

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

## FULL ADMINISTRATION

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### 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.

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### Background

If you intend to serve as the Estate Representative,<sup>1</sup> then, to commence a probate proceeding, you must decide whether to proceed with a (i) Full Administration, (ii) Release from Administration, (iii) Summary Release from Administration, (iv) Short Form Release, or (v) Real Estate Certificate of Transfer.<sup>2</sup> Consider reviewing that decision with an attorney of your choosing. Before you make that decision, you need to gather information concerning the Decedent's probate property, creditors, spouse and minor children, beneficiaries, and next-of-kin. Such information is required to decide which probate proceeding you will select. To assist you with that process, you should read the probate information sheet titled Probate Process Overview. Additionally, please read the probate information sheets titled Release from Administration and Summary Release from Administration, the website checklist titled Short Form Release, and the website checklist titled Checklist – Certificate of Transfer to assist you in determining whether any of those probate proceedings are available to you. Typically, those other four probate proceedings are less complex and less time-consuming than a Full Administration.

If you decide to proceed with a Full Administration, the fundamental procedural steps of a Full Administration of a probate estate include the following:

1. Determine the creditor rights – see the probate information sheet titled Creditor Rights.
2. Determine the rights of the surviving spouse and minor children – see the probate information sheet titled Rights of Surviving Spouse.

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<sup>1</sup> "Estate Representative" is the person appointed by the probate court to handle the probate estate, whether the probate process is a Full Administration (in which case the name of that person is the Executor, Administrator, or Administrator with Will Annexed), the Commissioner of a Release from Administration, or the applicant of a Summary Release from Administration. Sometimes that person is called a "fiduciary."

<sup>2</sup> R.C. 2113.61(D)(1)

3. Determine whether the Decedent has a Will (including a lost, damaged or destroyed Will), and if so, file an application with the Court to have the Will admitted to probate. See the probate information sheet titled The Decedent's Will"
4. File an application with the Court to have the Judge appoint you as the Executor, Administrator with Will Annexed, or Administrator, as applicable.<sup>3</sup> (Executor, Administrator with Will Annexed, or Administrator will be referred to in this probate information sheet as the "Estate Representative" or "Fiduciary").
5. Promptly after appointment as the Estate Representative, establish an estate checking account at any bank convenient for you in Geauga County if required by Geauga Probate Local Rule 78.5(D)(4).
6. Prepare and file an Inventory<sup>4</sup> (a detailed description of the probate property).
7. Routinely prepare and file Accounts<sup>5</sup> with the Court (informing the Court of receipts and disbursements during a certain time period).
8. Upon the conclusion of the probate process, prepare and file with the Court a Final and Distributive Account.<sup>6</sup>
9. The general rule is that the Estate Representative will complete the administration of the probate estate within six months after his or her appointment unless an extension of the time to file a Final and Distributive Account is authorized by Court order under R.C. 2109.301(B).<sup>7</sup>

Preparation for Filing. Consider the following steps if you intend to proceed with a Full Administration, and before you file any documents with the Court.

- Does Decedent have a Valid Will? Determine whether the Decedent has a Will. Please read the probate information sheet titled The Decedent's Will. Please note that a valid Will may include a copy of a Will that was lost or destroyed, or a copy of the original Will that was damaged together with the damaged original Will.
  - If you cannot find a Will (including a copy of a Will), then check with the bank that has the Decedent's checking account. The Decedent may have deposited a Will in a safe deposit box. See notes below regarding opening a safe deposit box.

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<sup>3</sup> An "Executor" is the person appointed by the probate court judge to handle a Full Administration if the Decedent died with a valid Will, and that person is named as Executor in that Will. An "Administrator with Will Annexed" is the person appointed by the probate court judge to handle a Full Administration, if the Decedent died with a valid Will, but that person is not named as Executor in that Will. If the Decedent died without a valid Will, then an "Administrator" is the person appointed by the probate court judge to handle a Full Administration.

<sup>4</sup> "Inventory" means the forms Inventory and Appraisal (Form 6.0) and the Schedule of Assets (Form 6.1).

<sup>5</sup> "Account" means the forms Fiduciary's Account (Form 13.0), Receipts and Disbursements (Form 13.1), and Assets Remaining in the Fiduciary's Hands (Form 13.2).

