

FORMAL CLOSINGS AT THIRD DISTRICT COURT

1) Petition for Order Approving Final Settlement and Distribution

This should include an accounting unless Waivers of Accounting are signed by each distributee and filed with the Court. Probate cannot be formally closed sooner than 3 months after the first date of publication of Notice to Creditors. This is scheduled on the Wednesday probate calendar and the Court will give Notice to all interested parties and Post for 30-days prior to the hearing.

2) Estate Closing Order and Schedule of Distribution

Signed by the probate Judge.

3) Receipts and Releases

There needs to be a receipt and release signed by all those listed as per the Schedule of Distribution attached to the Estate Closing Order.

4) Decree of Final Discharge

Signed by the probate Judge when all receipts and releases have been filed with the Court. There is no hearing for this.

For Pro Se clients: attached are checklists of the required forms and the form numbers that coincide with the "Probate Packet" sold by the Utah State Bar for \$30.00. The Court always recommends you get an attorney but it is not mandatory.

IMPORTANT THINGS TO REMEMBER:

If the first person nominated in a Will to act as personal representative is deceased or not able/willing to serve, you must file a death certificate or affidavit regarding why that person cannot serve. If the person is just not able to serve, they need to sign a renunciation and nomination.

If you do not have all of the signed consents from people with equal priority, it is best to go formal rather than informal as Notices sent by the Court **act as consents in formal probates only!**

The "Wherefore" at the end of your petition must state **the date of the Will being probated.**

Court interpreters are **not provided** for probate cases.

Formal Probate - With a Will

The Court needs the original documents of the following:

<u>Form #:</u>	<u>Title:</u>
13	Petition for Formal Probate of Will and Formal Appointment of Personal Representative - List Heirs/Interested Parties, <i>and addresses for each person including Petitioner</i>

The Court will schedule for hearing and sent notice to all parties listed in the Petition. If matter is approved at the hearing, then the following documents need to be filed.

17	Order of Formal Probate of Will, Adjudication of Intestacy and Appointment of Personal Representative - This is signed by the Judge.
28	Acceptance of Appointment by Personal Representative or Special Administrator - This is signed by the person/persons who are appointed.
30	Letters Testamentary - This form you get copies of to show that you are the Personal Representative.
31	<i>Notice to Creditors</i>

**Or the Court will send Notice to those interested parties listed in the Application.

- **We do need the Original Will.** If you are unable to obtain the Original Will, we need the reason why in the Application along with a copy of the will attached to the Application.

- **Filing Fee:** \$: *360.⁰⁰*
Copy Fee: \$.50 per Regular Copy
\$5.00 per Certified Copy

- You get the forms from the Utah State Bar located at: 645 S. 200 E.
Phone #: 531 - 9077

Formal Probate - Without a Will

The Court needs the original documents of the following:

<u>Form #:</u>	<u>Title:</u>
14	Petition for Formal Adjudication of Intestacy and Formal Appointment of Personal Representative - List Heirs/Interested Parties.

The Court will schedule for hearing and sent notice to all parties listed in the Petition. If matter is approved at the hearing, then the following documents need to be filed.

17	Order of Formal Probate of Will, Adjudication of Intestacy and Appointment of Personal Representative - This is signed by the Judge.
28	Acceptance of Appointment by Personal Representative or Special Administrator - This is signed by the person/persons who are appointed.
30	Letters Testamentary - This form you get copies of to show that you are the Personal Representative.
31	<i>Notice to Creditors</i>

**Or the Court will send Notice to those interested parties listed in the Application.

- **Filing Fee:** \$ 360⁰⁰
Copy Fee: \$.50 per Regular Copy
\$ 5.00 per Certified Copy

- You get the forms from the Utah State Bar located at: 645 S. 200 E.
Phone #: 531 - 9077

Informal Probate - With a Will

The Court needs the original documents of the following:

<u>Form #:</u>	<u>Title:</u>
6	Application for Informal Probate of Will and for Informal Appointment of Personal Representative - List Heirs/Interested Parties.
1	Waiver of Notice** - Signed by all interested parties listed in the Application. You may have to make copies of this document.
7	Statement of Informal Probate of Will and for Informal Appointment of Personal Representative - This is signed by the Judge.
28	Acceptance of Appointment by Personal Representative or Special Administrator - This is signed by the person/persons who are appointed.
30	Letters Testamentary - This form you get copies of to show that you are the Personal Representative.
31	<i>Notice to Creditors</i>

**Or the Court will send Notice to those interested parties listed in the Application.

- **We do need the Original Will.** If you are unable to obtain the Original Will, we need the reason why in the Application along with a copy of the will attached to the Application.

