-3-310 have waived this notice in writing; but if the decedent was a nonresident, the registrar shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.
- (2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created by it, is subject to termination as provided in Sections 75-3-608 through 75-3-612, but is not subject to retroactive vacation.

Amended by Chapter 194, 1977 General Session

**75-3-308 Informal appointment proceedings -- Proof and findings required.**

- (1) In informal appointment proceedings, the registrar shall determine whether:
  - (a) the application for informal appointment of a personal representative is complete;
  - (b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;
  - (c) the applicant appears from the application to be an interested person as defined in Subsection 75-1-201(24);
  - (d) on the basis of the statements in the application, venue is proper;
  - (e) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
  - (f) any notice required by Section 75-3-204 has been given; and
  - (g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.
- (2) Unless Section 75-3-612 controls, the application shall be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in Subsection 75-3-610(3) has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state, and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

Amended by Chapter 39, 1998 General Session

**75-3-309 Informal appointment proceedings -- Registrar not satisfied.**

If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of Sections 75-3-307 and 75-3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

Enacted by Chapter 150, 1975 General Session

**75-3-310 Informal appointment proceedings -- Notice requirements.**

- (1) The moving party must give notice as described by Section 75-1-401 of his intention to seek an appointment informally:
  - (a) To any person demanding it pursuant to Section 75-3-204.
  - (b) To any person having a prior or equal right to appointment not waived in writing and filed with the court.
- (2) Upon receipt of an application for an informal appointment the clerk shall give written notice of the application to the heirs and devisees who have not waived notice. The notice shall include the name and address of the person whose appointment is sought, the name and location of the court in which the application was filed, the date on which the application was filed, and a statement to the effect that the appointment will be made after the elapse of 10 days from the date of the notice. The notice shall be delivered or sent by ordinary mail to each of the heirs and devisees at his address as shown on the application. The failure of an heir or devisee to object to the appointment within the prescribed period of time shall not affect his right to petition the court to set the appointment aside under Section 75-3-414.

Amended by Chapter 194, 1977 General Session

**75-3-311 Informal appointment unavailable in certain cases.**

If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the registrar shall decline the application.

Enacted by Chapter 150, 1975 General Session