

**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**PART 4**

**FORMAL TESTACY AND APPOINTMENT PROCEEDINGS**

**700.3401 Formal testacy proceedings; nature; commencement.**

Sec. 3401. (1) A formal testacy proceeding is litigation to determine whether a decedent left a valid will. An interested person or a person that has a right or cause of action that cannot be enforced without administration may commence a formal testacy proceeding by filing 1 of the following:

(a) A petition described in section 3402(1) in which the petitioner requests that after notice and hearing, the court enter an order probating a will.

(b) A petition to set aside a will's informal probate or to prevent a will's informal probate that is the subject of a pending application.

(c) A petition in accordance with section 3402(2) for an order that the decedent died intestate.

(2) A petitioner may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

(3) During the pendency of a formal testacy proceeding, the register shall not act upon an application for informal probate of a will of the decedent or an application for informal appointment of a personal representative of the decedent.

(4) Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, after receipt of notice of the commencement of a formal probate proceeding, a previously appointed personal representative shall refrain from exercising the power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding may also request an order restraining the acting personal representative from exercising that office's powers and may request the appointment of a special personal representative. In the absence of a request under this subsection or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

**Popular name:** EPIC

**700.3402 Formal testacy or appointment; proceedings; petition; contents.**

Sec. 3402. (1) A petition for formal probate of a will or for adjudication of intestacy with or without request for appointment of a personal representative must be directed to the court, must request a judicial order after notice and hearing, and must contain the statements required by this section. A petition for formal probate of a will must include all of the following:

(a) A request for an order as to the testacy of the decedent in relation to a particular instrument that may or may not have been informally probated and a request for an order determining the decedent's heirs.

(b) The statements required for an informal application prescribed by section 3301(1)(a) and (b)(ii) and (iii).

(c) A statement as to whether the original of the decedent's last will is in the court's possession or accompanies the petition. If the original will is not in the court's possession or neither the original will nor an authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition must also state the will's contents and shall indicate that the will is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of a personal representative in intestacy must include all of the following:

(a) A request for a judicial finding and order that the decedent left no will and determining the heirs.

(b) The statements required by section 3301(1)(a) and (d).

(c) A statement indicating whether supervised administration is sought. A petition under this subsection may request an order determining intestacy and heirs without requesting the appointment of a personal representative, in which case, the statements required by section 3301(1)(d)(ii) may be omitted.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

**700.3403 Formal testacy proceedings; notice of hearing on petition.**

Sec. 3403. (1) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of

hearing. The petitioner shall give notice in the manner prescribed by section 1401 to each of the following persons:

(a) The decedent's heirs.

(b) The devisees and personal representatives named in a will that is being, or has been, probated or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated or offered for informal or formal probate elsewhere.

(c) A personal representative of the decedent whose appointment has not been terminated.

(d) A person who has filed a demand for notice under section 3205.

(e) The trustee of a trust described in section 7605(1) as to which the decedent was settlor.

(2) Notice may be given to other persons. In addition, the petitioner shall give notice by publication to each unknown person and to each known person whose address is unknown who has an interest in the matters being litigated. If the proceeding involves a request for appointment of a personal representative and it appears that the deceased died intestate without leaving a known heir, the petitioner shall give notice to the attorney general, public administration division.

(3) If it appears by the petition or otherwise that the fact of the decedent's death may be in doubt, or on the written demand of an interested person, a copy of the notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his or her last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including by any of the following methods:

(a) Inserting in 1 or more suitable periodicals a notice requesting information from anyone having knowledge of the alleged decedent's whereabouts.

(b) Notifying law enforcement officials and public welfare agencies in appropriate locations of the alleged decedent's disappearance.

(c) Engaging an investigator's services.

(4) The costs of a search conducted under subsection (3) shall be paid by the petitioner if there is no administration or by the decedent's estate if there is administration.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

**Popular name:** EPIC

#### **700.3404 Formal testacy proceedings; written objections to probate.**

Sec. 3404. A party to a formal proceeding who opposes the probate of a will for any reason shall state in his or her pleadings the party's objections to probate of the will.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3405 Formal testacy proceedings; uncontested cases; hearings and proof.**

Sec. 3405. (1) If a petition in a testacy proceeding is unopposed, the court may either order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 3409 have been met or conduct a hearing in open court and require proof of the matters necessary to support the order sought.

(2) If evidence concerning execution of the will is necessary, the sworn statement or testimony of 1 of the attesting witnesses to the instrument is sufficient. If the sworn statement or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or sworn statement. If, after diligent search and effort and after the signature of the testator is identified, it appears that the whereabouts of the witnesses to a will cannot be ascertained and it appears on the face of the will that the requirements in this section for a valid will have been met, a presumption arises that the will was executed in all particulars as required by law.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3406 Formal testacy proceedings; contested cases; testimony of attesting witnesses.**

Sec. 3406. (1) If evidence concerning execution of an attested will that is not self-proved is necessary in a contested case, the testimony of at least 1 of the attesting witnesses, if within the state and if competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If a will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and sworn statements annexed or attached to the will, unless there is proof of fraud or forgery affecting the acknowledgment or a sworn statement.

(3) If a witness is competent at the time he or she signs the will, the witness's subsequent incompetency

from whatever cause does not prevent admission of the will to probate, if it is otherwise satisfactorily proved.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3407 Formal testacy proceedings; burdens in contested cases.**

Sec. 3407. (1) All of the following apply in a contested case:

(a) A petitioner who seeks to establish intestacy has the burden of establishing prima facie proof of death, venue, and heirship.

(b) A proponent of a will has the burden of establishing prima facie proof of due execution in all cases and, if the proponent is also a petitioner, prima facie proof of death and venue.

(c) A contestant of a will has the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.