- **Filing Fee:** \$360.⁰⁰
Copy Fee: \$.50 per Regular Copy
\$5.00 per Certified Copy

- You get the forms from the Utah State Bar located at: 645 S. 200 E.
Phone #: 531 - 9077

Informal Probate - Without a Will

The Court needs the original documents of the following:

<u>Form #:</u>	<u>Title:</u>
10	Application for Informal Appointment of Personal Representative - List Heirs/Interested Parties.
1	Waiver of Notice** - Signed by all interested parties listed in the Application. You may have to make copies of this document.
5	Renunciation and/or Nomination - This is for those who either have priority or equal priority to serve as personal representative. You may have to make copies of this. You may or may not have to use this form.
11	Statement of Informal Appointment of Personal Representative - This is signed by the Judge.
28	Acceptance of Appointment by Personal Representative or Special Administrator - This is signed by the person/persons who are appointed.
30	Letters of Administration or of Special Administrator - This form you get copies of to show that you are the Personal Representative.
31	<i>Notice to Creditors</i>

**Or the Court will send Notice to those interested parties listed in the Application.

- **Filing Fee:** \$360.⁰⁰
Copy Fee: \$.50 per Regular Copy
\$5.00 per Certified Copy

- You get the forms from the Utah State Bar located at: 645 S. 200 E.
Phone #: 531 - 9077

INFORMAL PROBATE - With a Will

- 1) Will: Should be **original** always
 - a) unless it is stated in the application that they are unable to locate it or it has been destroyed
 - b) needs to have two witnesses OR be notarized OR both. If not notarized, needs to have Affidavit of Attesting Witness.
- 2) Application for Informal Probate of Will and Informal Appointment of PR
Date of death: cannot be filed sooner than 5 days after the date of death (see 120 hours rule 75-2-104) and not longer than 3 years after date of death (see rule 75-3-107).
- 3) Waiver of Notice
If there are waivers of notice from **all interested parties** listed in their application, then the Court would not have to send Notice.
- 4) Statement of Informal Probate of Will and Informal Appointment of Personal Representative
This is the Order signed by the Registrar (Judge).
- 5) Acceptance of Appointment
This is signed by the individual(s) who are appointed to serve as pr's
- 6) Letters Testamentary
This document is signed by the clerk. This is what you would want certified copies of in order to show that you have authority to handle the estate. Note: some financial institutions may tell PR's they need updated "new letters". That does not mean that you file new Letters, the Court will certify Letters already on file.

If Waivers of Notice and all of the other required documents are in order, then it can be completed without a review date. If not, the Court will set a date for review and send Notice to all interested parties.

- 7) Notice to Creditors
Once Letters have been filed, this should be published and proof of said publication filed with the Court.

Please note: you cannot adjudicate intestacy informally!

INFORMAL PROBATE - Without a Will

1) Application for Informal Appointment of Personal Representative
(No sooner than 5 days after death and no longer than 3 years after death)

2) Waiver of Notice

If you have waivers of notice from all of the interested parties listed in the application, the Court would not have to send Notice to anyone.

3) Consent to Appointment

This needs to be filed if the one who is seeking appointment does not have priority or has equal priority.

Examples: Spouse of decedent has priority to serve
 Parents have equal priority
 Children of decedent have equal priority
 Siblings have equal priority

4) Statement of Informal Appointment of Personal Representative

This is the Order that is signed by the Registrar (Judge).

5) Acceptance of Appointment

This is signed by the individual(s) who are appointed to serve as personal representatives.

6) Letters of Administration

This document is signed by the clerk. This is what you would want to get certified copies of in order to show that the personal representative has authority to handle the estate.

IF Waiver of Notice and Consents to Appointment (if needed) are all in order, then it can be completed without a review date. That means the clerk can stamp the Judge's signature on the Order and issue the Letters right then.

IF there are no Waivers of Notice from each interested party, the probate will be set for review and the Court will send Notice to all interested parties.

7) Notice to Creditors

Once Letters have been filed, Notice to Creditors should be published and proof of publication filed with the Court.

INFORMAL CLOSING - With or without a Will

1) Verified Statement of Personal Representative Closing Estate

This document cannot be filed sooner than 4 months after the first date of publication of Notice to Creditors (EX: first date of publication was 7/15/09, soonest you could close informally would be 11/15/09) OR one year after the date of death.

2) Receipt and Release and Consent to Closing by Sworn Statement

This is signed by all parties who have received distribution

*****ONE YEAR AFTER FILING THE ABOVE:*****

3) Application for Certificate of Registrar

4) Certificate of Registrar

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NOTES OF INTEREST

Third District Court posts probate Notices in three places: the Matheson Courthouse on the first floor (West end), the West Jordan Courthouse, and on the courts website.

Public Website for viewing probate Notices:

www.utcourts.gov/notices/courts/

The following types of Notices must be posted at least 10 days prior to the hearing date: formal probates, determination of heirs, anything to do with trusts, any kind of termination (guardianship, conservatorship), formal closings, final settlement & distributions, anything to do with claims against an estate, any objection to an informal probate, anything to do with structured settlement payments.

All of these types of matters are heard on the Wednesday morning (8:30a.m.) Probate calendar. Judge Robert K Hilder is filling the probate judge rotation through June 30, 2010. Guardianships and conservatorships of both minors and adults are also heard on this calendar but their Notices are never posted.

Adoptions, minor settlements, and name changes are heard by the assigned Judge.

Probate filing fee is \$360.00 as of 5/12/09

Certified copies are \$4.00 per certification and .50 a page

Affidavit for collecting personal property in a small estate proceeding.

(1) Being first duly sworn, I state that:

(2) This affidavit is made for the purpose of collecting the personal property of _____, who died on _____, as authorized by §75-3-1201;

(3)(a) I am the decedent's successor and entitled to payment or delivery of the property;

(3)(b) I am the duly authorized agent of _____, who is the decedent's successor;

(4)(a) The value of the entire estate subject to administration, wherever located, less liens and encumbrances, does not exceed \$100,000;

(4)(a) The value of the entire estate subject to administration, wherever located, less liens and encumbrances, does not exceed \$100,000;

(4)(b) The value of the entire estate subject to administration, wherever located, other than motor vehicles, trailers, or semi-trailers, less liens and encumbrances, does not exceed \$100,000; (Required for title transfer by Motor Vehicle Division of the State Tax Commission.)

(5) 30 days have elapsed since the death of the decedent;

(6) No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(7) Such indebtedness, tangible personal property or instrument evidencing a debt, obligation, stock, or chose in action include:

Date:

Sign here

Typed or printed name

I certify that _____, who is known to me or who presented satisfactory identification, has, while in my presence and while under oath or affirmation, voluntarily signed this document and declared that it is true.

Date:

Sign here

Typed or printed name:

Seal:

ALTERNATIVE DISPUTE RESOLUTION IN PROBATE

1. Parties to probate disputes are required to participate in alternative dispute resolution, sometimes called ADR (Rule 4-510 of the Rules of Judicial Administration). Because probate procedure differs from usual civil procedure, the Third District Court has adapted some of the ADR rules to probate cases.
2. All probate disputes that are not resolved by the law and motion judge are automatically referred by the Court to the ADR program at the time the case is referred to a judge for trial. By default, the form of ADR is mediation but parties may agree to substitute non-binding arbitration or binding arbitration. The rules provide that **mediation shall be commenced within 30-days of the date of referral**. To exit ADR prior to completing the process, a motion to withdraw from probate mediation (ADR Deferral Notice) and a request for a scheduling conference must be filed with the assigned judge.
3. The fees of the mediator are to be paid in advance. If a Personal Representative, Trustee, Guardian or Conservator with liquid assets is a party, the estate or trust will pay the mediator's fees. Otherwise, the earliest petitioner in the matter(s) referred to mediation will pay but is entitled to reimbursement from the estate or trust. Ultimate responsibility for reimbursing the mediator's fees is reserved for the court to determine absent agreement of the parties. If the parties cannot afford mediator fees or there is another good reason, a pro bono mediator may be appointed through the Director of Dispute Resolution, Administrative Office of the Courts. Telephone Kathy Elton at (801) 578-3982 or fax (801) 578-3843 or e-mail: kathye@email.utcourts.gov.
4. Discovery may proceed during mediation proceedings (URCADR Rule 101(f)). However, the initial disclosure and the discovery and scheduling conference provisions of Rule 26(a)(1) and (f) of the Utah Rules of Civil Procedure are automatically stayed by the court for 60-days following the referral to ADR. This stay end when a motion to withdraw from probate mediation is filed.
5. **ADR is expected to be completed within 60-days from the date of the automatic referral**. If the parties agree to a different date, notice of the new date should be filed with the Court. Only the assigned judge can change the 60-day suspension of Rule 26(a)(1) and (f).

6. Upon completion of ADR, the plaintiff is required to notify the Court of the outcome on a form provided by the Court. This is required for purposes of both case management and tracking the results of mediation. All parties should understand that to give an agreement the force of a judgment, a motion must be made and a judgment entered by the assigned judge.
7. The "plaintiff" in probate proceedings is presumed to be the earliest petitioner in the matter(s) referred to mediation and may have duties under Rule 4-510 and Rule 26. A motion to designate another party as "plaintiff" should be brought before the assigned judge.
8. **Before a motion to withdraw** from probate mediation is filed, the parties and attorneys must view a **short videotape on ADR** which has been prepared by the Court. The video is also available on the website as well as for purchase for \$10 from the Director of Dispute Resolution.
9. To assist parties in choosing a mediator, the Court maintains a roster of mediators for probate disputes on the courts website:
www.utcourts.gov/resources/forms/#mediation

FREQUENTLY USED COURT ASSISTANCE WEB LINKS

ANSWERING A COMPLAINT / PETITION:

<http://www.utcourts.gov/howto/answer/>

COLLECTING A DEBT:

<http://www.utcourts.gov/howto/judgment/>

COMMON LAW MARRIAGE:

<http://www.utcourts.gov/howto/marriage/> (Scroll down to "common law marriage")

****STATUTE**** Lays out the required elements for a judicial determination of marriage not legally solemnized

<http://www.le.utah.gov/UtahCode/getCodeSection?code=30-1-4.5>

FILING PROCEDURE:

<http://www.utcourts.gov/howto/filing/>

FINDING PEOPLE FOR SERVICE OF PROCESS:

http://www.utcourts.gov/howto/service/finding_people.html

FORECLOSURE:

<http://www.utcourts.gov/howto/foreclosure/>

IDENTIFYING A JUDGMENT DEBTOR'S PROPERTY (Supp Orders)

http://www.utcourts.gov/howto/judgment/Supplemental_Procedures/

(Need to click on forms, then "Related Forms" scroll down to identifying a judgment debtor's property)

JUDGMENTS:

<http://www.utcourts.gov/howto/judgment/>

SERVICE OF PROCESS:

http://www.utcourts.gov/howto/service/service_of_process.html

WRIT OF EXECUTION:

<http://www.utcourts.gov/howto/judgment/execution/>

WRIT OF GARNISHMENT:

<http://www.utcourts.gov/resources/forms/garnishment/>

TEMPORARY ORDERS:

http://www.utcourts.gov/howto/family/Temporary_Order/

VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS:

<http://www.utcourts.gov/howto/family/relinquishment/>

Notification of the Exercise of Trustee to a Financial Institution

Utah Code Ann. Section 75-5-410 provides that the "court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person." (emphasis added) Only a trust company may engage in the trust business in this state and the general power to serve as trustee is granted to a corporation, or other business, if it is in the business of providing conservator services, under the ambit of the Financial Institutions Act. Utah Code Ann. Section 7-5-1 defines a "business trust" as a business acting in any agency or fiduciary capacity, including that of "personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under appointment as trustee, for any purpose permitted by law, including the definition of "trust" set forth in Utah Code Ann. 75-1-201(53)."

Businesses which seek to provide conservator or guardian services, but which otherwise are not qualified as trust companies, are eligible to serve as conservators, guardians, or trustees, after notice has been given, pursuant to Utah Code Ann. Section 75-1-401 to all trust companies doing business in this state. See:

www.le.utah.gov/UtahCode/getCodeSection?code=75-1-401

A "trust company" is an institution authorized to engage in the trust business under the Financial Institutions Act including (i) a Utah depository institution or its wholly owned subsidiary; (ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary; (iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103 See:

www.le.utah.gov/UtahCode/getCodeSection?code=7-1-103

(8); (iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and (v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.

The genesis of this provision evolved from the problem presented by depository institutions which, traditionally, operated trust companies, but

which could not profitably serve smaller clients. The authority to provide trust services, i.e. guardian or conservator services, devolved to companies which could economically provide a needed service. Initially, the companies which provided such a service were affiliated with accounting firms. However, the statute clearly provides that, upon appropriate notice, a business can provide such a service after notice to the entities which previously might have been its competitors, depository institutions.

