

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

Information Sheet
Land Sale

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. Please note that any reference to a court form with the designation of “HCPF” is only available at the Court’s Help Center and not on the Court’s website.

Background.

An Estate Representative or Guardian does not have the authority to sell the Decedent’s or Ward’s interest in real property or to sign and to deliver a deed that conveys title to a buyer merely by virtue of being appointed as such. Among a number of concerns, it is critical to a buyer that the Estate Representative or Guardian (i.e., the seller) has the required authority. In most cases a title company will be involved in the transaction, and the title company will need to be assured that the Estate Representative or Guardian has the required authority in order to close the sale transaction and for the buyer to receive a valid title for the real property.

With two exceptions, with respect to an Estate Representative, and one exception, with respect to a Guardian, the authority to sell the Decedent’s interest in real property will result only from a probate court order that empowers the Estate Representative or Guardian to sell that interest and to convey title to the buyer by signing and delivering a deed that is authorized by the Court. Please note that there are special rules that apply to an out-of-state Estate Representative and an ancillary probate proceeding, which are not addressed in this Information Sheet.¹

Two Exceptions to the Requirement of a Court Order.

1. Power to Sell in Valid Will.² If the Decedent died with a Will and (i) that Will was admitted to probate and the time for a Will contest action has passed; (ii) that Will contains a provision that empowers the Executor (or Administrator with Will Annexed) to sell real property and convey title; and (iii) there is no other provision in the Will that adversely impacts the proposed sale transaction (e.g.,

¹ See requirements set forth in R.C. 2129.13 and 2129.25

² R.C. 2127.01

specific bequest to a beneficiary), then the Estate Representative may sell the Decedent's interest and convey title without a court order, without any other filing with the probate court, and without any consent.

2. Written Consent

- a. Decedent's Estate.³ If each of the following conditions are met, then the Estate Representative may sell the Decedent's interest in real property and convey title to a buyer without a court order:
- The surviving spouse, all of the legatees and devisees of Decedent's Will was admitted to probate, or all of the next of kin if no Will was admitted to probate, give written consent to a power of sale for a particular parcel of real property or to a power of sale for all the real property belonging to the estate; and
 - Any sale under a power of sale authorized pursuant to this section is made at a price of at least 80 per cent of the appraised value, as set forth in an approved inventory; and
 - No power of sale provided for in this section is effective if the surviving spouse or any legatee, devisee, or heir is a minor. No person may give the consent of the minor who is an interested person under this section; and
 - The Inventory has been filed and approved, and the real property is described on the Inventory, including a permanent parcel number.

If each of those conditions are met, then the Estate Representative may prepare and file with the Court the form titled "Consent to Power to Sell Real Estate" (Form 11.0) in order to sell the Decedent's real property. No court order is necessary. In essence, the written consent of all interested persons grants the Estate Representative the necessary authority and should satisfy a title company.

You should consider obtaining a preliminary judicial report, which will provide you with information regarding creditors who have a lien against the real property and any other persons who have a legal or equitable interest in the real property. If the buyer has a title company regarding the purchase, then that title company may be able to assist you.

Note also that a surviving spouse who is the executor or administrator may sell the Decedent's interest in real property to himself or herself pursuant to R.C. 2127.011.

- b. Written Consent – Guardianship.⁴ Technically, although R.C. 2127.012 permits a sale of the ward's real property by the guardian of the estate based upon consent, a court order is still required as the result of a motion titled "Motion by Guardian for Real Estate Sale by Consent" (Form 28.0) that is filed together with the consent titled "Consent to Power to Sell Real Estate" (Form 28.1). If each of the following conditions are met, then the Guardian may sell the Ward's interest in real property and convey title to a buyer without filing a separate lawsuit:

