

Senate Study Bill 3077 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON SODDERS)

A BILL FOR

1 An Act relating to civil law provisions, including notice
2 requirements for the disposition of the real property of
3 an estate, notice and document delivery under the trust
4 code, the powers of an agent under a power of attorney, and
5 liability for refusing to accept an acknowledged power of
6 attorney, and including effective date and retroactive and
7 other applicability provisions.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

SALE OF REAL PROPERTY OF AN ESTATE — NOTICE REQUIREMENTS

Section 1. Section 633.389, Code 2016, is amended to read as follows:

633.389 Notice on sale, mortgage, exchange, pledge, or lease of property.

Upon the filing of the petition, unless notice is waived in writing, or unless all interested persons are also personal representatives and have signed the petition, notice in accordance with [section 633.40](#), shall be served on all persons interested in the property, provided that as to personal property and as to the lease of real property not specifically devised, for a period not to exceed one year, the court may hear the petition without notice. When notice is required, the notice shall state briefly the nature of the application. Upon satisfactory proof, the court may order the sale, mortgage, exchange, pledge, or lease of the property described, or any part of the property, at a price and upon terms and conditions as the court may authorize. For the purposes of [this section](#), the term "*all persons interested*" includes only distributees in the estate and persons who have requested notice as provided by this probate code.

DIVISION II

TRUST CODE — NOTICE AND DOCUMENT DELIVERY REQUIREMENTS

Sec. 2. NEW SECTION. **633A.1109 Methods of notice and document delivery — waiver.**

Except as otherwise provided by this chapter:

1. Giving notice to a person, including notice of a judicial proceeding, or the sending of a document to a person under this chapter shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of giving notice or sending a document include first-class mail, personal delivery to a person's last known place of residence or place of business, or by properly directed electronic mail. When notice

1 in a trust proceeding is served on an interested party via the
2 United States postal service, the service is made and completed
3 when the notice being served is enclosed in a sealed envelope
4 with proper postage paid, is addressed to the interested party
5 at the party's last known post office address, and is deposited
6 in a mail receptacle provided by the United States postal
7 service.

8 2. In the case of a proceeding against an unknown person
9 whose address or whereabouts are unknown, the court shall
10 prescribe that notice may be served by publication within
11 the time and in the manner provided by the rules of civil
12 procedure.

13 3. Notice under this chapter or the right to receive a
14 document under this chapter may be waived by the person to be
15 notified or entitled to receive the document.

16 4. For purposes of this section, "*properly directed*"
17 means directed to an electronic mail address that the sender
18 reasonably believes is a current electronic mail address of the
19 recipient.

20 Sec. 3. APPLICABILITY. This division of this Act applies to
21 notices and documents sent on or after July 1, 2016, regarding
22 trusts in existence on or created after July 1, 2016.

23 DIVISION III

24 POWERS OF ATTORNEY — POWERS OF AN AGENT — LIABILITY FOR
25 REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF ATTORNEY

26 Sec. 4. Section 633B.120, subsection 3, paragraph b, Code
27 2016, is amended to read as follows:

28 *b.* Liability for damages sustained by the principal ~~for~~ and
29 reasonable attorney fees and costs incurred in any action or
30 proceeding that confirms the validity of the power of attorney
31 or mandates acceptance of the power of attorney, provided that
32 any such action must be brought within one year of the initial
33 request for acceptance of the power of attorney.

34 Sec. 5. Section 633B.204, subsections 2 and 3, Code 2016,
35 are amended to read as follows:

1 2. Sell; exchange; convey with or without covenants,
2 representations, or warranties; quitclaim; release; surrender;
3 retain title for security; encumber; partition; consent to
4 partitioning; be subject to an easement or covenant; subdivide;
5 apply for zoning or other governmental permits; plat or consent
6 to platting; develop; grant an option concerning; lease;
7 sublease; contribute to an entity in exchange for an interest
8 in that entity; or otherwise grant or dispose of an interest in
9 real property or a right incident to real property, including
10 the transfer or release of any and all of the principal's
11 homestead rights under section 561.13 and chapter 597.

12 3. Pledge or mortgage an interest in real property or a
13 right incident to real property as security to borrow money
14 or pay, renew, or extend the time of payment of a debt of the
15 principal or a debt guaranteed by the principal, including the
16 transfer or release of any and all of the principal's homestead
17 rights under section 561.13 and chapter 597.

18 Sec. 6. Section 633B.211, subsection 2, paragraph h, Code
19 2016, is amended by striking the paragraph.

20 Sec. 7. Section 633B.214, subsection 2, Code 2016, is
21 amended by adding the following new paragraph:

22 NEW PARAGRAPH. g. Create and fund a medical assistance
23 income trust as defined in section 633C.1 or a trust or device
24 that meets the criteria of 42 U.S.C. §1396p(d)(4)(B)(i)-(ii)
25 that is authorized under the applicable law of another
26 jurisdiction in which the principal is a resident.

