



Amendments to Section 128A Probate Code Requiring Notice and Affidavit

1. Effective with probates of wills of decedents whose date of death was September 1, 2007 or later.
2. A notice must be given by the 60th day after the date an order is signed admitting a will to probate.
3. The notice must be given to all beneficiaries named in will (See 128A(c) for specifics) “whose identities are known . . . or, through reasonable diligence, can be ascertained”.
4. Notice is not required to given to a beneficiary who:
 - a. Made an appearance in the proceeding before the will was admitted; or
 - b. Received a copy of the will and waived the right to receive notice in an instrument which:
 - i. acknowledges receipt of a copy of the will;
 - ii. is signed by the beneficiary; and
 - iii. is filed with the court.
5. The notice required must:
 - a. State:
 - i. the name and address of the beneficiary;
 - ii. the decedent’s name;
 - iii. that the will was admitted to probate;
 - iv. that the beneficiary to whom the notice is given is a beneficiary; and
 - v. the personal representative’s name and contact information.
 - b. Contain as an attachment a copy of the will admitted to probate and the order admitting the will to probate; and
 - c. Be sent certified mail, return receipt requested.
6. An affidavit by the personal representative or a certificate signed by the personal representative’s attorney must be filed not later than the 90th day after the order admitting will to probate is signed, stating:
 - a. The name and address of each beneficiary to whom notice was given;
 - b. The name and address of each beneficiary who waived notice;
 - c. The name of each beneficiary whose identity or address could not be ascertained despite the personal representative’s exercise of reasonable diligence; and
 - d. Any other information necessary to explain any inability to give notice.
7. The affidavit or certificate may be included with any other pleading, including the inventory.
8. The 60 and 90 day deadlines may not be extended.
9. Failure to file the affidavit or certificate is grounds for removal by the court on its own motion or the complaint of any party, with notice, pursuant to Probate Code Sec. 222(b)(7).