³ R.C. 2127.011

⁴ R.C. 2127.012

- The Ward's spouse and all persons entitled to the next estate of inheritance from the Ward in the real property give written consent to a power of sale for a particular parcel of real estate. Each consent to a power of sale provided for in this section shall be filed in the Court; and
- Any sale under a power of sale authorized under this section R.C. 2127.012 shall be made at a price of at least 80 per cent of the appraised value, as set forth in an approved inventory only if the real estate was appraised within two years before the filing of the consents. If the value of the real estate in an approved inventory was not determined by an appraisement, or the appraisement was completed more than two years before the filing of the consents, then the real estate shall be appraised and a sale shall be made at a price of at least 80 per cent of the appraised value; and
- In all events, no power of sale provided for in this section is effective if the Ward's spouse or any next of kin is a minor. No person may give the consent of the minor that is required by this section.

If all of those conditions are met, then the Guardian should prepare, obtain the required signature, and file with the Court the form titled "Motion by Guardian for Real Estate Sale by Consent" (Form 28.0) together with the form titled "Consent to Power to Sell Real Estate" (Form 28.1).

You need to obtain a legal description for the real property including parcel numbers. That information may be obtained from the Ward's deed for the real property, but you may want to obtain a preliminary judicial report, which will provide you with information regarding creditors who have a lien against the real property. If the buyer has a title company regarding the purchase, then that title company may be able to assist you.

Upon filing the motion (Form 28.0) and the consent (Form 28.1), the guardian shall execute such bond or additional bond in an amount set forth in the court order in Form 28.0, having regard to the amount of real property to be sold, its appraised value, the amount of the original bond given by the Guardian, and the distribution to be made of the proceeds arising from the sale.

Note also that the spouse who is the Guardian may sell the Ward's interest in real property to himself or herself pursuant to R.C. 2127.012.

Land Sale by Court Order (without consent)⁵

Due to the complexity of a Land Sale by Court Order, the Help Center highly recommends that you hire an attorney to represent you in such proceeding.

If the Estate Representative or Guardian requires a court order to sell the Decedent's or Ward's interest in real property and convey title to that interest, then the Estate Representative or Guardian must start a new lawsuit with the probate court by filing a complaint. The new proceeding is assigned a case

⁵ The legal proceedings described are provided for in R.C. Chapter 2127. There are other statutes applicable to a fiduciary sale of real property that are beyond the scope of this Information Sheet. See R.C. 1313.21, 1779.01, 2111.19 and 2113.48, 2111.21, 2129.13, 5303.21, and 5731.37.

number, separate from the case number assigned to the probate estate proceeding. In a Decedent's estate, essentially, there are four types of complaints that may be filed by the Estate Representative, depending upon the facts, two of which are mandatory, and the other two are discretionary. Irrespective of whether the land sale proceeding is mandatory or discretionary, the following provisions are applicable. In a guardianship, there is only one type of complaint that may be filed by the Guardian – see R.C. 2127.05.

2. **Filing a Complaint – A New Lawsuit**. Excluding a sale with consent by a guardian of the estate as permitted by R.C. 2127.012, if a fiduciary requires a court order to sell real property in an estate or guardianship, then the fiduciary must prepare and file a complaint with the Court and cause the issuance of a summons upon all interested persons, in a manner similar to any lawsuit.

○ Initial Steps.

