

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 (New Draft of S.P. 759, L.D. 1923)  
3 SECOND REGULAR SESSION  
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE  
6

7 Legislative Document

No. 2257

8  
9 S.P. 897

In Senate, March 25, 1986

10 Reported by Senator Carpenter of Aroostook from the Committee on  
11 Judiciary and printed under Joint Rule 2. Original bill sponsored by Senator  
12 Carpenter of Aroostook. Cosponsored by Representative Kane of So.  
Portland, Representative MacBride of Presque Isle and Representative  
Lebowitz of Bangor.

JOY J. O'BRIEN, Secretary of the Senate

13  
14 STATE OF MAINE  
15

16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-SIX  
18

19 AN ACT to Amend the Requirements for Personal  
20 Service in an Action for a  
21 Guardianship or Conservatorship.  
22

23 Emergency preamble. Whereas, Acts of the Legis-  
24 lature do not become effective until 90 days after  
25 adjournment unless enacted as emergencies; and

26 Whereas, changes in the Probate Code, enacted  
27 during the First Regular Session of the 112th Legis-  
28 lature, became effective on January 1, 1986; and

29 Whereas, these changes include provisions requir-  
30 ing, in actions for conservatorships and guardian-  
31 ships, personal notice of the action to be served on  
32 relatives and friends of the person to be protected;  
33 and

1           Whereas, the expense and difficulty of this per-  
2           sonal service was not appreciated when the require-  
3           ments were enacted; and

4           Whereas, in the judgment of the Legislature,  
5           these facts create an emergency within the meaning of  
6           the Constitution of Maine and require the following  
7           legislation as immediately necessary for the preser-  
8           vation of the public peace, health and safety; now,  
9           therefore,

10          Be it enacted by the People of the State of Maine as  
11          follows:

12          Sec. 1. 18-A MRSA §5-309, sub-§(b), as amended  
13          by PL 1985, c. 440, §§4 and 13, is repealed and the  
14          following enacted in its place:

15          (b) Notice shall be served personally on the  
16          ward or the allegedly incapacitated person at least  
17          14 days before the date of the hearing. Waiver of  
18          notice by the ward or the person alleged to be inca-  
19          pacitated is not effective unless he attends the  
20          hearing or his waiver of notice is confirmed by his  
21          counsel or by his guardian ad litem or in an inter-  
22          view with the visitor. Representation of the ward or  
23          the allegedly incapacitated person by a guardian ad  
24          litem is not mandatory. The court may order that the  
25          petition and hearing notice be served by the visitor.

26          Sec. 2. 18-A MRSA §5-309, sub-§(c), as enacted  
27          by PL 1985, c. 440, §§5 and 13, is repealed and the  
28          following enacted in its place:

29          (c) Notice to the spouse, adult children and  
30          parents required by subsection (a) shall be served by  
31          certified mail, with restricted delivery and return  
32          receipt requested, at least 14 days before the date  
33          of the hearing.

34          If the certified mail to the spouse is not delivered  
35          and the spouse can be found within the State, notice  
36          shall be served personally on the spouse.

37          If the certified mail to the spouse is not delivered,  
38          the spouse cannot be found within the State and the  
39          certified mail is not delivered to any adult chil-

1 children, notice shall be served personally on an adult  
2 child who can be found within the State.

3 If the certified mail to the spouse and adult chil-  
4 children is not delivered, the spouse and all adult chil-  
5 children cannot be found within the State and the certi-  
6 fied mail is not delivered to any parent, notice  
7 shall be served personally on a parent who can be  
8 found within the State.

9 If no spouse, adult child or parent is served by cer-  
10 tified mail or personally, notice to the closest  
11 adult relative required by subsection (a) shall be  
12 served by certified mail, with restricted delivery  
13 and return receipt requested. If the certified mail  
14 to the adult relative is not delivered and the adult  
15 relative can be found within the State, notice shall  
16 be served personally on the adult relative. If no  
17 adult relative is served by certified mail or person-  
18 ally, notice to an adult friend required by subsec-  
19 tion (a) shall be served by certified mail, with re-  
20 stricted delivery and return receipt requested. If  
21 the certified mail to the adult friend is not deliv-  
22 ered and the adult friend can be found within the  
23 State, notice shall be served personally on the adult  
24 friend.

25 Notice required by subsection (a) to any person  
26 -serving as a guardian, conservator or who has a  
27 person's care and custody shall be served by certi-  
28 fied mail, with restricted delivery and return re-  
29 ceipt requested.

30 Except as otherwise provided in this section, notice  
31 shall be given as prescribed by court rule under sec-  
32 tion 1-401.