<sup>6</sup> In certain cases, you may file a Certificate of Termination

<sup>7</sup> R.C. 2113.25

- Regardless of whether you have found the Decedent's Will, in all events you must request that the Court examine the Court's index of wills deposited with the Court to determine whether the Decedent has a later Will.<sup>8</sup>
- If the Will is lost, damaged or destroyed, there is a process to have that Will admitted to probate – See R.C. 2107.26, 2107.27, and 2107.28, which is explained in the probate information sheet titled The Decedent's Will and the "Checklist - Probating the Decedent's Will," located on the Court's website.
- If the Will is not executed in accordance with the formalities set forth in R.C. 2107.03, then there is a process to have that Will admitted to probate – See R.C. 2107.24.
  - **WARNING.** Confirm that Geauga County is the appropriate county for having the Decedent's Will admitted to probate and for you to be appointed as the Executor. See the probate information sheet titled Jurisdiction of Ohio Probate Courts. Generally, the applicant must file the application to admit to probate the Decedent's Will in the county where Decedent resided at the time of death.
- Declaration of Validity. The applicant should determine whether the Decedent, before death, filed a complaint with the probate court to have that court determine whether the Decedent's will is valid (thus minimizing the risk of a future will contest after death).<sup>9</sup> If the court finds that "the testator had the requisite testamentary capacity, was free from undue influence, and was not under restraint or duress," then the court will issue an order declaring the will to be valid. If so, the applicant should obtain a court order that determines the will to be valid.
- Death Certificate. Obtain a copy of the Death Certificate so that you can file it with the Application for Authority to Administer Estate (Form 4.0). Typically, the funeral director can obtain a copy for you. Before filing with the Court, the applicant must redact the Decedent's social security number.
- Identify the Decedent's Creditors.
  - Create a list of all creditors, including the name (and the address and phone number if possible), a description of the claim, and the amount owed. The Help Center has a Worksheet that is helpful in organizing the relevant information.
    - Moreover, determine whether the Decedent, or the Decedent's spouse if that spouse predeceased the Decedent, was a recipient of any Medicaid benefits. That may have occurred if the person was in a nursing home for a significant period of time before death.
  - Determine whether the Decedent owed you any money. If the amount is \$500 or greater, an Estate Representative may not pay any debt that the Decedent owed to the Estate Representative from probate property without disclosing the debt to the Judge and receiving the Judge's order permitting such payment. Furthermore,

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<sup>8</sup> Wills may be deposited under R.C. 2107.07. See Geauga Probate Local Rule 59.1(C).

<sup>9</sup> See R.C. 5817.02

that debt is not entitled to preference over other creditors of the same class.<sup>10</sup> Please review the probate information sheet titled Creditor Rights.

- Consider whether to wait six months following the Decedent's date of death before filing the Application for Authority to Administration the Estate (Form 4.0). If the Decedent died with creditors, be sure to carefully read the probate information sheet titled Creditor Rights, and perhaps confer with an attorney for legal advice regarding the payment of creditor claims and the timing for filing that application with the Court. Be aware that if you decide to wait six months after the date of death before filing an application to be appointed as the Fiduciary, nevertheless a creditor may file an application to be appointed as the Fiduciary for the purpose of presenting a creditor claim within six months after date of death. Again, you should discuss that course of action with an attorney in order to fully understand all of the ramifications.
  - **WARNING.** If you are owed money from the probate estate, then read the probate information sheet titled Creditor Rights. You should obtain legal advice before taking action. You have at least two choices.
    - First, consider filing the Application for Authority to Administration the Estate (Form 4.0) BEFORE six months after the Decedent's death, and file with both you and with the probate court a presentation of claim as a creditor of the probate estate BEFORE six months after the Decedent's death using the form titled Presentation of Claim (HCPF 070A), which can be obtained at the Help Center. Filing a Release from Administration will not help you to be reimbursed from probate property.
    - Second, consider not filing an Application for Authority to Administration the Estate (Form 4.0) until more than six months AFTER the Decedent's death. If you are appointed the Fiduciary, you may be able to have your claim approved by the Court by presenting your claim to the Court within three months following the Court's appointment of the Executor or Administrator in accordance with R.C. 2117.02.<sup>11</sup>
- Obtain a copy of the funeral director's bill. If that funeral bill has been paid or prepaid, then obtain (i) a copy of the funeral director showing a zero-balance due and (ii) proof of payment by the person who paid that funeral bill (e.g., a cancelled check), or if waived, a copy of the waiver of payment by the funeral director. Regarding the Estate Representative's duty to reimburse the person who paid the funeral bill, please read the information sheet titled Creditor Rights, or discuss the issue with an attorney of your choosing.
  - If the person who paid the funeral bill or other court-approved funeral and burial expenses does not seek reimbursement from the estate, then the Estate Representative should have that person sign and then file Form GC PF 4.54 - Waiver of Reimbursement for Funeral and Burial Expenses.

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<sup>10</sup> R.C. 2117.01

<sup>11</sup> See the probate information sheet titled "Creditor Rights" and *In re Estate of Curc*, 2019-Ohio-416 [11<sup>th</sup> App. Dist.]