- Consider Hiring an Attorney. Even if you are capable of handling the probate proceeding without the assistance of an attorney, you should consider hiring an attorney to assist with the Land Sale proceeding. Like any lawsuit, a Land Sale proceeding is complex, perhaps more so than a typical probate proceeding. If you decide to hire an attorney to assist with the Land Sale, then the Estate Representative or Guardian will pay legal fees and costs from the sale proceeds. If you decide to hire an attorney on a limited basis, such as a review of sale documents in a private sale, or preparation of a deed, then request the Court to issue a court order to hire an attorney for those purposes.
- Copy of Deed. Review the deed to determine the legal description and whether the subject real property is “registered” land per R.C. 5309.04. If so, then there are additional steps to consider in the Land Sale proceeding. Be certain when selecting the title company to prepare the preliminary judicial report that the title company is qualified as a registered land title examiner.
- Decedent's Name. If the Decedent's or Ward's name on the probate filings is different from the name on the Deed, then be prepared to explain the difference on the complaint for land sale or subsequent hearings.
- Preliminary Judicial Report.⁶ Select a title company and obtain a preliminary judicial report in order to determine the necessary parties and a legal description for the real property. The preliminary judicial report must be prepared by a title company licensed by the state of Ohio, an attorney's certificate, or other evidence of title satisfactory to the Court no later than 15 days before the filing of the complaint. See Geauga Probate Local Rule 65.2(A) for more details. Upon filing the complaint, you must file the form titled “Certificate of Title” (GC PF 50.1), which is based upon the information set forth in the Preliminary Judicial Report.
- Necessary Parties.⁷ Determine the necessary parties that must be named in the complaint and their addresses. If a complaint is filed to obtain a court order to sell real property, then the following class of persons must be included as parties on the complaint:

⁶ See Sup.R. 65(A) (Ohio Rules of Superintendence)

▪ In a Decedent's Estate:

- surviving spouse;
- persons entitled to inherit from the Decedent's estate or having an interest in the real property, whether under a Will admitted to probate or by intestacy, but next of kin are not required to be made parties if they are not entitled to inherit (such as if a Will is admitted to probate, to the extent next of kin are not beneficiaries under that Will; provided, however, that if the complaint is filed before expiration of the Will contest period, then all next of kin should be joined as defendants);
- Mortgage holders and other lienholders (consider also judgment creditors);
- If the interest subject to sale is equitable, then all persons holding legal title to the interest or any part of it;
- If a fraudulent transfer is sought to be set aside, all persons holding or claiming under the transfer; and
- All other persons having an interest in the real property. Include the County Treasurer as a defendant even if real estate taxes seem to be fully paid.

If a next of kin or other party is incompetent and does not have an appointed guardian, or if a defendant is a minor, then request that the Court appoint a guardian ad litem for such defendant.

• In a Guardianship:

- The Ward;
- The Ward's spouse;
- All persons entitled to the next estate of inheritance from the Ward in the real property who are known to reside in Ohio, but their spouses need not be made parties defendant;
- All lienholders whose claims affect the real property or any part of the property;
- If the interest subject to the sale is equitable, then all persons holding legal title to the real property or any part of the property;
- All other persons having an interest in the real property. Include the County Treasurer as a defendant even if real estate taxes seem to be fully paid.

- Sale in Decedent's Estate – Consider Spousal Rights. Determine whether a surviving spouse has rights that must be accounted for. Please review the probate information sheet titled "Rights of Surviving Spouse." In particular the Estate Representative should consider and account for the following rights if the real property is a mansion house:⁷

⁷ "Mansion House" is the home of the deceased spouse.

