

1 S.116

2 Introduced by Senator Sears

3 Referred to Committee on Judiciary

4 Date: January 3, 2012

5 Subject: Probate proceedings; service by publication; notice to interested  
6 parties

7 Statement of purpose: This bill proposes to reduce the amount of time notice  
8 by publication is required to be in newspapers with respect to probate  
9 proceedings, and to provide the court in a proceeding involving a decedent's  
10 estate with the discretion to determine that an interested party need not be  
11 served with notice if the court finds that not providing such notice is in the best  
12 interests of the decedent and the estate.

~~An act relating to probate proceedings~~ *An act relating to probate  
proceedings, powers of attorney, and county budget reserve funds*

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 ~~Sec. 1. Rule 4(e) of the Vermont Rules of Probate Procedure is amended~~

15 to read:

16 (e) Service by publication. When service by publication is required by this  
17 rule or by order of the court, the person directed by the court shall cause the  
18 substance of the notice prescribed by subdivision (a) of this rule, and a brief  
19 statement of the object of the petition, to be published ~~once a week for two~~  
20 ~~successive weeks and at least seven days apart in a designated newspaper of~~

1 general circulation in the probate district where the petition was filed, or such  
2 other location as the court may direct. The ~~first~~ publication of the notice shall  
3 be made within 20 days after the petition is filed or the order is granted.

4 Service by publication is complete on the day of ~~the last~~ publication.

5 Sec. 2. Rule 17 of the Vermont Rules of Probate Procedure is amended  
6 to read:

7 Rule 17. PARTIES GENERALLY

8 (a) Parties at commencement. At the commencement of a probate  
9 proceeding all interested persons shall be considered parties and shall be  
10 served with notice pursuant to Rule 4.

11 (1) Decedent's estates. At commencement of a probate proceeding  
12 involving a decedent's estate, the term "interested person" includes heirs,  
13 devisees, legatees, children, spouses, and such other persons as the court  
14 directs. The term "interested person" also includes the trustees of any trusts to  
15 which assets of the decedent's estate may be distributed. Notice to a trustee  
16 shall be sufficient to notify the trust's beneficiaries. It also includes persons  
17 having priority for appointment as executor or administrator, and other  
18 fiduciaries representing interested persons. Notwithstanding this rule, in a  
19 proceeding involving a decedent's estate, the court shall have discretion to  
20 determine that an interested party need not be served with notice pursuant to

1 ~~Rule 4 if the court finds that not providing such notice is in the best interests of~~  
2 ~~the decedent and the estate.~~

3 \* \* \*

4 Sec. 3. EFFECTIVE DATE

5 ~~This act shall take effect on passage.~~

~~Sec. 1. Rule 4(e) of the Vermont Rules of Probate Procedure is amended to read:~~

~~(e) Service by publication. When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published ~~once a week for two successive weeks and at least seven days apart~~ in a designated newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The ~~first~~ publication of the notice shall be made within 20 days after the petition is filed or the order is granted. Service by publication is complete on the day of ~~the last~~ publication.~~

~~Sec. 2. Rule 17 of the Vermont Rules of Probate Procedure is amended to read:~~

~~Rule 17. PARTIES GENERALLY~~

~~(a) Parties at commencement. At the commencement of a probate proceeding all interested persons shall be considered parties and shall be served with notice pursuant to Rule 4.~~

~~(1) Decedent's estates. At commencement of a probate proceeding involving a decedent's estate, the term "interested person" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs. The term "interested person" also includes the trustees of any trusts to which assets of the decedent's estate may be distributed. Notice to a trustee shall be sufficient to notify the trust's beneficiaries. It also includes persons having priority for appointment as executor or administrator, and other fiduciaries representing interested persons. Notwithstanding this rule, in a proceeding involving a testate decedent's estate, the court shall have discretion to determine that an interested party need not be served with notice pursuant to Rule 4 if the court finds that not providing such notice is in the best interests of the decedent and the estate.~~

~~\* \* \*~~

~~Sec. 3. 14 V.S.A. § 3504 is amended to read:~~

~~§ 3504. SCOPE OF AUTHORITY~~

~~(g)(1) The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to section 3506 of this title and subsections (b) through (g) of this section.~~

~~(2) A general power of attorney created under this subchapter may be construed to grant powers that are not expressly delineated in the terms of the power of attorney if it appears from the relevant facts and circumstances that the principal intended the agent to have general authority to act on the principal's behalf with respect to all lawful subjects and purposes.~~

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~~Sec. 4. 24 V.S.A. § 133 is amended to read:~~

~~§ 133. COUNTY TAX; AMOUNT; ASSESSMENT~~

~~\*\*\*~~

~~(e) The proposed budget shall contain any cost estimates and preliminary plans for capital construction in the county pursuant to subchapter 2 of chapter 3 of this title, estimates of the indebtedness of the county, estimates of the probable ordinary expenses of the county for the ensuing year, and any and all other expenses and obligations of the county. The budget may contain provision for additions to ~~an~~ an operations reserve fund and the accumulated total reserve fund shall not at any time exceed an amount equal to ~~ten~~ 15 percent of the current budget presented. Pursuant to a capital program, as described in section 4426 of this title, the budget may also include a provision for a separate reserve fund for capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign which shall not at any time exceed an amount equal to ~~50~~ 75 percent of the current budget presented. However, if capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign is necessitated by an insured loss or damage to a county building, the separate reserve fund may also include the amount of insurance proceeds received as a result of the loss or damage. All county budgets shall be presented on the form prescribed by the auditor of accounts, after consultation with the association of assistant judges, and shall include the amounts currently budgeted for each item included in the proposed budget.~~

