

CHAPTER 30.1-03
NOTICE - PARTIES - REPRESENTATION AND OTHER MATTERS

30.1-03-01. (1-401) Notice - Method and time of giving.

1. If notice of a hearing on any petition is required and, except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the interested person's attorney if the interested person has appeared by attorney or requested that notice be sent to the interested person's attorney. Notice shall be given:
 - a. By mailing a copy thereof at least fourteen days before the time set for the hearing by certified or ordinary first-class mail addressed to the person being notified at the post-office address given in that person's demand for notice, if any, or at that person's office or place of residence, if known;
 - b. By delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing; or
 - c. If the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing.
2. The court for good cause shown may provide for a different method or time of giving notice for any hearing.
3. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

30.1-03-02. (1-402) Notice - Waiver.

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A ward or protected person, for whom a guardianship, conservatorship, or other protective order is sought may not waive notice.

30.1-03-03. (1-403) Pleadings - When parties bound by others - Notice.

In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

1. Interests to be affected must be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests or in another appropriate manner.
2. A person is bound by an order binding another in the following cases:
 - a. An order binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds another person to the extent that person's interests, as objects, takers in default, or otherwise, are subject to the power.
 - b. To the extent there is no conflict of interest between them or among persons represented, an order binding a conservator binds the person whose estate the conservator controls; an order binding a guardian binds the ward if no conservator of the ward's estate has been appointed; an order binding a trustee binds a beneficiary of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a former fiduciary and in proceedings involving creditors or other third parties; an order binding a personal representative binds a person interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and an order binding a sole holder or all coholders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

- c. Unless otherwise represented, a minor or an incapacitated, unborn, or unascertained person is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.
3. If no conservator or guardian has been appointed, a parent may represent a minor child.
4. Notice is required as follows:
 - a. The notice prescribed by section 30.1-03-01 must be given to every interested person or to one who can bind an interested person as described in subdivision a or b of subsection 2. Notice may be given both to a person and to another who may bind that person.
 - b. Notice is given to unborn or unascertained persons who are not represented under subdivision a or b of subsection 2 by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.
5. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall state its reasons for appointing a guardian ad litem as a part of the record of the proceeding.