

SENATE BILL NO. 1542

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

6051S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 472.010, 472.100, and 473.020, RSMo, and to enact in lieu thereof three new sections relating to fiduciaries in probate matters.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 472.010, 472.100, and 473.020, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 472.010, 472.100, and 473.020, to read as
4 follows:

472.010. When used in this code, unless otherwise
2 apparent from the context:

3 (1) "Administrator" includes any administrator de
4 bonis non, administrator cum testamento annexo,
5 administrator ad litem and administrator during absence or
6 minority;

7 (2) "Child" includes an adopted child and a child born
8 out of wedlock, but does not include a grandchild or other
9 more remote descendants;

10 (3) "Claims" include liabilities of the decedent which
11 survive whether arising in contract, tort or otherwise,
12 funeral expenses, the expense of a tombstone, and costs and
13 expenses of administration;

14 (4) "Clerk" means clerk of the probate division of the
15 circuit court;

16 (5) "Code" or "probate code" means chapters 472, 473,
17 474 and 475;

18 (6) "Court" or "probate court" means the probate
19 division of the circuit court;

20 (7) "Devise", when used as a noun, means a
21 testamentary disposition of real or personal property or
22 both; when used as a verb it means to dispose of real or
23 personal property or both by will;

24 (8) "Devisee" includes legatee;

25 (9) "Distributee" denotes those persons who are
26 entitled to the real and personal property of a decedent
27 under his will, under the statutes of intestate succession
28 or who take as surviving spouse under section 474.160, upon
29 election to take against the will;

30 (10) "Domicile" means the place in which a person has
31 voluntarily fixed his abode, not for a mere special or
32 temporary purpose, but with a present intention of remaining
33 there permanently or for an indefinite time;

34 (11) "Estate" means the real and personal property of
35 the decedent or ward, as from time to time changed in form
36 by sale, reinvestment or otherwise, and augmented by any
37 accretions and additions thereto and substitutions therefor,
38 and diminished by any decreases and distributions
39 therefrom. Under the provisions of subsections 4 and 5 of
40 section 209.625, assets held in an ABLE account established
41 under sections 209.600 to 209.645 shall not be considered
42 the property of the designated beneficiary of said account
43 for purposes of this subdivision when applied in chapter
44 475, unless the estate is in the charge and custody of a
45 public administrator;

46 (12) "Exempt property" means that property of a
47 decedent's estate which is not subject to be applied to the
48 payment of claims, charges, legacies or bequests as
49 described in section 474.250;

50 (13) "Fiduciary" includes executor, administrator,
51 guardian, conservator, and trustee;

52 (14) "Heirs" means those persons, including the
53 surviving spouse, who are entitled under the statutes of
54 intestate succession to the real and personal property of a
55 decedent on his death intestate;

56 (15) "Interested persons" mean heirs, devisees,
57 spouses, creditors or any others having a property right or
58 claim against the estate of a decedent being administered
59 and includes children of a protectee who may have a property
60 right or claim against or an interest in the estate of a
61 protectee. **The term "interested persons" includes any**
62 **person or agency nominated to serve as a fiduciary in any**
63 **application for letters, petition for appointment of a**
64 **guardian or conservator, or petition for appointment of a**
65 **trustee.** This meaning may vary at different stages and
66 different parts of a proceeding and must be determined
67 according to the particular purpose and matter involved;

68 (16) "Issue" of a person, when used to refer to
69 persons who take by intestate succession, includes adopted
70 children and all lawful lineal descendants, except those who
71 are the lineal descendants of living lineal descendants of
72 the intestate;

73 (17) "Lease" includes an oil and gas lease or other
74 mineral lease, but does not include month-to-month or year-
75 to-year tenancies under oral contracts;

76 (18) "Legacy" means a testamentary disposition of
77 personal property;

78 (19) "Legatee" means a person entitled to personal
79 property under a will;

80 (20) "Letters" include letters testamentary, letters
81 of administration and letters of guardianship;