- Right to Purchase Probate Property.⁸ If the mansion house⁹ is not specifically given to a beneficiary under the Will, then, regardless of any provision in the Decedent's Will to the contrary, the surviving spouse has the right to purchase the Decedent's interest in the mansion house at the appraised value. Likewise, to the extent that other Probate Property is not specifically given to a beneficiary under the Will, then the spouse has the right to purchase such Probate Property, both real and personal property, for the appraised value. The spouse shall exercise the right to purchase by filing an application or complaint with the Court not sooner than the filing of the Inventory and Appraisal (Form 6.0), nor later than one month after the approval of the Inventory and Appraisal. The spouse must follow the rules set forth in R.C. 2106.16.
- Election to Receive the Mansion House.¹⁰ A surviving spouse may elect to receive the Decedent's entire interest in the mansion house (including household goods) as part of the spouse's rights for Allowance for Support and the spouse's right to Elect to Take Against the Will (explained below). The Decedent's interest shall be valued at the appraised value, as adjusted for any liens. The spouse must exercise the election before the final account is filed if the probate estate is handled as a Full Administration. If the probate estate is handled as a Release from Administration or a Summary Release from Administration, then the spouse must make the election at or before the court order granting the Release or Summary Release. If the spouse desires to make the election, then the spouse must inform the Estate Representative, and then the Estate Representative shall complete the transfer of title as specified in R.C. 2016.10(C).¹¹
- Allowance for Support.¹² Regarding the payment of the "Allowance for Support," the surviving spouse (and surviving minor children) are treated like a creditor, and that Allowance for Support should be paid from the sale proceeds if not otherwise paid. Again, please review the probate information sheet titled "Rights of Surviving Spouse."
- Dower Rights. While the fiduciary deed delivered by court order is free of the dower rights of the surviving spouse, the Court will determine the value of the dower right and account for it in determining the distribution of the sale proceeds.¹³ The surviving spouse may release his or her dower rights.
- **Note:** Consider having the surviving spouse sign and file with the Court the form titled "Release of Dower" (HCPF 006).
- Bond in Lieu of Sale.¹⁴ Determine whether a bond in lieu of sale may be used if the personal property is insufficient to pay creditors (including the Allowance for Support) and the legatees' claims.
- Partial Interest. Determine whether the Decedent owned a partial interest, and if so how to proceed – e.g., whether to force the sale of entire interest. R.C. 2127.08 sets forth the

⁸ R.C. 2106.16

⁹ "Mansion house" does not mean an actual mansion, but rather the house that is the Decedent's primary residence.

¹⁰ R.C. 2106.10

¹¹ See generally probate form titled "Application for Certificate of Transfer" (Form 12.0)

¹² R.C. 2106.13

¹³ R.C. 2127.16

¹⁴ R.C. 2127.31

requirements for requiring a sale of the entire interest when the Decedent only owns a partial interest.

- Other Matters.
 - Determine whether a new appraisal may be required;
 - Determine whether repairs should be made to the real property;
 - Determine whether to do a public or private sale;
 - If public – then determine the auctioneer and cost;
 - If private – then determine if a broker is required and the cost, and other costs such as title insurance, escrow fees, legal fees, etc.;
 - Determine whether Service of Process by Publication is required;
 - Determine whether Service of Notice of Hearing by Publication is required;
 - Determine whether there are any environmental issues;
 - Determine whether to sell subject to mortgage or other liens;
 - Determine back due real estate taxes and assessments; and
 - Determine whether there are any liens shown on the preliminary judicial report that are for claims, which were paid in full, and make arrangements to have the creditor prepare and file a release of such liens in order to clear the title record.

- Preparation of Complaint. If a court order is required to provide the Estate Representative or Guardian with the authority to sell real property, then R.C. 2127.10 requires the Estate Representative or Guardian to prepare and file a complaint with the Court. The complaint may be filed either in the county where the real property is located, or the county that appointed the Estate Representative or Guardian. That complaint must include the following information:
 - Legal description of the real property;
 - Value of the real property;
 - Describe the decedent's or Ward's interest in the real property;
 - Statement of facts showing the reason for the sale;
 - Include request for authorization of legal fees if you intend to hire an attorney; and
 - Must add the County Treasurer as a Defendant even if the real estate taxes are current

In a Decedent's estate Land Sale, there are four types of complaints that may be prepared and filed depending upon the applicable section of the Ohio Revised Code – see discussion below. In a guardianship Land Sale, there is only one type of complaint.

- Decedent's Estate - Four Types of Land Sale Proceedings to Obtain Court Order.¹⁵
 - Mandatory - Payment of Creditors (including Allowance for Support).¹⁶ Regardless of whether a Will is admitted to probate, if no power to sell is granted in a valid Will (or if there is no Will admitted to probate), then promptly after the Estate Representative determines that the personal property is insufficient to pay: (1) all valid creditor claims,

¹⁵ Please note that while this Information Sheet addresses two mandatory land sales, the Estate Representative may be forced to proceed with a Land Sale, under R.C. 2127.03, upon motion of a creditor, legatee, or by the Court on its own motion.