(d) A party has the ultimate burden of persuasion as to a matter with respect to which the party has the initial burden of proof.

(2) If a will is opposed by a petition for probate of a later will revoking the former, the court shall first determine whether the later will is entitled to probate. If a will is opposed by a petition for a declaration of intestacy, the court shall first determine whether the will is entitled to probate.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3408 Formal testacy proceedings; will construction; effect of final order in another jurisdiction.**

Sec. 3408. This state's court shall accept as determinative a final order of a court of another state determining testacy, or the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons if the order includes, or is based upon, a finding that the decedent was domiciled at death in the state where the order was made.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3409 Formal testacy proceedings; order; foreign will.**

Sec. 3409. (1) After the time expires for any required notice, upon proof of notice and after a hearing, if necessary, if the court finds that the testator is dead and that venue is proper, the court shall determine the decedent's domicile at death, the decedent's heirs, and the decedent's state of testacy. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead.

(2) A will found to be valid and unrevoked shall be formally probated. Termination of a previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 3612. A will from a place that does not provide for probate of a will after death may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will is effective under the law of the other place.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3410 Formal testacy proceedings; probate of more than one instrument.**

Sec. 3410. If 2 or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than 1 instrument may be probated if neither expressly revokes the other and neither contains provisions that work a total revocation by implication. If more than 1 instrument is probated, the order shall indicate which provisions control in respect to the nomination of the personal representative, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by another instrument. After a final order in a testacy proceeding has been entered, a petition for probate of another instrument of the decedent shall not be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 3412.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3411 Formal testacy proceedings; partial intestacy.**

Sec. 3411. If it becomes evident in the course of a formal testacy proceeding that, though 1 or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3412 Formal testacy proceedings; effect of order; vacation.**

Sec. 3412. (1) Subject to appeal and subject to vacation as provided in this section and section 3413, a formal testacy order under sections 3409 to 3411, including an order that the decedent did not leave a valid will and that determines 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 that will's 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 the decedent's heirs may be reconsidered if it is shown that an individual was omitted from the determination and that the omitted individual was unaware of his or her relationship to the decedent, was unaware of the decedent's death, or was not given notice of any proceeding concerning the decedent's estate, except by publication.

(2) A petition for vacation filed under subsection (1) shall be filed before the earlier of the following time limits:

(a) If a personal representative is appointed for the estate, the time of entry of an order approving final distribution of the estate or, if the estate is closed by statement, 6 months after the filing of the closing statement.

(b) One year after the entry of the order sought to be vacated.

(3) 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.

(4) 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 or her last known address and the court finds that a search was made as required by section 3403.

(5) If the alleged decedent is not dead, even if notice was sent and the search was made, the alleged decedent 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.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3413 Formal testacy proceedings; vacation of order for other cause.**

Sec. 3413. For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

#### **700.3414 Formal proceeding concerning appointment of personal representative.**

Sec. 3414. (1) An interested person or a person that has a right or cause of action that cannot be enforced without appointment may file a petition for a formal proceeding regarding the priority or qualification of a prospective or appointed personal representative.

(2) If an issue concerning the decedent's testacy is or may be involved, a formal proceeding for adjudication regarding the priority or qualification of an individual who is seeking appointment as personal representative or who was previously appointed personal representative in informal proceedings is governed by this section and section 3402. In other cases, the petition must include or adopt the statements required by section 3301(1)(a) and must describe the question relating to the personal representative's priority or qualification that is to be resolved.

(3) If a formal proceeding precedes the appointment of a personal representative, the formal proceeding stays an informal appointment proceeding that is pending or that is commenced after the formal proceeding's commencement. If the formal proceeding is commenced after the appointment of a personal representative and after the personal representative receives notice of the commencement, the personal representative shall not exercise a power of administration except as necessary to preserve the estate or unless the court orders

otherwise.

(4) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, a previously appointed personal representative, a person having or claiming priority for appointment as personal representative, and any other person described in section 3403(1) or (2), the court shall determine who is entitled to appointment under section 3203, make a proper appointment, and, if appropriate, terminate a prior appointment found to be improper as provided in cases of removal under section 3611.

(5) If the state or county public administrator is seeking appointment as personal representative and the state or county public administrator has knowledge that the decedent's real property has delinquent property taxes on it or is subject to a mortgage foreclosure, all of the following apply:

(a) In addition to any other notice required under this act, the petitioner shall give notice of hearing to the decedent's heirs in the manner prescribed by section 1401. The petitioner shall also post the notice of hearing and the state court administrative office form to challenge the petition on the decedent's real property. A notice required under this subdivision must be in a form approved by the supreme court and must include all of the following information:

(i) A statement describing why the heir is receiving the notice.

(ii) That the heir may object to the petitioner's appointment.

(iii) That the heir may petition the court for a court hearing on any matter, including, but not limited to, any of the following:

(A) A petition for removal of a personal representative for cause under section 3611, at any time during the estate's administration.

(B) A petition for the heir to be appointed personal representative.

(b) The petition must include a statement that details the petitioner's reasonable search for the decedent's heirs, including, but not limited to, an internet search.

(6) A state or county public administrator who intentionally fails to provide the notices required under subsection (5) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000.00, or both.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2018, Act 13, Eff. May 7, 2018.

**Popular name:** EPIC

#### **700.3415 Independent applications to court.**

Sec. 3415. Unless supervised administration is sought and ordered, each person interested in an estate, including a personal representative, whether appointed informally or after notice, may make 1 or more independent requests to the court so that a question or assumption relating to the estate, including the status of an estate as testate or intestate, a matter relating to 1 or more claims, a disputed title, an account of a personal representative, and distribution, may be resolved or established by adjudication after notice without necessarily subjecting the estate to the necessity of a judicial order in regard to other or further questions or assumptions.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC