**South Carolina General Assembly**

118th Session, 2009-2010

**S. 371**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Hayes

Document Path: l:\council\bills\dka\3123mm09.docx

Introduced in the Senate on February 3, 2009

Currently residing in the Senate Committee on **Judiciary**

Summary: Estate closings

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/3/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\02-03-09.docx)‑7

2/3/2009 Senate Referred to Committee on **Judiciary** [SJ](file:///h:\SJ%20Archive\2009\02-03-09.docx)‑7

2/6/2009 Senate Referred to Subcommittee: Malloy (ch), Ford, Massey, S.Martin, Mulvaney

**VERSIONS OF THIS BILL**

[2/3/2009](file:///p:\pprever\2009-10\371_20090203.docx)

**A** **BILL**

TO AMEND SECTION 62‑3‑1001, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REQUIRED FILINGS FOR CLOSING AN ESTATE IN THE PROBATE COURT, SO AS TO ALLOW AN INTERESTED PERSON TO WAIVE THE FILING OF AN ACCOUNTING, A PROPOSAL FOR DISTRIBUTION OF ASSETS, OR A NOTICE OF THE RIGHT TO DEMAND A HEARING.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 62‑3‑1001 of the 1976 Code, as last amended by Act 152 of 1997, is further amended to read:

“Section 62‑3‑1001. (a) Within one year after the date of the first publication of notice to creditors, ~~(~~or if a state or federal estate tax return was filed, within ninety days after the receipt of a state or federal estate tax closing letter, whichever is later~~)~~, a personal representative ~~must~~ shall file with the court:

(1) a full account in writing of his administration, unless the accounting is waived pursuant to subsection (e);

(2) a proposal for distribution of assets not yet distributed, unless the proposal for distribution of assets is waived pursuant to subsection (e);

(3) a petition for settlement of the estate, which may request the court to determine testacy if not previously determined, to consider the final account or approve an accounting and distribution, to construe ~~any~~ a will or determine heirs, and adjudicate the final settlement and distribution of the estate; and

(4) proof that a notice of right to demand hearing and copies of the account, the proposal for distribution, and the petition for settlement of the estate have been sent to all interested persons including all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred, unless the notice of right to demand hearing is waived pursuant to subsection (e).

(b) If the personal representative does not timely perform his duties ~~under~~ pursuant to subsection (a), ~~any~~ and all interested persons have not waived the requirement pursuant to subsection (e), an interested person may petition for an order compelling the personal representative to perform his duties ~~under~~ pursuant to subsection (a). The court may issue an order requiring the personal representative to perform his duties ~~under~~ pursuant to subsection (a).

(c) After thirty days from the filing by the personal representative of proof that a notice of right to demand hearing has been sent to all persons entitled to ~~such~~ the notice ~~under~~ pursuant to subsection (a), the court may enter an order or orders, on appropriate conditions, determining testacy, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate, terminating the appointment of the personal representative, and discharging the personal representative from further claim or demand of any interested person. However, if ~~any~~ an interested person files with the court a written demand for hearing within thirty days after the personal representative files proof that a notice of right to demand hearing has been sent to all persons entitled to ~~such~~ the notice ~~under~~ pursuant to subsection (a), the court may enter its order or orders only after notice to all interested persons and hearing.

(d) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate ~~under~~ pursuant to this section~~,~~ and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of ~~any~~ a will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

(e) Notwithstanding the provisions of this section, a personal representative must not be required to file an account in writing of his administration, a proposal for distribution of assets not yet distributed, or a notice of right to demand hearing if and to the extent these filings are waived by all interested persons.”

SECTION 2. This act takes effect upon approval by the Governor.

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