¹⁶ R.C. 2127.02

(2) the Allowance for Support for surviving spouse and minor children,¹⁷ and (3) the administrative costs, then the Estate Representative must commence a civil action in the Court for authority to sell the real property.

- Mandatory Sale - Required to Pay Legacies, etc.¹⁸ If (i) a Will is admitted to probate, (ii) no power to sell is granted in a valid Will, and (iii) the personal property is insufficient to pay: (1) all valid creditor claims, (2) the Allowance for Support for surviving spouse and minor children,¹⁹ (3) the administrative costs, and (4) the legacies (i.e., specific gifts in a Will), then the Estate Representative must commence a civil action in the Court for authority to sell the real property.
- Discretionary Sale - Action to Sell Real Property.²⁰ Even if not required to pay valid creditor claims or legacies, the Estate Representative may file a complaint with the Court to obtain a court order to sell real property.²¹ Such action may be needed if the Decedent owned a partial interest in real property.
 - Required Conditions. One of the following requirements must be met before the Court can issue an order of sale:
 - At least 50 percent of all interested persons give their consent and no objection is filed by persons holding more than a 25 percent interest in the real property; or
 - No person's interest in the real property exceeds 10 percent of the value of the real property, and no objection is filed by persons holding more than a 25 percent interest in the real property; or
 - No person is living, and no entity exists that is entitled to a distribution from the probate estate, and thus the Probate Property must be distributed to the State of Ohio under R.C. 2105.06(K).
- Discretionary Sale – Summary Sale (\$3,000).²² If the Court determines that the fair market value of the real property interest to be sold is less than \$3,000, then by summary order the Court may authorize the sale and conveyance of the Real Property at a private sale, on the terms that the Court considers proper, and in that proceeding, all requirements of R.C. 2127.01 to 2127.43, as to service of summons, appraisal, and additional bond, are waived. However, the Estate Representative should provide notice to all interested persons, although a summons is not required.

3. Guardianship – Complaint. R.C. 2127.05 sets forth the requirements needed to obtain a court order to sell the Ward's real estate. Essentially, the Court may order a sale of the Ward's real property whenever necessary for the education, support, or the payment of the Ward's just debts, or for the discharge of liens on the Ward's real property, whenever the Ward's real property is suffering unavoidable waste, or a better investment of its value can be made, or

¹⁷ R.C. 2106.13

¹⁸ R.C. 2127.03

¹⁹ R.C. 2126.13

²⁰ R.C. 2127.04

²¹ R.C. 2127.10

²² R.C.2127.11

whenever it appears that a sale of the real property will be for the Ward's benefit or the benefit of Ward's children.

4. Service of Summons.²³ Excluding a sale of real property (1) in an estate based on beneficiary written consent under R.C. 2127.011; (2) in a guardianship based on written consent under R.C. 2127.012; or (3) by summary order (value under \$3,000) under R.C. 2127.11, because a Land Sale involves a new lawsuit in probate court, commenced by the filing of a complaint, all defendants must be served with a summons and a copy of the complaint, except to the extent that a person waives service of summons or consents to the sale of the real property. The Estate Representative or Guardian must prepare and file with the complaint a form titled "Instructions for Service" (GC PF 63.4), which provides the probate clerk of courts with the name and mailing address of each defendant named in the complaint. The Estate Representative or Guardian must make every reasonable and diligent effort to determine the current mailing address of each defendant.²⁴ See the probate information sheet titled "Service of Notice, Subpoena, and Summons."

To the extent that a defendant's address is unknown or the name and address of a defendant is unknown, then service of the complaint and summons shall be made upon those defendants by newspaper publication. Civ.R. 73(A) provides that the Rules of Civil Procedure, particularly Civ.R. 4.4(A)(1), regarding service of summons, govern in matters before the Court. When service of summons by newspaper publication is required, there essentially are three steps.

