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Kansas Judicial Center
301 S.W. Tenth Avenue, Suite B2
Topeka, Kansas 66612-1507

Telephone (785) 296-2498

judicial.council@ks.gov
www.kansasjudicialcouncil.org

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TO: House Judiciary Committee
FROM: Fred Patton, Kansas Judicial Council
DATE: March 12, 2024
RE: Proponent testimony on S.B. 379

The Kansas Judicial Council recommends S.B. 379, which was the work product of its Probate Law Advisory Committee. The bill makes amendments to two different areas of probate law: the small estates affidavit process and publication notice deadlines for sales of real and personal property at auction.

Small estates affidavit process

K.S.A. 59-1507b authorizes the transfer of personal property using an affidavit process when the total probate estate does not exceed \$75,000. The affidavit is presented to the holder of the property by a successor who is entitled to the property either under a will or under intestate succession. This process allows Kansans to avoid the time and expense of opening a probate proceeding. Probably the most common use of the affidavit process is to obtain transfer of bank accounts and motor vehicles.

The Probate Committee has always interpreted K.S.A. 59-1507b as allowing a single successor to sign the affidavit and receive the property, even though that person is just one of several successors to whom the property will eventually be apportioned. The Committee's interpretation of the statute is based on the language stating that a transfer to a successor is deemed to be a transfer to the personal representative of the decedent. However, the Committee learned that a question had arisen whether this interpretation was correct.

The proposed amendments to subsection (a) of K.S.A. 59-1507b appear in Section 2 of the bill and are intended to clarify that:

- 1) A third party need not verify that a successor is actually a beneficiary or heir of the decedent; and
- 2) The successor may designate how the third party should distribute the property (*e.g.* to the successor alone or to multiple successors).

New subsection (c) provides a definition of “successor” that includes a person nominated as personal representative under a decedent’s will. This change would enable the executor of a pour-over will to receive property and transfer it into a decedent’s trust.

Publication notice deadlines

Last year, the Probate Committee recommended amendments to extend the window of time available to accomplish publication notice of hearings and notice of sale of real estate at public auction. The amendments were enacted as part of 2023 H.B. 2130.

This year, the Probate Committee is recommending several additional related amendments involving publication notice. K.S.A. 59-709 currently requires publication notice to creditors within 10 days of the filing of a petition for administration or probate of a will. This statute should parallel K.S.A. 59-2209, which now requires notice of hearing to be published within 30 days (rather than 10 days) of an order for hearing. Notice of hearing and notice to creditors are frequently combined so the deadlines need to be the same.

The Probate Committee also recommends amending the statutes dealing with sales of real and personal property at public auction to clarify requirements when the sale is being held as an auction taking place over a number of days. This is becoming more common, especially as many auctions are now being held online.

Probate Committee Members

The members of the Probate Law Advisory Committee are:

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