- If the Estate Representative decides to reject a creditor claim, then the Estate Representative should read the probate information sheet titled Creditor Rights.
- Identify the Decedent's Probate Property.
  - List Probate Property. An applicant should make a detailed list of the Decedent's probate property, including gathering copies of all documents that evidence title to property (e.g., deeds for real property and current county auditor tax bills, certificate of title for each vehicle, financial account statements, retirement account statements, stock certificates, bonds, income tax refunds for year of death, Digital Assets, uncashed checks, intellectual property, copy of wages due from employer if possible, etc.), and including valuable jewelry, collections, or artwork. An applicant needs that information to determine whether to select a Full Administration, a Release from Administration, a Summary Release from Administration, or a Short Form Release. Consider the following as you determine the probate property.
    - Obtain Financial Information. If the Decedent owned financial accounts and you do not know the account balances or account numbers, and if the financial institution will not release that information to you, then you can obtain a court order that requires the financial institution to release that information to you. Please read Geauga Probate Local Rule 78.23 and the "Checklist – Medical and Financial Information," which is on the Court's website and which explains the process and forms to be prepared and filed with the Court to obtain a court order.
    - Digital Assets. Review (i) the probate information sheet titled Digital Assets and (ii) the form titled Digital Asset Certification (GC PF 6.5). Eventually you will need to prepare and file the Digital Asset Certification (GC PF 6.5) together the Inventory (referred to as "Inventory") – see the discussion below regarding preparation and filing of the Inventory. You should make a careful examination to determine to what extent the Decedent owned Digital Assets.
    - Tangible Personal Property. Review the form titled Tangible Personal Property Certification (GC PF 6.6). Eventually you need to prepare and file the Tangible Personal Property Certification (GC PF 6.6) together with the Inventory. You should make a careful examination to determine to what extent the Decedent owned tangible personal property, in particular that which has significant value, for example jewelry, collections, antiques, artwork, etc.
    - Tax Refunds. Determine whether the Decedent is entitled to any income tax (federal or state) refunds. See the discussion below regarding income tax returns and review the probate information sheet titled Creditor Rights.
    - Unclaimed Funds. The Decedent may be owed unclaimed funds for a variety of reasons, including a deposit refund, forgotten bank account, expense reimbursement, wages, etc. Consider contacting the Ohio Division of Unclaimed Funds. The website is <https://www.com.ohio.gov/unfd/>. The website has a useful tool to search for

unclaimed funds. The phone number is 877-644-6823. The mailing address is Ohio Department of Commerce, Division of Unclaimed Funds, 77 South High Street, 20<sup>th</sup> Floor, Columbus, OH 43215-6133.

- Intellectual Property. The Decedent may own intellectual property, which could include patents, copyrights, or trademarks, both federal and state. Obtain copies of documents that evidence such property.
  - Business Interests. The Decedent may own business interests, which could include shares of stock on a corporation that is not publicly traded, a partnership interest, or a membership interest in a limited liability company. Obtain copies of documents that evidence such property.
  - Firearms. The Decedent may own or possess (i) firearms that are regulated by federal or state law or (ii) Dangerous ordnance as defined by R.C. Sec. 2923.11(K). Federal or state law may regulate the Fiduciary regarding the possession, use, storage, sale, transport, and the distribution of such probate property to certain beneficiaries, particularly beneficiaries who reside in another state. Such federal and state law is complex. Some beneficiaries are not permitted by law to own, possess, or use certain firearms, resulting from age, criminal background, mental health issues, use of drugs, or citizenship status (e.g., illegal alien). Depending upon the nature of a firearm or Dangerous ordnance, the Fiduciary may have risk arising from a violation of federal or state law, including criminal law. If the Decedent owned or possessed firearms or Dangerous ordnance and the Fiduciary does not have an attorney, then it is highly recommended that the Fiduciary obtain legal advice from an attorney, who has experience with such issues. Additionally, the Fiduciary should read the probate information sheet titled Firearms Law and Probate Concerns.
- Determine if Decedent had a Safe Deposit Box. Determine whether the Decedent had a safe deposit box. Check with the bank that has the Decedent's checking account. If you locate a safe deposit box, then review Checklist - Safe Deposit Box, located on the Court's website. You need to obtain a court order to examine the contents of the safe deposit box – see Checklist – Safe Deposit Box. Of course, if the safe deposit box is jointly owned, then the surviving owner can open the safe deposit box without need of a court order.
  - Determine Value of Probate Property. Decide whether any probate property must be appraised.<sup>12</sup> If so, determine who will be the appraiser, depending upon the nature of the probate property to be appraised. You can select more than one appraiser.<sup>13</sup> See the Court's website for a list of preapproved appraisers. You may pay the cost of the appraiser from the probate property after you are appointed by the Judge as the Estate Representative.
    - The general rule is that any probate property that does not have a readily ascertainable value must be appraised.<sup>14</sup>

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<sup>12</sup> See Information Sheet "Probate Process Overview."