~~Sec. 5. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

~~Sec. 1. Rule 4(e) of the Vermont Rules of Probate Procedure is amended to read:~~

*(e) Service by publication. When service by publication is required by this rule or by order of the court, the person directed by the court shall cause the substance of the notice prescribed by subdivision (a) of this rule, and a brief statement of the object of the petition, to be published ~~once a week for two successive weeks and at least seven days apart~~ in a designated newspaper of general circulation in the probate district where the petition was filed, or such other location as the court may direct. The ~~first~~ publication of the notice shall be made within 20 days after the petition is filed or the order is granted. Service by publication is complete on the day of ~~the last~~ publication.*

*Sec. 2. Rule 17 of the Vermont Rules of Probate Procedure is amended to read:*

*Rule 17. PARTIES GENERALLY*

*(a) Parties at commencement. At the commencement of a probate proceeding all interested persons shall be considered parties and shall be served with notice pursuant to Rule 4.*

*(1)(A) Decedent's estates. At commencement of a probate proceeding involving a decedent's estate, the term "interested person" includes heirs, devisees, legatees, children, spouses, and such other persons as the court directs. The term "interested person" also includes the trustees of any trusts to which assets of the decedent's estate may be distributed. Notice to a trustee shall be sufficient to notify the trust's beneficiaries. It also includes persons having priority for appointment as executor or administrator, and other fiduciaries representing interested persons.*

*(B) The court, on motion, may order that an interested party need not be served with notice pursuant to Rule 4:*

*(i) if after due diligence the interested party cannot be located; or*

*(ii) for other good cause shown if the court finds that not providing such notice serves the interests of justice and the efficient administration of the estate.*

\* \* \*

*Sec. 3. 14 V.S.A. § 3504 is amended to read:*

*§ 3504. SCOPE OF AUTHORITY*

*(a)(1) The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to section 3506 of this title and subsections (b) through (g) of this section.*

(2) A general power of attorney created under this subchapter shall be construed to grant powers that are not expressly delineated in the terms of the power of attorney if it appears from the relevant facts and circumstances that the principal intended the agent to have general authority to act on the principal's behalf with respect to all lawful subjects and purposes. The specific inclusion or exclusion of one or more powers shall not, by itself, prevent a determination that the principal intended to grant general authority to the agent with respect to subjects not specifically included or excluded.

\* \* \*

Sec. 4. 14 V.S.A. § 3516 is amended to read:

§ 3516. *EFFECTIVE DATE; EFFECT ON EXISTING POWERS OF ATTORNEY*

(a) A power of attorney shall be valid if it:

(1) complies with the terms of this subchapter; or

(2) is executed before July 1, 2002 and valid under common law or statute existing at the time of execution.

(b) If a power of attorney executed before July 1, 2002 was valid under common law or statute existing at the time of execution, any exercise of authority under the power of attorney, whether before or after July 1, 2002, shall be deemed valid if the exercise complies with common law or statute existing at the time of execution.

Sec. 5. 24 V.S.A. § 133 is amended to read:

§ 133. *COUNTY TAX; AMOUNT; ASSESSMENT*

\* \* \*

(e) The proposed budget shall contain any cost estimates and preliminary plans for capital construction in the county pursuant to subchapter 2 of chapter 3 of this title, estimates of the indebtedness of the county, estimates of the probable ordinary expenses of the county for the ensuing year, and any and all other expenses and obligations of the county. The budget may contain provision for additions to ~~an~~ an operations reserve fund and the accumulated total reserve fund shall not at any time exceed an amount equal to ~~ten~~ 15 percent of the current budget presented. Pursuant to a capital program, as described in section 4426 of this title, the budget may also include a provision for a separate reserve fund for capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign which shall not at any time exceed an amount equal to ~~50~~ 75 percent of the current budget presented. However, if capital construction, reconstruction, remodeling, repairs, renovation, design, or redesign is necessitated by an insured loss or damage to

*a county building, the separate reserve fund may also include the amount of insurance proceeds received as a result of the loss or damage. All county budgets shall be presented on the form prescribed by the auditor of accounts, after consultation with the association of assistant judges, and shall include the amounts currently budgeted for each item included in the proposed budget.*

*Sec. 6. MINOR GUARDIANSHIP STUDY COMMITTEE*

*The minor guardianship study committee created by Sec. 23 of No. 56 of the Acts of 2011 shall continue to meet during 2012 and shall report any additional findings and recommendations to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare on or before December 15, 2012, whereupon it shall cease to exist.*

*Sec. 7. EFFECTIVE DATE*

*This act shall take effect on passage.*