

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, GEauga COUNTY, OHIO
Judge Timothy J. Grendell

Information Sheet
DISCLAIMER

WARNING

This Information Sheet is intended to provide you with an overview of the subject matter, effective as of the date noted in the upper left-hand corner. This Information Sheet is not intended to provide you with all legal information that may be necessary for you to decide upon a course of action, and the information provided may not be error-free, complete, or accurate. Moreover, this Information Sheet may not accurately describe the cited sections of the Ohio Revised Code or cited case law. Finally, this Information Sheet is not intended as a substitute for legal advice from a competent licensed attorney, who is familiar with all of the relevant facts of your case, and therefore the Help Center recommends that you seek legal advice from a competent licensed attorney that you select before taking any action. While the Help Center can provide you with a limited amount of general legal information, neither the Help Center staff nor any other Court employee can give you any legal advice.

Background

Essentially, the probate process decides who receives the probate property of a deceased person. The primary recipients are: (1) the creditors, including the rights of a surviving spouse and minor children, and then (2) the beneficiaries of the probate estate. The beneficiaries are determined by the decedent's Will, if a Will is admitted to probate, otherwise in accordance with an Ohio statute, known as the "Statute of Descent and Distribution."¹ There are circumstances where a beneficiary of a probate estate may not want to receive probate property. There is a process established by R.C. 5815.36 that permits a beneficiary to refuse to receive or take title to probate property (or a portion of the probate property) that the beneficiary is otherwise entitled to receive from the Estate Representative.² In effect, if a beneficiary does not want to receive probate property to which the beneficiary is entitled, that beneficiary must take certain action to "disclaim" any inheritance. The effect of disclaiming property is that you are deemed to have died before the Decedent. Among many considerations is that disclaiming property avoids gift taxes, but you should review that consideration with your tax advisor.

¹ Review RC Chapter 2105, and in particular R.C. 2105.06.

² "Estate Representative" means a person appointed as the Executor, Administrator, or an applicant for a Release from Administration or Summary Release from Administration

If you decide to “disclaim” an inheritance, as permitted by R.C. 5815.36, it is recommended that you first obtain legal advice from your attorney. There are a number of factors to consider, depending upon your circumstances and your reason for “disclaiming.” In all events, you should carefully read R.C. 5815.36.³

Set forth below are the basic requirements of “disclaiming” the receipt of probate property. Please note that R.C. 5815.36 also permits the disclaimer of non-probate property, including joint and survivor property and trust property. This information sheet is only intended for persons who are beneficiaries of a probate estate and who desire to “disclaim” probate property to which that person is entitled under the decedent’s Will or by reason of the Statute of Descent and Distribution. Please note that R.C. 5815.36 allows a beneficiary of a trust to disclaim the beneficial interest provided by the trust under certain circumstances, but this Information Sheet and the referenced form titled “Disclaimer” (HCPF 080F) does not address the applicable issues and cannot be relied upon regarding a trust beneficial interest.

Basic Requirements for Disclaiming Probate Property.⁴

1. “Disclaimant” means any person who is entitled to receive probate property, whether as a result of the decedent’s Will or the Statute of Descent and Distribution, and who elects to disclaim the probate property.⁵
2. Any probate property may be disclaimed, including real property, tangible personal property (e.g., a vehicle, watercraft, household goods, collections, jewelry, etc.), and intangible personal property (e.g., financial accounts, stocks, bonds, etc.).⁶ The Disclaimant may disclaim all or any part of the probate property.
3. A Disclaimant may only disclaim probate property by signing (and acknowledging before for a notary public), delivering, filing, or recording a written instrument.⁷
4. The written instrument of disclaimer (the “Disclaimer Instrument”) shall contain the following:⁸
 - a. A reference to the donative instrument (see below the special rules if the probate property is real property);
 - b. A description of the property, part of the property, or interest disclaimed, and of any fiduciary right, power, privilege, or immunity disclaimed;
 - c. A declaration of the disclaimer and its extent.

Note: Consider using the form titled “Disclaimer” (HCPF 080F). Again, it is recommended that you review with your attorney any form that you may decide to use.

³ Circumstances may include creditor issues and estate planning concerns, which are best handled by legal advice.

⁴ Review the probate information sheet titled “Probate Process Overview” for a definition of “probate property.”

⁵ R.C. 5815.36(A)(1)

⁶ R.C. 5815.36(A)(3)

⁷ R.C. 5815.36(B)(1)

⁸ R.C. 5815.36(B)(2)

5. The Disclaimer Instrument may not grant the Disclaimant the power to (1) revoke the disclaimer, or (2) transfer, or direct to be transferred to self the entire legal and equitable ownership of the probate property subject to the Disclaimer Instrument.⁹
6. The Disclaimant must deliver, file, or record the Disclaimer Instrument **BEFORE** accepting any benefits of the disclaimed probate property, and at any time after the latest of (1) the effective date of the donative instrument if both the Disclaimant and the Disclaimant's interest in the property are finally ascertained on that date; or (2) the date of the occurrence of the event upon which both the Disclaimant and the Disclaimant's interest in the property become finally ascertainable.¹⁰ Note that the Disclaimant forfeits any right to disclaim probate property after he or she has accepted the benefits of that property. Note also there are special rules if the Disclaimant is not 18 years or older.
7. The Disclaimer Instrument must be delivered to the Estate Representative and must be filed with the Court.¹¹
8. If the probate property that is disclaimed is real property, then an executed copy of the Disclaimer Instrument must be recorded in the office of the county recorder where the real property is located. Moreover, the Disclaimer Instrument must include a legal description of that real property and a reference to the record of the instrument that created the interest disclaimed.¹²
9. You must consider that if you disclaim probate property, then another person will receive that property. If probate property is properly disclaimed, then the persons who will receive that probate property are determined as follows:¹³
 - a. If the donative instrument (the decedent's Will) provides who receives any disclaimed property, then the terms of the donative instrument govern, otherwise
 - b. The disclaimed property shall be distributed as though the Disclaimant died before the decedent and without a Will. Generally, the Statute of Descent and Distribution will govern.¹⁴
10. The Disclaimant's right to disclaim probate property is barred if the Disclaimant does any of the following:¹⁵
 - a. Assigns, conveys, encumbers, pledges, or transfers, or contracts to assign, convey, encumber, pledge, or transfer, the property or any interest in it;
 - b. Waives in writing the disclaimant's right to disclaim and executes and delivers, files, or records the waiver in the manner provided in this section for a disclaimer instrument;

⁹ R.C. 5815.36(E)

¹⁰ R.C. 5815.36(D)

¹¹ R.C. 5815.36(F)(2)

¹² R.C. 5815.36((F)(4)

¹³ R.C. 5815.36(G)

¹⁴ See R.C. Chapter 2105

¹⁵ R.C. 5815.36(J)

- c. Accepts the property or an interest in it; or
- d. Permits or suffers a sale or other disposition of the property pursuant to judicial action against the disclaimant.

LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEAUGA COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.