

**MEMORANDUM**

**TO: Judicial Council**  
**FROM: Christy Molzen**  
**DATE: December 4, 2015**  
**RE: Probate Law Advisory Committee's proposed amendments to K.S.A 59-618a**

The Probate Law Advisory Committee recommends the attached proposed amendments to K.S.A. 59-618a. This statute allows a protective filing of a will within 6 months of the date of death in order to preserve it for possible future probate. Under current law, this filing can only be made if there is no known property in the probate estate or if the value of any property is less than all demands against the estate. The Probate Committee believes that there should be no conditions upon the protective filing of a will and no public purpose is served by including information about assets of the estate and demands against it in the affidavit.

The Committee noted that it is often impossible to know the assets and liabilities of an estate early on, and that allowing more wills to be preserved, regardless of the estate's assets and liabilities, would preserve the intent of more testators. Also, deleting these requirements would place creditors' claims against a testate estate on equal footing with those against an intestate estate.

The proposed amendments are virtually identical to a bill offered by the Kansas Bar Association in 2011. That bill, 2011 SB 48, was referred to the Judicial Council for study. As a result of that study, the Judicial Council introduced a similar bill in 2012: SB 293. SB 293 passed the Senate but died in House Judiciary.

Before seeking Council approval, the Probate Committee asked the KBA's real estate, probate and trust law section for their feedback. That group unanimously supports the proposed amendments.

**59-618a. Filing of certain wills in court; affidavit; admission to probate.** (a) Any person possessing a decedent's will may file in the district court of the county of the decedent's last residence the decedent's will and an affidavit which complies with subsection (b) ~~if the decedent's probate estate contains no known real or personal property or the value of the known real and personal property in the decedent's probate estate is less than the total of all known demands enumerated in K.S.A. 59-1301, and amendments thereto.~~

(b) An affidavit filed pursuant to this section shall state: (1) The name, residence address and date and place of death of the decedent; (2) the names, addresses and relationships of all the decedent's heirs, legatees and devisees which are known to the affiant after a diligent search and inquiry; (3) the name and address of any trustee of any trust established under the will; (4) ~~the property left by the decedent and its approximate valuation;~~ (5) ~~the approximate amount and nature of any demands enumerated in K.S.A. 59-1301, and amendments thereto, which were outstanding against the decedent's estate upon the decedent's death;~~ (6) that the will is being filed with the district court for the purpose of preserving it for record in the event that probate proceedings are later required; and ~~(7)~~ (5) that a copy of the affidavit and will has been mailed to each heir, legatee and devisee named in the affidavit.

(c) Any will filed pursuant to this section within a period of six months after the death of the testator may be admitted to probate after such six-month period.

**History:** L. 1977, ch. 196, § 1; L. 1982, ch. 235, § 1; L. 1984, ch. 147, § 12; L. 1985, ch. 191, § 10; L. 1996, ch. 234, § 14; L. 2010, ch. 19, § 1; July 1.