33 Sec. 3. 18-A MRSA §5-405, sub-§(a), as amended  
34 by PL 1985, c. 440, §§7 and 13, is repealed and the  
35 following enacted in its place:

36 (a) On a petition for appointment of a conserva-  
37 tor or other protective order or on a petition under  
38 section 5-416, the person to be protected or the pro-  
39 protected person must be served personally with notice  
40 of the proceeding at least 14 days before the date of  
41 the hearing. Waiver by the person to be protected or

1 the protected person is not effective unless he at-  
2 tends the hearing or, unless minority is the reason  
3 for the proceeding, waiver is confirmed in an inter-  
4 view with the visitor. The court may order that the  
5 petition and hearing notice be served by the visitor.

6 Sec. 4. 18-A MRSA §5-405, sub-§(a-1) is enacted  
7 to read:

8 (a-1) The spouse and all adult children of the  
9 person to be protected or the protected person or, if  
10 none, the person's parents or closest adult relative  
11 or, if none, a friend must be given notice of the  
12 proceeding. Notice under this subsection shall be  
13 served by certified mail, restricted delivery and re-  
14 turn receipt requested, at least 14 days before the  
15 date of the hearing.

16 If the certified mail to the spouse is not delivered  
17 and the spouse can be found within the State, notice  
18 shall be served personally on the spouse.

19 If the certified mail to the spouse is not delivered,  
20 the spouse cannot be found within the State and the  
21 certified mail is not delivered to any adult chil-  
22  dren, notice shall be served personally on an adult  
23 child who can be found within the State.

24 If notice is served on the person's parents or clos-  
25 est adult relative and the certified mail is not de-  
26 livered, notice shall be served personally on a par-  
27 ent or the adult relative if a parent or adult rela-  
28 tive can be found within the State.

29 If notice is served on the person's friend and the  
30 certified mail is not delivered, notice shall be  
31 served personally on the friend if the friend can be  
32 found within the State.

33 Except as otherwise provided in this subsection and  
34 subsection (a), notice shall be given as prescribed  
35 by court rule under section 1-401.

36 Sec. 5. 18-A MRSA §5-405, subsection (b), as en-  
37 acted by PL 1979, c. 540, §1, is amended to read:

1 (b) Notice of a petition for appointment of a  
2 conservator or other initial protective order, and of  
3 any subsequent hearing, must be given to any person  
4 who has filed a request for notice under section  
5 5-406 and to interested persons and other persons as  
6 the court may direct. Except as otherwise provided in  
7 ~~subsection~~ subsections (a) and (a-1), notice shall be  
8 given as prescribed by court rule under section  
9 1-401.

10 Emergency clause. In view of the emergency cited  
11 in the preamble, this Act shall take effect when ap-  
12 proved.

13 STATEMENT OF FACT

14 This new draft revises the provisions for serving  
15 notice of guardianship or conservatorship proceed-  
16 ings.

17 Sections 1 and 2 apply to guardianships. Notice  
18 of the guardianship proceeding is to be served per-  
19 sonally on the ward or allegedly incapacitated per-  
20 son. That person's spouse, adult children and par-  
21 ents receive notice by certified mail. If the certi-  
22 fied mail is not delivered to a person existing in  
23 closest relation to the ward or allegedly incapaci-  
24 tated person, a person in that category of those most  
25 closely related to the ward or allegedly incapaci-  
26 tated person must be personally served if that person  
27 can be found within Maine.

28 If no spouse, adult child or parent is served by  
29 certified mail or personally, the next most closely  
30 related adult relative of the ward or allegedly inca-  
31 pacitated person must be given notice by certified  
32 mail or, if that mail is not delivered, by personal  
33 service if the adult relative can be found within  
34 Maine.

35 If no spouse, adult child, parent or closest  
36 adult relative is served by certified mail or person-  
37 ally, an adult friend of the ward or allegedly inca-  
38 pacitated person must be given notice by certified  
39 mail or, if that mail is not delivered, by personal

1 service if the adult friend can be found within  
2 Maine.

3 Sections 3, 4 and 5 apply to conservatorships.  
4 Notice of the conservatorship proceeding is to be  
5 served personally on the person to be protected or  
6 the protected person. That person's spouse and adult  
7 children receive notice by certified mail. If the  
8 certified mail is not delivered to the person exist-  
9 ing in closest relation to the person to be protected  
10 or protected person, a person in that category of  
11 those most closely related to the person to be pro-  
12 tected or the protected person must be personally  
13 served if that person can be found in Maine.

14 If no spouse or adult child is served by certi-  
15 fied mail or personally, the parents or closest adult  
16 relative of the person to be protected or the pro-  
17 tected person must be given notice by certified mail  
18 or, if that mail is not delivered, by personal ser-  
19 vice on a parent or closest adult relative if such a  
20 person can be found within Maine.

21 If no spouse, adult child, parent or closest rel-  
22 ative is served by certified mail or personally, a  
23 friend of the person to be protected or the protected  
24 person must be given notice by certified mail or, if  
25 that mail is not delivered, by personal service if  
26 the friend can be found within Maine.

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