<sup>13</sup> R.C. 2115.06

<sup>14</sup> R.C. 2115.02

- Please note that if probate property includes an ownership interest in real property or a vehicle, then the value may be determined by means other than appraisal. See Geauga Probate Local Rule 78.5(D)(1)(a)(2).
  - Vehicles. Rather than appraisal, the Court will accept the value of a vehicle as established by Kelley Blue Book.<sup>15</sup> If you elect to determine value using Kelley Blue Book, then make a photocopy of the page that sets forth the value and file it with the Court when you file the Inventory. See Geauga Probate Local Rule 78.5(C)
  - Real Property. The Court may accept as the value of real property (i) the value set forth on the latest assessment by the county auditor for determining real property taxes, (ii) a “letter of valuation from the County Auditor’s Office,” or (iii) as set forth by the Auditor on REALink.<sup>16</sup> Make a photocopy of that valuation and file it with the Court when you file the Inventory.
    - Income Tax Consequence. If a probate asset is sold either during the estate administration or after distribution, the value of the probate asset as shown on the Inventory may result in an unintended income tax consequence to the estate or the beneficiaries depending upon the sale price. The Estate Representative should consider obtaining tax advice from a tax professional before deciding to use the “letter of valuation from the County Auditor’s Office” or REALink.
  - Household Goods, Personal Effects.<sup>17</sup> Generally, if household goods and personal effects are of modest value, then such items do not need appraisal, and the Estate Representative may estimate and assign a value consistent with what would be received at a public auction. However, if such items include artwork, collections, jewelry, or other such items of significant value, then those items should be appraised and the court may order an appraisal.
  - Digits Assets. Likewise, depending upon their nature, Digital Assets may need to be appraised.
- Concealment of Probate Property. Decide whether any of the Decedent’s probate property may be concealed by another person. If that is the case, then R.C. 2109.50 to 2109.56 provides a legal process to discover and include that probate property in the probate estate.<sup>18</sup> The Help Center recommends that you obtain an attorney to assist you with the process set forth in R.C. 2109.50 to 2109.56. The Help Center cannot assist you with the preparation of the required complaint or related documents.
- Determine any Pending Lawsuits involving the Decedent. If there is a pending claim in a court of record against the Decedent at the time of death or if after appointment

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<sup>15</sup> See <https://www.kbb.com/>

<sup>16</sup> See <http://geaugarealink.co.geauga.oh.us/realink/>

<sup>17</sup> See Geauga Probate Local Rule 78.5(D)(1)(a)(2)(c).

<sup>18</sup> See Supreme Court of Ohio Probate Bench Cards – “CONCEALMENT OF ASSETS”

the Estate Representative has actual knowledge of such litigation, then R.C. 2117.06(E) requires the Estate Representative to give written notice to the Court within 10 days after acquiring such actual knowledge. If the Decedent filed a lawsuit against another person before death, then the Estate Representative should promptly contact the attorney of record.

- Identify Beneficiaries.

- An applicant should create a list of the name of each person and entity that is named in the Will, and who has survived the Decedent, including as to each vested Beneficiary, the address, the relationship to the Decedent, and the birthdate of any minor. Identify those beneficiaries whose current address is unknown but include the last known address and determine whether there are beneficiaries whose names are unknown.
- If the Decedent died with a valid Will, then the Will defines the beneficiaries of the probate property.<sup>19</sup> In that event, the applicant must file an application and the Will with the Court to allow the Judge to determine if the Will should be admitted to probate.
- Sometimes the Will may not describe beneficiaries by name, but rather by describing a class of persons. For example, the Will might say – “I leave the remaining assets to my lineal descendants, per stirpes.” In that example, the beneficiaries of the Will are defined by the “Statute of Descent and Distribution,” which is R.C. 2105.06.<sup>20</sup>

- Identify Next-of-Kin.

- In addition to a list of the Beneficiaries, the applicant should create a list of the name of each person who is next-of-kin to the Decedent and as to each such person, the address, the relationship to the Decedent, and the birthdate of any minor. The next of kin is determined by R.C. Chapter 2105, with a focus on R.C. 2105.06. Identify those next-of-kin whose current address is unknown but include the last known address. If the Decedent has a surviving spouse or any surviving or predeceased lineal descendants (e.g., children or grandchildren), then include required information for each of them including a predeceased child, and including the name and address of each lineal descendant of a predeceased child. If the Decedent does not have a surviving spouse or any surviving lineal descendants, then include the required information for any surviving parent, and if none, then any surviving full and half brothers and sisters (and the lineal descendants or any deceased siblings).

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<sup>19</sup> That is true except to the extent that the Will does not dispose of all the probate property, in which case that probate property will pass to the Decedent’s nearest next-of-kin, but subject to the rights of a surviving spouse. See Information Sheets “Probate Process Overview” and “Rights of a Surviving Spouse.”

<sup>20</sup> See Information Sheet “Probate Process Overview.”



- If there is doubt as to who is the Decedent's next-of-kin, then the Estate Representative may file a complaint with the Court under R.C. Chapter 2123, requesting the Court to determine heirship. An example might be if the Decedent fathered a child out of wedlock. You should discuss this with an attorney of your choosing.
- If any of the Decedent's next-or-kin cannot be located, there is a process that the judge may use to have the inheritance held as unclaimed funds by the county treasurer or the Estate Representative for a period of not more than two years, as more fully described in R.C. §§ 2113.64, 2113.65, and 2113.66.
- Finally, R.C. 2105.15 permits a person, who is legally competent, to designate a person as the next-of-kin (i.e., heirs at law) of the declarant. For example, a person could designate a child born out of wedlock as the declarant's child, the result being that the designated child would share with any of the declarant's other children if the declarant died intestate (i. e., without a valid will admitted to probate). The declaration of heir at law is accomplished by filing the declaration in a probate court and obtaining a court order accepting the declaration. A certified copy of the court record is evidence of that declaration. The applicant should make inquiry to determine whether the Decedent ever made such a declaration.
- Determine the Decedent's Name. Of course, the applicant should use the Decedent's name found on the death certificate in preparing any Court documents. However, other evidence of title of probate property (e.g., deeds, certificates of title, financial account statements, retirement account statements) may have a slightly different name. In such cases, be sure to add those additional names when preparing Court documents. For example, the Decedent's name on the "Application for Authority to Administer Estate" might state:

"John Charles Smith, aka John C. Smith"

- Determine Rights of Surviving Spouse (or Minor Children). If the Decedent has a surviving spouse or minor children, then carefully review the probate information sheet titled Rights of Surviving Spouse and determine how to satisfy each of those rights from the probate property. Their rights, in most cases, are superior to the creditor rights, and in all cases, superior to the rights of other Beneficiaries.
- Determine Whether a Surety Bond is Required. Carefully review Geauga Probate Local Rule 78.17. A surety bond provides "insurance" for creditors and beneficiaries of the probate estate if the Estate Representative acts in an unlawful manner and causes a loss to those persons and entities.<sup>21</sup> The Estate Representative owes those persons and entities a high degree of loyalty.<sup>22</sup> In some cases, the Estate Representative need not obtain a surety bond unless otherwise ordered by the judge. If a surety bond is required by the Court, then the Estate Representative must arrange and pay for the surety bond and file it with the Court.<sup>23</sup> The Estate Representative may be reimbursed for the cost of the surety bond from probate property. After the probate estate administration is concluded, the Estate Representative must obtain from the Court a judgment entry terminating the surety bond requirement. The Estate Representative must present the

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<sup>21</sup> See R.C. 2109.04 for details about the surety bond.

<sup>22</sup> See R.C. 2113.31, 2113.32, and 2113.34.

<sup>23</sup> The surety bond must conform to the form titled "Fiduciary Bond" (Form 4.2).

judgment entry to the surety bond company to terminate the continuing cost of the surety bond.

- If the Decedent died with a valid Will, then:
  - If the Will waives the bond, then the judge may not order a surety bond; provided however, that if the applicant is not an Ohio resident, then the Judge may require a surety bond.
  - If the Executor is the surviving spouse, and the surviving spouse is entitled to receive the net proceeds of the probate property, then a surety bond is not required.<sup>24</sup>
- If the Decedent died without a valid Will, and if the Administrator is the Decedent's next-of-kin and is entitled to receive all of the net proceeds of the probate property, then a surety bond is not required.<sup>25</sup>
- If a surety bond is required, then the amount of the bond typically is twice the value of the personal property and the annual real property rentals.<sup>26</sup>
- Personal Identification. Unless you are represented by an Ohio attorney, obtain (1) a government-issued photographic identification (e.g., a current driver's license or passport) and (2) evidence of current mailing address (e.g., recent utility bill, bank statement account, property tax bill, voter registration card). Additionally, gather information concerning any felonies that you were convicted of or that you pled guilty to.
- Qualifications to be Appointed Executor or Administrator.
  - Valid Will. If the Decedent died with a valid Will (including a Lost, Spoliated, or Destroyed Will that was admitted to probate), and if you are named in the Will as Executor, then consider the following:
    - If you are named in the Will as Executor and are related to the Decedent by consanguinity (blood) or affinity (marriage) then you need not be an Ohio resident to be appointed. If you are not so related to the Decedent, and you are not an Ohio resident, then you may be appointed if your state of residency permits out-of-state persons to serve as Executor.<sup>27</sup>
    - If the Will has been admitted to probate, if a person is named before you in the Will to serve as Executor and is surviving, and if such person does not want to serve as Executor, then have such person sign the form titled Declination (GC PF 4.9) and file the signed Declination with the Court before filing the Application for Authority to Administer Estate (Form 4.0). If any such person is unwilling to sign a Declination, then the Court will set the application for hearing. Moreover, if you are not the first in priority named in that Will to be appointed Executor, then you will prepare and file

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<sup>24</sup> R.C. 2109.07(A)(1)

<sup>25</sup> R.C. 2109.07(A)(2)

<sup>26</sup> R.C. 2109.04(A)(1)

<sup>27</sup> R.C. 2109.21 and 2113.05

with the Court the form titled Executor Listing (Form GC PF 4.9A), together with the Application for Authority to Administer Estate.

- You must be suitable, competent, accept the appointment in writing, and give a surety bond if required by the Court.<sup>28</sup>
- If all persons named as Executor in the Will either are deceased or decline, then generally any suitable person who is a beneficiary of the Will, who is an Ohio resident and is next-of-kin, may apply to be named “Administrator with Will Annexed.”<sup>29</sup>
- No Valid Will. If the Decedent died without a valid Will, then consider the following:
  - **WARNING.** Confirm that Geauga County is the appropriate county for you to be appointed as the Administrator. See the probate information sheet titled Jurisdiction of Ohio Probate Courts.
  - If the Decedent died without a valid Will, then the Administrator must be an Ohio resident and must provide proof of residency.<sup>30</sup> The priority for appointment as the Administrator is as follows:<sup>31</sup>
    - Surviving Spouse, if an Ohio resident
    - Any next-of-kin who is an Ohio resident
    - Any suitable person who is an Ohio resident
  - If any person has priority over your appointment as the Administrator or has equal rights to be appointed Administrator, and if that person does not want to be appointed as Administrator, then you should have such person sign a form titled Waiver of Right to Administer (Form 4.3). If any such person is unwilling to sign that Waiver, or if such person is a minor, then the Court will set the application for hearing, and you must deliver a notice of the hearing, no less than seven days before the hearing date, upon such persons named using the form titled Notice and Citation of Hearing on Appointment of Fiduciary (Form 4.4). The applicant shall deliver a copy of that notice to each such person by certified mail, return receipt requested. Before the hearing, the applicant shall provide the Court with proof of service of that notice by preparing and filing with the Court the form titled Affidavit Evidencing Service of Notice (GC PF 41.6) together with a copy of each such notice and the “green card” for each notice. See the probate information sheet titled Service of Notice, Subpoena, and Summons and see Probate Local Rules 78.13 and 78.14. Consider whether notice by publication is required.

