

**524.3-401 FORMAL TESTACY PROCEEDINGS; NATURE; WHEN COMMENCED.**

A formal testacy proceeding is one conducted with notice to interested persons before a court to establish a will or determine intestacy. A formal testacy proceeding may be commenced by an interested person or a personal representative named in the will filing a petition as described in section 524.3-402(a) in which it is requested that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with section 524.3-402(b) for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, shall refrain from exercising power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

**History:** 1974 c 442 art 3 s 524.3-401; 1975 c 347 s 37; 1986 c 444