

75-3-407 Formal testacy proceedings -- Burdens in contested cases.

- (1) In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Except in cases where a presumption is operable, parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. Where one or more presumptions are operable, the ultimate burden of persuasion shall be determined in accordance with the Utah Rules of Evidence.
- (2) If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

Amended by Chapter 179, 1992 General Session