Application to Admit Will to Probate. If the Decedent died with a valid Will, then you must have the Will admitted to probate before you can be appointed as the Executor of the probate estate. Carefully review the probate information sheet titled The Decedent’s Will.

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<sup>28</sup> R.C. 2113.05

<sup>29</sup> R.C. 2113.05

<sup>30</sup> R.C. 2109.21(A)

<sup>31</sup> R.C. 2113.06

Application for Authority to Administer Estate.

- Where to File Application for Authority to Administer Estate.
  - Will Admitted to Probate. If the Decedent died with a valid Will (including a lost, damages, destroyed will), then the File Application for Authority to Administer Estate must be filed in the Ohio county that admitted the Will to probate.<sup>32</sup>
  - No Will Admitted to Probate.<sup>33</sup> The Application for Authority to Administer Estate (Form 4.0) must be filed in the Ohio county where the Decedent was a resident on the date of death.
- Prepare and file with the Court the form titled Application for Authority to Administer Estate (Form 4.0).<sup>34</sup> Be sure that the Decedent's name entered on the caption of that application is identical to (i) the death certificate, and (ii) if applicable, the Decedent's Will that is admitted to probate. If the name on the death certificate and the Decedent's Will are different, then that application should recite each of the names and use the applicable abbreviation for "also known as" (aka) or "formerly known as" (fka). You should add to that application other variations of the Decedent's name that appear on a deed, certificate of title, or financial accounts, in order to facilitate a transfer of title or distribution.
  - You must indicate whether the Decedent died with a valid Will.
  - Insert the estimated values for the probate property.<sup>35</sup> Review Geauga Probate Local Rule 60.1(B). The applicant shall make a good faith estimate of the probate property when preparing and filing the Application for Authority to Administer Estate (Form 4.0). The Court will not accept for filing any such application in which the value estimates are blank, listed as \$0.00, stated as "unknown," or otherwise fail to reflect any positive value, except as provided in Geauga Probate Local Rule 60.1(B)(2). If there is no known personal property, real property, or personal or real property rentals, then the applicant shall insert the word "None" on the appropriate line, otherwise the applicant shall insert a good faith estimated value.
  - Indicate the appropriate response regarding the need for a surety bond.
    - Again, review Geauga Probate Local Rule 78.17. If a surety bond is required, then arrange for the surety bond, and prepare and file with the Court the form titled Fiduciary's Bond (Form 4.2).
- Notification (and Declination or Waiver) of Right to be Appointed Fiduciary.
  - Will Admitted to Probate. If the Decedent died with a valid Will and if persons have a superior right to be appointed Executor, then the applicant should have those persons sign and then file with the Court the form titled Declination (GC PF 4.9), together with the Application for Authority to Administer Estate if possible, otherwise file that form with the Court as soon as possible thereafter. Moreover, if you are not the first in priority named in that Will to be appointed Executor, then

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<sup>32</sup> R.C. 2107.11

<sup>33</sup> R.C. 21113.01

<sup>34</sup> See R.C. 2113.07 for a description of the Application for Authority to Administer Estate.

<sup>35</sup> See Geauga Probate Local Rule 60.1(B).

you will prepare and file with the Court the form titled Executor Listing (Form GC PF 4.9A).