Thanks to Scott W Hansen for preparing this on behalf of Third District Court's Probate Department's Case Manager, Joanne Bueno Sayre.

As requested by Utah Code Section 7-5-1(c)(viii)©, to notify Financial Institutions (when a company is petitioning to be appointed Conservator):

Trust Manager*
Holladay Bank and Trust
2020 E 4800 S
SLC UT 84117

Dept Head, Private Banking and Investing*
Key Private Bank, N.A.
36 S State St Ste 2600
SLC UT 84111

Senior Vice President*
Zions First National Bank
One South Main St
SLC UT 84111

Vice President and Manager*
JP Morgan Chase Bank
Investment Management and Trust Group
201 S Main St
SLC UT 84111

Trust Dept*
Wells Fargo Bank
299 S Main 8th Floor
SLC UT 84111

Deseret Trust Company*
POB 11558
SLC UT 84147-0558

Trust Dept*
U.S. Bank of Utah
170 S Main St
SLC UT 84101

Trust Manager*
Bank of Utah
2605 Washington Blvd
Ogden UT 84401

Sr. Vice President*
Central Bank
75 N University Ave
Provo UT 84601

Last updated 12/8/08

Notification of the Exercise of Trustee to a Financial Institution

Utah Code Ann. Section 75-5-410 provides that the "court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person." (emphasis added) Only a trust company may engage in the trust business in this state and the general power to serve as trustee is granted to a corporation, or other business, if it is in the business of providing conservator services, under the ambit of the Financial Institutions Act. Utah Code Ann. Section 7-5-1 defines a "business trust" as a business acting in any agency or fiduciary capacity, including that of "personal representative, executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under appointment as trustee, for any purpose permitted by law, including the definition of "trust" set forth in Utah Code Ann. 75-1-201(53)."

Businesses which seek to provide conservator or guardian services, but which otherwise are not qualified as trust companies, are eligible to serve as conservators, guardians, or trustees, after notice has been given, pursuant to Utah Code Ann. Section 75-1-401 to all trust companies doing business in this state. See:

www.le.utah.gov/UtahCode/getCodeSection?code=75-1-401

A "trust company" is an institution authorized to engage in the trust business under the Financial Institutions Act including (i) a Utah depository institution or its wholly owned subsidiary; (ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary; (iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103 See:

www.le.utah.gov/UtahCode/getCodeSection?code=7-1-103

(8); (iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and (v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.

The genesis of this provision evolved from the problem presented by depository institutions which, traditionally, operated trust companies, but

which could not profitably serve smaller clients. The authority to provide trust services, i.e. guardian or conservator services, devolved to companies which could economically provide a needed service. Initially, the companies which provided such a service were affiliated with accounting firms. However, the statute clearly provides that, upon appropriate notice, a business can provide such a service after notice to the entities which previously might have been its competitors, depository institutions.

Thanks to Scott W Hansen for preparing this on behalf of Third District Court's Probate Department's Case Manager, Joanne Bueno Sayre.

FILED
THIRD DISTRICT COURT
JAN 22 AM 11:00
SALT LAKE COUNTY
BY [Signature] DEPUTY CLERK

Scott W. Hansen, 1347
LEWIS HANSEN WALDO & PLESHE, LLC
Eight East Broadway, Suite 410
Salt Lake City, Utah 84111
Telephone: (801) 746-6300
Facsimile: (801) 746-6301
Attorney for Guardian & Conservator Services

IN THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH

IN THE MATTER OF

John Doe

An Incapacitated Person.

NOTICE TO FINANCIAL
INSTITUTIONS

Probate No. 093900076

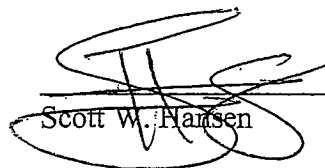
To:

Trust Department
U.S. Bank of Utah
170 South Main Street
Salt Lake City, Utah 84101

Guardian & Conservator Services, LLC, by and through its attorney of record, Scott W. Hansen of Lewis Hansen Waldo & Pleshe, LLC, hereby provides notice of its petition for the appointment of Guardian & Conservator Services, LLC, as a guardian and conservator, as requested by Utah Code Section 7-5-1(c)(viii)(C).

DATED this 20th day of January, 2009.

LEWIS HANSEN WALDO & PLESHE, LLC



Scott W. Hansen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on this 21st day of January, 2009, to the following:

Trust Department
U.S. Bank of Utah
170 South Main Street
Salt Lake City, Utah 84101