- The plaintiff (the Estate Representative or Guardian) must prepare and file form GC PF 63.4A "Affidavit for Publication" with the probate clerk, which should have attached the language of the proposed notice. That notice must be published in the legal news once each week for six consecutive weeks.²⁵
- The probate clerk will cause the notice to be published in The News-Herald, Lake County, Ohio.
 - In this Court, the appropriate legal news and contact information is: The News-Herald – 7085 Mentor Ave, Willoughby, Ohio, 44094 – Tel. (440)-951-0000, email – legals@news-herald.com.
 - Moreover, while the probate clerk has the duty to cause the publication, the practice in this Court is that the probate clerk will request that the plaintiff deliver the required Notice to The News-Herald and arrange for publication, including payment of the fees.
- Promptly following the date of last publication, the publisher will prepare and file with the probate clerk an affidavit and a copy of the notice, which constitutes proof of service of process. The News-Herald has a form affidavit that it uses in such cases.

²³ R.C. 2127.14

²⁴ See *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478 (1988)

²⁵ Civ.R. 4.4(A)(1) requires that a publication of service of process must be published for six consecutive weeks. Civ.R. 73(C) requires that in any proceeding requiring service of summons, Civ.R. 4 through 4.6 governs. Thus, it would appear that in a Land Sale proceeding, where publication is required, the publication of the appropriate notice must be once a week for six consecutive weeks.

5. Preparation of Documents and Filing. See the Court's "Checklist – Land Sale (Estate)."

- Complaint to Pay Creditors (R.C. 2127.02). If you decide to file a complaint for a court order to sell the decedent's real property to obtain cash needed to pay creditors, including the Allowance for Support, then consider preparing and filing the following:
 - "Complaint for Land Sale – Payment of Debts" (HCPF 002);
 - GC Form "GC PF 50.1 – Certificate of Title"
 - "Exhibit A – List of Other Defendants" (HCPF 004);
 - To the extent possible, "Waiver of Service of Summons" (GC PF 63.1);
 - "Instructions for Service" (GC PF 63.4);
 - If the surviving spouse is willing, then "Release of Dower" (HCPF 006); and
 - If needed, "Affidavit for Service by Publication" (GC PF 63.4A); with a "Legal Notice" (HCPF 008A1) or (HCPF 008A2) attached, depending upon whether there are known defendants whose address is unknown. Use HCPF 008A2 if there are known defendants with unknown address, otherwise use HCPF 008A1.
- Upon receipt of instructions from the probate clerk of courts, as described above, arrange for the notice by publication.
- Complaint to Pay Legacies (R.C. 2127.03). If you decide to file a complaint for a court order to sell the decedent's real property to obtain cash needed to pay creditors, including the Allowance for Support, and legatees, then consider preparing and filing all the documents noted above, except for the complaint using the form titled "Complaint for Land Sale – Payment of Legacies" (HCPF 003).
- Complaint – Partial Consent to Sell (R.C. 2127.04). If you decide to file a complaint for a court order to sell the decedent's real property based upon the consent required under R.C.2127.04, then consider preparing and filing all the documents noted above, except for the complaint use the form titled "Complaint for Land Sale – Consent to Sell" (HCPF 001).
 - Additionally, consider preparing, obtaining signatures, and filing the form titled "Consent to Sale" (HCPF 001A) to obtain the required consent to permit a sale under R.C. 2127.04. However, the Plaintiff should consider serving those defendants who signed that consent with a summons and thus note those defendants on the "Instruction for Service" (GC PF 63.4).
- Complaint - \$3,000 Summary Order (R.C. 2127.11). If you decide to file a complaint for a Court order to sell the decedent's real property based upon R.C. 2127.11, then consider preparing and filing the following:
 - "Complaint - \$3,000 Summary Order" (HCPF 007);
 - "Exhibit A – List of Other Defendants" (HCPF 004);
 - If the surviving spouse is willing, then "Release of Dower" (HCPF 006)
 - "Legal Notice" (HCPF 008A1) or (HCPF 008A2), depending upon whether there are known defendants whose address is unknown. Use HCPF 008A2 if there are known defendants with unknown address, otherwise use HCPF 008A1.
 - Mail the appropriate Legal Notice to the Defendants with a known address.
 - Arrange to publish the appropriate Legal Notice for those unknown defendants.

- Complaint –Guardianship Sale. If you decide to file a complaint for a court order to sell the Ward’s real property based upon R.C. 2127.05, then consider preparing and filing the following:
 - “Complaint for Land Sale-Guardian” – (HCPF 013);
 - Certificate of Title” (GC Form “GC PF 50.1)
 - “Exhibit A – List of Other Defendants” (HCPF 004);
 - To the extent possible, “Waiver of Service of Summons” (GC PF 63.1);
 - “Instructions for Service” (GC PF 63.4); and
 - If needed, “Affidavit for Service by Publication” (GC PF 62.0); with a “Legal Notice” (HCPF 008A1) or (HCPF 008A2) attached, depending upon whether there are known defendants whose address is unknown. Use HCPF 008A2 if there are known defendants with unknown address, otherwise use HCPF 008A1.
 - Upon receipt of instructions from the probate clerk of courts, as described above, arrange for the notice by publication.
- 6. Post Filing – Certificate of Title Update. Geauga Probate Local Rule 65.2(B) requires that no later than 10 Calendar Days following the filing of the complaint a certification of title update (form “GC PF 50.2 - Certificate of Title Update”) shall be filed with the Court. Additionally, form “GC PF 50.2 - Certificate of Title Update” shall be filed with all motions for the issuance of an order of sale.
- 7. Hearing to Authorize Sale.²⁶ After the complaint is filed and all parties are properly before the Court, including the time required for service by publication, the Court will hold a hearing to consider the complaint, all other pleadings filed by other parties and determine whether to order the sale of the Real Property as requested in the complaint, or as the Court may otherwise determine. The Clerk will serve notice of hearing upon all parties. At that hearing the Court may also determine whether to accept the appraisal in the inventory or order a new appraisal of Decedent’s or Ward’s interest in the Real Property.²⁷
 - Bond Requirement.²⁸ Depending upon the new appraisal report and other factors, the Court may order the Estate Representative or Guardian to obtain a fiduciary bond in addition to the initial bond, if any. Determine whether to request that the Court dispense with an additional bond.
 - Order of Sale. Before the Hearing, consider preparing a judgment entry for the Court, using the form titled “Order of Sale” (HCPF 009), and bring that judgment entry to the Hearing, or for a Guardianship Land Sale, the form titled “Order of Sale-Land Sale-Guardianship” (HCPF 009A).

²⁶ R.C. 2127.18

²⁷ R.C. 2127.22

²⁸ R.C. 2127.27

8. Public Sale. If the Court orders a public sale of the Real Property, then

- Advertising. Arrange for advertising of the public sale in the News-Herald showing date and place of the sale, which must be published three consecutive weeks before the public sale (R.C. 2127.32)
- Order of Sale. The Court will determine a suitable place, and the date and time of the public sale.
- Notice. The Plaintiff shall give notice of the time and place of a public sale. That notice must comply with the requirements of R.C. 2329.23, 2329.24, and Civ.R. 73(E), and must be completed by two methods:
 - Actual Notice.²⁹ The Plaintiff shall deliver written notice to all Defendants, by regular mail at least three weeks before the sale date, at the last known address after making a reasonable and diligent effort to determine the address and should mail that notice on or before the date that Notice by Publication is delivered to the publisher, as noted below.
 - **Note:** You should consider using the form titled “Notice of Public Auction” (HCPF 008B)
 - Notice by Publication.³⁰ You must prepare and deliver to the News-Herald a legal notice of publication that advertises the date, time and place of the public sale at least three consecutive weeks before the date of a public sale.³¹ Note that if the real property is not located in Geauga County, then the newspaper selected must be published in the county where the real property is situated.
 - **Note:** You should consider using the form titled “Notice of Public Auction” (HCPF 008B), which was used for the actual notice. You should request that The News-Herald prepare and deliver to the Court an affidavit of publication upon completion of the final week of publication, as evidence of the publication of that legal notice.
 - Certificate of Notice and Advertisement. After mailing the Notice of Public Auction and arranging for Notice by Publication, you shall notify the Court of those actions by preparing and filing form titled “Certificate of Notice and Advertisement” (GC PF 72.0), with the required attachments.
- Sale Price. The sale price must be not less than two-thirds of the appraised value.³² If at the public sale there is no bidder willing to offer such price, then the Estate Representative or Guardian must inform the Court, and the Court may either order a new appraisal or order a new date for sale, a new public notice by publication, and allow sale to the highest bidder.