27 Sec. 8. EFFECTIVE UPON ENACTMENT. This division of this
28 Act, being deemed of immediate importance, takes effect upon
29 enactment.

30 Sec. 9. RETROACTIVE APPLICABILITY. This division of this
31 Act applies retroactively to July 1, 2014.

32 EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

35 This bill relates to notice requirements for the sale or

1 other disposition of the real property of an estate under the
2 Iowa probate code, methods of notice and document delivery
3 under the Iowa trust code, the powers of an agent under a
4 power of attorney, and liability for refusing to accept an
5 acknowledged power of attorney.

6 DIVISION I — NOTICE REQUIREMENTS FOR SALE OF REAL PROPERTY
7 OF AN ESTATE. Under current law, a personal representative may
8 petition a court to sell, mortgage, pledge, lease, or exchange
9 property belonging to the decedent in order to pay debts of
10 the estate, to distribute the estate, or for any other purpose
11 which is in the best interests of the estate. For the sale,
12 mortgage, exchange, or pledge of real property, or the lease
13 of real property with a rental term exceeding one year, the
14 personal representative is required to serve notice of such
15 a petition on all persons interested in the property unless
16 the right to receive notice is waived in writing. The bill
17 provides that notice of the petition is not required if all
18 interested persons are also personal representatives who have
19 signed the petition.

20 DIVISION II — TRUST CODE NOTICE AND DOCUMENT DELIVERY
21 REQUIREMENTS. The bill provides that notice and the sending
22 of a document related to proceedings under the Iowa trust
23 code (Code chapter 633A) shall be accomplished in a manner
24 reasonably suitable under the circumstances and likely to
25 result in receipt of the notice or document. Permissible
26 methods of notice and document delivery include first-class
27 mail, personal delivery, and properly directed electronic mail.
28 If notice is served via United States mail, service is made and
29 completed when the notice is enclosed in a sealed envelope with
30 proper postage paid, addressed to the interested party at the
31 last known address, and deposited in a mail receptacle provided
32 by the United States postal service.

33 The bill provides that in the case of a proceeding against an
34 unknown person whose address or whereabouts are unknown, the
35 court shall prescribe that notice may be served by publication

1 within the time and in the manner provided by the rules of
2 civil procedure.

3 The bill provides that a person entitled to notice or the
4 receipt of documents under Code chapter 633A may waive such
5 rights.

6 DIVISION III — POWERS OF AN AGENT UNDER A POWER OF ATTORNEY
7 — LIABILITY FOR REFUSING TO ACCEPT AN ACKNOWLEDGED POWER OF
8 ATTORNEY. Under current law, if a person refuses to accept an
9 acknowledged power of attorney, the person may be subject to
10 liability for damages sustained by the principal for reasonable
11 attorney fees and costs incurred in any action or proceeding
12 that confirms the validity of the power of attorney. The bill
13 provides that a person who refuses to accept an acknowledged
14 power of attorney may be subject to liability for damages and
15 reasonable attorney fees and costs.

16 Under current law, unless the power of attorney otherwise
17 provides, language in a power of attorney granting general
18 authority with respect to real property authorizes the agent
19 to, among other things, grant or dispose of an interest in
20 real property or a right incident to real property. The bill
21 provides that such authority includes the right to the transfer
22 or release of any and all of the principal's homestead rights
23 under Code section 561.13 and Code chapter 597.

24 Under current law, unless the power of attorney otherwise
25 provides, language in a power of attorney granting general
26 authority with respect to real property authorizes the agent
27 to, among other things, release, assign, satisfy, or enforce by
28 litigation or otherwise, a mortgage, deed of trust, conditional
29 sale contract, encumbrance, lien, or other claim to real
30 property which exists or is asserted. The bill provides that
31 such authority includes the right to the transfer or release
32 of any and all of the principal's homestead rights under Code
33 section 561.13 and Code chapter 597.

34 Under current Code section 633B.201, an agent's power to
35 disclaim property must be specifically granted in the power of

1 attorney. Under Code section 633B.211, subsection 2, paragraph
2 "h", a grant of general authority with respect to estates,
3 trusts, and other beneficial interests authorizes the agent to
4 reject, renounce, disclaim, release, or consent to a reduction
5 in or modification of a share in or payment from an estate,
6 trust, or other beneficial interest. The bill strikes the
7 general power in Code section 633B.211, subsection 2, paragraph
8 "h", and therefore an agent cannot disclaim property on behalf
9 of a principal unless the power of attorney specifically grants
10 such power.

11 The bill provides that, unless a power of attorney otherwise
12 provides, language in a power of attorney granting general
13 authority with respect to benefits from governmental programs
14 or civil or military service authorizes the agent to create
15 and fund a medical assistance income trust as defined in Code
16 section 633C.1, also known as a "Miller trust", or a similar
17 trust that is authorized under the applicable law of another
18 jurisdiction in which the principal is a resident.

19 The bill's provisions relating to powers of attorney take
20 effect upon enactment and apply retroactively to July 1, 2014.