(21) "Lien" includes all liens except general judgment, execution and attachment liens;

(22) "Lineal descendants" include adopted children and their descendants;

(23) "Mortgage" includes deed of trust, vendor's lien and chattel mortgage;

(24) "Person" includes natural persons and corporations;

(25) "Personal property" includes interests in goods, money, choses in action, evidences of debt, shares of corporate stock, and chattels real;

(26) "Personal representative" means executor or administrator. It includes an administrator with the will annexed, an administrator de bonis non, an administrator pending contest, an administrator during minority or absence, and any other type of administrator of the estate of a decedent whose appointment is permitted. It does not include an executor de son tort;

(27) "Property" includes both real and personal property;

(28) "Real property" includes estates and interests in land, corporeal or incorporeal, legal or equitable, other than chattels real;

(29) "Registered mail" includes "certified mail" as defined and certified under regulations of the United States Postal Service;

(30) "Will" includes codicil; it also includes a testamentary instrument which merely appoints an executor and a testamentary instrument which merely revokes or revives another will.

472.100. 1. No notice to interested persons need be given except as specifically provided for in this code or as

3 ordered by the court. When no notice is required by this
4 code, the court may require such notice as it deems
5 desirable by a general rule or by an order in a particular
6 case.

7 2. Except as otherwise specifically provided by law,
8 all notices required by this code or the court to be served
9 upon any person shall be served as the court directs, by
10 rule or otherwise, in such manner and at such time as to
11 constitute reasonable notice, in any of the following
12 manners:

13 (1) By delivering to the person, including a minor or
14 a disabled or incapacitated person not known to have a
15 legally appointed guardian or conservator, a copy of the
16 notice personally or by leaving a copy at his dwelling house
17 or usual place of abode with some person of his family over
18 the age of fifteen years, or by delivering a copy to an
19 agent authorized by appointment or required by law to
20 receive service of process;

21 (2) By publishing a copy of the notice in some
22 newspaper qualified to publish legal notices under chapter
23 493 and having general circulation within the county in
24 which the court is held for the time required by law or
25 court rule or order. If no time is fixed by law or by rule
26 of court, the notice shall be published once each week for
27 four consecutive weeks, the last insertion being at least
28 seven days before the hearing. The personal representative,
29 or other person at whose instance any notice by publication
30 is required, may designate the newspaper in which such
31 notice is to be published; but as to any notice which is
32 necessary to the jurisdiction of the court, the clerk shall
33 designate the newspaper unless the personal representative
34 or other person has made such designation and so informed

the clerk in writing before the time for commencement of publication. If there is no qualified newspaper published in the county, the notice shall be published in some qualified newspaper published in an adjoining county which has a general circulation within the county in which the court is held or the notice shall be given by posting copies thereof in ten public places in the county as the court directs. If a notice, which is required to be published once a week for more than one time, is published in a daily newspaper, each publication after the first shall appear on the same day of the week on which the first publication was made;

(3) By registered or certified mail, addressed to the person to be notified at his address within the United States, deposited in the United States mail, with all postage charges prepaid, and, if ordered by the court, with a return receipt requested;

(4) By ordinary mail, deposited in the United States mail with all postage charges prepaid at the first class rate, in a sealed envelope or on a post or postal card, properly addressed, bearing the name and return address of the sender and otherwise inscribed in accordance with the regulations of the United States Postal Service to require a return thereof to the sender upon nondelivery to the addressee;

(5) By any combination of the above or as may be provided by the rules of civil procedure.

3. Service by publication is notice to all heirs and devisees, whether known or unknown or whether residents or nonresidents of this state, spouses and to all creditors and other persons interested in the estate.

66 4. Provisions in this code for notice to interested
67 persons, other than by publication, do not require such
68 notice to creditors unless otherwise specifically required
69 by the code or by the court.