²⁹ Sup.R. 65(B) and R.C. 2329.23 and 2329.24

³⁰ R.C. 2127.32, 2329.23, and 2329.24

³¹ R.C. 2127.32; Civ.R. 73(E).

³² R.C. 2127.33 – if land is unimproved, then not less than one-half the appraised value.

- Report of Public Sale. Upon completion of the public sale, the plaintiff must prepare and file with the Court a Report of Sale, reporting to the Court the terms of the public sale.
 - **Note:** You should consider using the form titled “Report of Public Sale” (HCPF 012).
 - Confirmation of Public Sale. If that report is acceptable to the Court, then the Court will confirm the public sale and will order that the plaintiff issue a deed to the purchaser and direct the distribution of the proceeds.
 - **Note:** Together with the filing of the Report of Public Sale, you should prepare and deliver a judgment entry for the Court using the form titled “Confirmation of Sale” (HCPF 010).
 - Fiduciary Deed. You should hire an attorney to assist you with the preparation of the required deed. R.C. 5302.09 sets forth a statutory form for a fiduciary deed.
9. Private Sale. If the Court orders a private sale of the Real Property, then:
- Price.³³ If the Court orders a private sale, then the sale price must be not less than the appraised value. Ideally, before applying for a private sale the Estate Representative or Guardian will have a purchaser committed to pay a gross sales price not less than the appraised value. If the private sale cannot be completed at a price equal to or greater than the appraised value, then the Estate Representative or Guardian must report to the Court, and perhaps request a new appraisal or court order permitting a lower gross sales price.
 - Legal Counsel. If you engage in a private sale, then you should consider having an attorney assist you with preparing or reviewing the real estate sales agreement and all related documents that you will be requested to sign. This is especially true if you have not hired a real estate broker, who is experienced in estate sales, to represent you.
 - Report of Private Sale.³⁴ Upon completion of the private sale, contingent upon a confirmation order by the Court, the Estate Representative or Guardian shall prepare and file with the Court a report of private sale.
 - **Note:** You should consider using the form titled “Report of Private Sale” (HCPF 011).
 - Affidavit of Sale.³⁵ Before the probate court confirms a sale by an executor, administrator, guardian, assignee, or trustee made under an order allowing that officer to make a private sale, the Court will require that officer to file a statement indicating that the private sale was made after diligent endeavor to obtain the best price for the property and that the private sale was at the highest price the executor, administrator, guardian, assignee, or trustee could obtain for the property. Prepare and file with the Court form GC PF 50.6 – Affidavit of Sale.

³³ R.C. 2127.33

³⁴ R.C. 2127.35

³⁵ R.C. 2109.45

- Confirmation of Private Sale. If that report of private sale and the affidavit of sale are acceptable to the Court, then the Court will confirm the private sale and will order that the plaintiff issue a deed to the purchaser and direct the distribution of the proceeds.
 - **Note:** Together with the filing of the report of private sale, you should prepare and deliver a judgment entry for the Court using the form titled “Confirmation of Sale” (HCPF 010)
- Fiduciary Deed. Again, with a private sale, you should hire an attorney to assist you with the preparation of the required deed. R.C. 5302.09 sets forth a statutory form for a fiduciary deed.

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.