

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

Part 4

NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

700.1401 Notice; method and time of giving.

Sec. 1401.

(1) If notice of a hearing on a petition is required and except for specific notice requirements as otherwise provided by supreme court rule, the petitioner shall cause notice of the time and place of the hearing on the petition to be given to each interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney. Unless otherwise provided by supreme court rule, notice must be given by 1 of the following methods:

(a) Mailing a copy at least 14 days before the time set for the hearing by certified, registered, or first-class mail addressed to the person being notified at the post office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known.

(b) Delivering a copy to the person being notified personally at least 7 days before the time set for the hearing.

(c) If the address or identity of the person is not known and cannot be ascertained with reasonable diligence, publishing once a copy in a newspaper having general circulation in the county where the hearing is to be held at least 14 days before the time set for the hearing.

(2) The court for good cause shown may provide for a different method or time of giving notice for a hearing.

(3) Proof that notice was given must be made at or before the hearing and filed in the proceeding.

(4) If a person entitled to notice under section 3306, 3310, 3403, 3414, 3705, or 5426 is a resident in and a citizen of a foreign country, the person required to give notice must notify the consul of the foreign nation in the city of New York or of the district having jurisdiction, or the consul, vice-consul, or consular agent resident in this state, if there is one, of the matters and with the particulars described in the relevant section of this act.

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

Popular Name: EPIC

700.1402 Notice; waiver; order.

Sec. 1402.

(1) Except as provided in subsection (2), a person, including a guardian ad litem, conservator, or other fiduciary, may waive notice and consent to the granting of a petition by a writing signed by the person or the person's attorney and filed in the proceeding. If every person affected by the proceeding waives notice and consents in writing to the granting of a petition, the court may enter an appropriate order on the petition without a hearing.

(2) A person for whom a guardianship or other protective order is sought, a ward, or a protected person cannot waive notice. A fiduciary shall not waive or consent on a petition, account, or report made as the fiduciary or in a different fiduciary capacity.

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

Popular Name: EPIC

700.1403 Formal proceeding; pleadings; parties bound by others; notice.

Sec. 1403.

In a formal proceeding that involves an estate of a decedent, minor, protected individual, or incapacitated individual or in a judicially supervised settlement relating to such matters, the following apply:

(a) An interest to be affected shall be described in pleadings that give reasonable information to owners by name

or class, by reference to the instrument that creates the interests, or in another appropriate manner.

(b) A person is bound by an order binding others in each of the following cases:

(i) An order that binds the holder of a power of revocation or amendment or a presently exercisable or testamentary general or special power of appointment binds another person to the extent the person's interest, as a permissible appointee, taker in default, or otherwise, is subject to the power.

(ii) To the extent there is no conflict of interest between the persons represented, as follows:

(A) An order that binds a conservator, plenary guardian, or partial guardian binds the estate that the conservator, plenary guardian, or partial guardian controls.

(B) An order that binds an agent under a durable power of attorney having authority to act binds the principal if a conservator, plenary guardian, or partial guardian has not been appointed.

(C) An order that binds a guardian having authority to act with respect to the matter binds the ward if a conservator of the ward's estate has not been appointed and no agent under a durable power of attorney has authority to act.

(D) An order that binds a trustee binds beneficiaries of the trust.

(E) An order that binds a personal representative binds a person interested in the undistributed assets of a decedent's estate in an action or proceeding by or against the estate.

(F) An order that binds a parent who represents his or her minor or unborn child binds that minor or unborn child if a conservator or plenary guardian has not been appointed.

(iii) A minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable and who is not otherwise represented is bound by an order that binds another party that has a substantially identical interest in the proceeding, but only to the extent there is no conflict of interest between the representation and the person represented.

(c) Notice is required as follows:

(i) Notice as prescribed by section 1401 shall be given to every interested person or to one who can bind an interested person as described in subdivision (b)(i) or (ii). Notice may be given both to a person and to another who may bind the person.

(ii) Notice is given to an unborn or unascertained person, who is not represented under subdivision (b)(i) or (ii), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained person.

(d) At any point in a proceeding, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out the reasons for appointing a guardian ad litem as a part of the record of the proceeding. If he or she accepts the appointment, the guardian ad litem shall report of his or her investigation and recommendation concerning the matters for which he or she is appointed in writing or recorded testimony. In making recommendations, a guardian ad litem may consider the general benefit accruing to living members of the individual's family. After the attorney general files an appearance as required by law in an estate proceeding on behalf of an unknown or unascertained heir at law, the attorney general represents the interest of the heir at law, and the court shall not appoint a guardian ad litem. If a guardian ad litem was previously appointed for the interest, the appointment of the guardian ad litem terminates.

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

Popular Name: EPIC