- Notice of Hearing. To the extent that those persons, who are entitled to be appointed Executor, do not sign a Declination to serve as Executor, then the Court will set a hearing date for the Application for Authority to Administer Estate, and the Clerk of Courts will notify those persons who did not sign the Declination of the hearing date.
- Person with Superior or Equal Right to Serve as Administrator. If the Decedent died without a valid Will and if persons have a superior or equal right to be appointed Administrator, then the applicant should: (1) either have the appropriate persons sign the Waiver of Right to Administer set forth in the Application for Authority to Administer Estate or (2) the form titled Waiver of Right to Administer (Form 4.3), and then file with the Court a copy of the signed Waiver(s) of Right to Administer (Form 4.3) together with the Application for Authority to Administer Estate if possible, otherwise file the signed Waiver(s) of Right to Administer (Form 4.3) with the Court as soon as possible thereafter.
  - Notice of Hearing. To the extent that those persons, who are entitled to be appointed Administrator, do not sign a Waiver of Right to Administer, as applicable, then the Court will set a hearing date for the Application for Authority to Administer Estate (Form 4.0), and the applicant must notify those persons who did not sign the Waiver of Right to Administer Estate, using the form titled Notice and Citation of Hearing on Appointment of Fiduciary (Form 4.4). Consider whether notice by publication is required. The applicant shall deliver a copy of that notice to each such person by certified mail, return receipt requested. Before the Hearing, the applicant shall provide the Court with proof of service of that notice by preparing and filing with the Court the form titled Affidavit Evidencing Service of Notice (GC PF 41.6) together with a copy of each such notice and the “green card” for each notice. See the probate information sheet titled Service of Notice, Subpoena, and Summons, and see Probate Local Rules 78.13 and 78.14. Consider whether notice by publication is required.
- Prepare and file, together with the Application for Authority to Administer Estate, the form titled Surviving Spouse, Children, Next of Kin, Legatees and Devisee (Form 1.0).<sup>36</sup> If there is a surviving spouse or surviving lineal descendants, then include (i) the name and address of each predeceased child, and (ii) under the name of a predeceased child insert the name and address of that child’s lineal descendants. Moreover, you must correctly check one of the boxes toward the bottom of the front page of Form 1.0.
- Together with the Application for Authority to Administer Estate, file with the Court a death certificate with the Decedent’s social security number redacted.
- If the Decedent’s residence on the death certificate is different from the Decedent’s actual residence in Geauga County as of the date of death, then prepare and file with the Court

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<sup>36</sup> See Geauga Probate Local Rule 78.5(A)(2).

the form titled Residency Affidavit (GC PF 4.52) and explain why Geauga County is the Decedent's county of residence on the date of death.

- If a surety bond is required, prepare and file with the Court the form titled Fiduciary's Bond (Form 4.2).
  - Consider whether to request that the Court dispense with a Fiduciary Bond. If so, then prepare and file the form titled Application to Dispense with Fiduciary's Bond (GC PF 4.40), and if applicable the forms titled Consent to Dispense with Fiduciary's Bond (GC PF 4.37) and Fiduciary's Acknowledgement of Personal Liability (GC PF 4.38). In either case first review Geauga Probate Local Rule 78.17(G).
- Prepare and file with the Court the form titled Fiduciary's Acceptance (Form 4.8).<sup>37</sup>
- If you are not represented by an Ohio attorney, then prepare and file with the Court:
  - (1) a government-issued photographic identification (e.g., a current driver's license or passport), and (2) evidence of current mailing address (e.g., recent utility bill, bank statement account, property tax bill, voter registration card);<sup>38</sup> and
  - the form titled Medicaid Recovery Acknowledgement (GC PF 4.29).
- Prepare and file with the Court the form titled Background Certification and Records Check (GC PF 4.30).<sup>39</sup>
- Be prepared to pay to the Probate Clerk of Courts the deposit for the court costs. The deposit for the court costs is listed on the Court's website. If the actual court costs are more than the deposit, the Estate Representative shall pay the additional court costs. Likewise, if the actual court costs are less than the deposit, the Court will reimburse the Estate Representative for that excess amount.

#### Court Approval of Application for Authority to Administer Estate.

- Letters of Authority If the Judge grants an Application for Authority to Administer Estate, then the Court will deliver to the applicant a written document that evidences the appointment and the authority of the Fiduciary, which is known as "Letters of Authority." The Executor or Administrator, as the case may be, will need that written document of authority as evidence of the appointment in order to do numerous tasks, including the transfer or sell probate property, establish an estate checking account, handle financial accounts, etc.
- Notice of Appointment of Administrator. If the Court appoints an Administrator (not Executor), then as required by Sup. R. 60(B), an Administrator shall give notice of the appointment within seven days after the appointment to all persons entitled to inherit, including persons entitled to an allowance for support, unless those persons have (i) waived notice by signing and filing the form titled Waiver of Notice of Appointment of Administrator (GC PF 4.4B), or (ii) been provided notice of the hearing on the appointment

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<sup>37</sup> R.C. 2109.02

<sup>38</sup> See Geauga Probate Local Rule 78.10.

<sup>39</sup> See Geauga Probate Local Rule 78.11.

(i.e., Form 4.4 – “Notice and Citation of Hearing on Appointment of Fiduciary”). If notice of appointment is required, then the Administrator shall use the form titled Notice of Appointment of Administrator (GC PF 4.4A). The Administrator shall deliver a copy of that notice to each such person in accordance with Civ.R. 73(E). The Administrator shall provide the Court with proof of service of that notice by preparing and filing with the Court the form titled Affidavit Evidencing Service of Notice (GC PF 41.6) together with a copy of each such notice and evidence of service (e.g., the “green card”) for each notice. See Probate Local Rule 78.13.

