

**75-3-402. Formal testacy or appointment proceedings -- Petition -- Contents.**

(1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, shall be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section.

A petition for formal probate of a will:

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(b) contains the statements required for informal applications as stated in Subsection 75-3-301(2) and the statements required by Subsections 75-3-301(3)(b) and (c), and, if the petition requests appointment of a personal representative, the statements required by Subsection 75-3-301(4); and

(c) states whether the original of the last will of the decedent is in the possession of the court, accompanies the petition, or was presented to the court for electronic storage or electronic filing and is not in the possession of the petitioner or the petitioner's attorney.

(2) If the original will is not in the possession of the court, has not been presented to the court for electronic storage or electronic filing, does not accompany the petition, and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also shall state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable.

(3) A petition for adjudication of intestacy and appointment of an administrator in intestacy shall request a judicial finding and order that the decedent left no will and, determining the heirs, contain the statements required by Subsections 75-3-301(2) and 75-3-301(5) and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by Subsection 75-3-301(5)(b) may be omitted.

Amended by Chapter 364, 2013 General Session