70 5. Service of notice upon a minor or a disabled or
71 incapacitated person having a legally appointed guardian or
72 conservator, if the fact of the guardianship or
73 conservatorship is known to the person requiring such
74 service or is disclosed by the court files or records, shall
75 be made by serving such guardian or conservator in the
76 manner provided herein for service upon other persons.
77 Service upon a corporation may be made in the manner
78 provided by law for the service of summons on corporations
79 in civil actions.

80 6. In all cases where service by publication is
81 required but personal service or service by registered or
82 certified mail is not ordered, all interested persons whose
83 names and addresses appear in the court files or records,
84 including creditors only when ordered by the court, shall be
85 served by ordinary mail. Failure in any such case to mail
86 any notice or failure of any interested person to receive
87 any mailed notice does not invalidate any order of the court
88 or deprive the court of jurisdiction.

89 7. Personal service and service by registered or
90 certified mail may be made by any competent witness, except
91 that service by mail of any process, order or notice issued
92 by the court shall be made by the clerk, or, if personal
93 service is required, by the sheriff. Service by publication
94 and by ordinary mail, except those required by section
95 473.587, shall be made by the clerk when requested in
96 writing by the party requiring same, and when furnished with
97 the necessary information therefor.

98 8. If an attorney has entered his appearance in
99 writing for any party in any probate proceeding or matter
100 pending in the court, all notices required to be served on
101 the party in the proceeding or matter may be served on the
102 attorney and such service shall be in lieu of service upon
103 the party for whom the attorney appears. Service on an
104 attorney may be made by ordinary mail or by leaving a copy
105 of any notice or paper at his office with his clerk or with
106 an attorney employed by or associated with the attorney to
107 be served.

108 **9. If the public administrator is nominated as**
109 **fiduciary, or at any stage of the proceeding is being**
110 **considered by the court to be nominated as fiduciary, the**
111 **public administrator shall receive a copy of the application**
112 **or petition from the applicant, petitioner, or the court and**
113 **any accompanying documents, including exhibits, and shall**
114 **receive written notice indicating the date and time of the**
115 **proceeding, and have an opportunity to attend and be heard.**

473.020. 1. If no application for letters
2 testamentary or of administration is filed by a person
3 entitled to such letters pursuant to section 473.110 within
4 twenty days after the death of a decedent, then any
5 interested person may petition the probate division of the
6 circuit court which would be the proper venue for the
7 administration of the estate of such decedent for the
8 issuance of letters testamentary or of administration. For
9 purposes of this section, in addition to persons provided
10 for in subdivision (15) of section 472.010, any person who
11 has attached a claim supported by an affidavit setting forth
12 the basis upon which such person has a claim against the
13 decedent shall be an interested person.

14 2. The petition must be filed within one year after
15 the date of death of the decedent and shall include the
16 following:

17 (1) The decedent's name, the address of the decedent's
18 last residence and the date of death of the decedent;

19 (2) If a written will of the decedent has been
20 presented for probate, the names and addresses of the
21 personal representatives designated in such will; and

22 (3) The names, addresses and relationships to the
23 decedent of the decedent's heirs as is known to, or can be
24 reasonably ascertained by, the petitioner.

25 3. Within fifteen days from the date of filing, the
26 petition shall be set for hearing to determine who should be
27 directed to apply for letters testamentary or of
28 administration, and not to determine the validity of any
29 claim. Notice of the hearing shall be served upon all
30 interested persons, **including a nominated fiduciary**, in the
31 manner and within such time as directed by the court. Upon
32 hearing of the petition, the court shall enter such order or
33 orders as it deems appropriate, including any of the
34 following:

35 (1) An order directing the person found by the court
36 to be entitled to the issuance of letters testamentary or of
37 administration to apply for and qualify for such letters
38 within such time as is allowed by the court, and in default
39 of such timely application and qualification, upon
40 application, the court shall issue letters of administration
41 to some other person found suitable by the court;

42 (2) An order refusing letters on the estate; or

43 (3) An order dismissing the petition.

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