#### Other Matters to Consider.

After receiving the Letters of Authority, consider the following;

- Income Tax Concerns. Please review the probate information sheet “Creditor Rights.” Additionally, review IRS Publication 559. You may have a duty to file the Decedent’s federal and Ohio income tax returns, and possibly an income tax return for the probate estate. The filing of those tax returns could result in a refund, which would likely be probate property. You should consider hiring a tax advisor to assist you. The Internal Revenue Service may be a creditor of the Decedent’s estate. You should discuss with your tax advisor whether you should prepare and file IRS Form 56, which is intended to notify the Internal Revenue Service of the creation and termination of a fiduciary relationship. Finally, before distributing probate property, you should discuss with your tax advisor whether you should (i) again file IRS form 56, noting that you are terminating your fiduciary relationship, (ii) file IRS form 4810, which is a request to the Internal Revenue Service to promptly assess the Decedent’s income tax liabilities, and (iii) file IRS form 5495, which is a request to the Internal Revenue Service to discharge you from any liability to the Internal Revenue Service as the fiduciary of the Decedent’s estate.
- You will need an estate federal tax identification number to establish an estate checking account. If you desire to obtain a federal tax identification number, then consider using the IRS website.<sup>40</sup>
- Allowance for Support. A surviving spouse or minor children may be entitled to the Allowance for Support pursuant to R.C. 2106.13 – see the information sheet titled “Rights of Surviving Spouse (and Minors). Before making any payment to creditors or beneficiaries, you should determine whether an Allowance for Support must be paid or whether all interested persons will sign the form titled Waiver of Allowance for Support (GF PF 7.3) – see “Checklist – Full Administration.” If the Allowance for Support must be paid, then determine whether you must file an application for a court order to pay the Allowance for Support, using either the form titled Application for Family Allowance (Form 7.1) or the form titled Application for Apportionment of Family Allowance (Form 7.2). Please read the probate information sheet titled Rights of Surviving Spouse for more details and R.C. 2106.13.
- Waiver. If you can obtain a waiver of the rights to the Allowance for Support, then use the form titled Surviving Spouse Waiver of Family Allowance (Form GC PF 7.3) and file it with the Court.

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<sup>40</sup> See also < <https://www.govdocfiling.com/tax-id-application> >

- Adjustment of Allowance for Support.<sup>41</sup> If the surviving spouse selected one or more automobiles under R.C. 2106.18, then the amount of the Allowance for Support (\$40,000) is reduced by the lowest value of the automobiles selected. Obtain information from the surviving spouse including a copy of the affidavit of value that the spouse filed with the Auto Title Bureau in order to determine the automobile with the lowest value and then reduce the Allowance for Support accordingly.<sup>42</sup>
- Allocation of Support for Allowance. Determine whether the Allowance for Support must be allocated among the spouse and minor children or among minor children if no surviving spouse. If so, you must file the form titled Application for Apportionment of Family Allowance (Form 7.2) within five months after your appointment.
- Medicaid Estate Recovery Program. Please review the probate information sheet "Creditor Rights."

You may have a duty to:

- prepare and deliver a notice, by certified mail, return receipt requested, to the Administrator of the Medicaid Estate Recovery Program not later than 30 days after the date that you were appointed the Estate Representative, using the form titled Notice to Administrator of Medicaid Estate Recovery Program (Form 7.0A).<sup>43</sup>
- Promptly after delivery of the Notice to Administrator of Medicaid Estate Recovery Program, prepare and file with the Court the form titled Certification of Notice to Administrator of Medicaid Estate Recovery Program (Form 7.0), with the "green card" and a copy of that notice attached.
- Social Security and VA Benefits. Consider contacting the Social Security Administration or the Veteran's Administration to determine whether benefits are payable to the probate estate as the result of the Decedent's death.
- Estate Checking Account.<sup>44</sup> To better account for any receipts received by the probate estate (e.g. uncashed checks, last wages, deposit refunds, tax refunds, death benefits, etc.), and any disbursements made by the probate estate to pay costs and expenses, creditors (including tax authorities), surviving spouse or minor children, or distributions to beneficiaries, with few exceptions the Geauga Probate Local Rule 78.5(D)(4) requires that the Estate Representative establish an estate checking account after receiving the Letters of Authority. Please carefully read that local rule. You must use the estate checking account solely for receiving and making payments related to the probate estate. Consider hiring an accountant or an attorney to advise you as to the best use of an estate checking account and to account for receipts and disbursements. The proper use of an estate checking account will assist you when you must file the Fiduciary's Account (and related documents) with the Court – see below. In all events, absent a court order that permits otherwise, you cannot make cash withdrawals from the estate checking account to pay any expense, cost, fee, reimbursement, or distribution.

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<sup>41</sup> R.C. 2106.13(A).

<sup>42</sup> R.C. 4505.10(B)

<sup>43</sup> R.C. 2117.061(B)(2).

<sup>44</sup> Geauga Probate Local Rule 78.5(D)(4)



- Determination of Heirship.<sup>45</sup> If you have a doubt regarding the beneficiaries under the Decedent's Will or the next of kin, then you can file a Complaint to Determine Heirship, and request the Court to determine those person or entities. That Court order will protect you from liability when you make distributions in accordance with the court order.<sup>46</sup> The filing of a Complaint for determination of heirship is a legal proceeding that is separate from the probate estate proceeding and thus will have a separate case number.

**WARNING:** The Help Center highly recommends that you retain an attorney to assist you regarding a Determination of Heirship proceeding.

**Note:** [the forms noted below are available at the Help Center] To start a legal proceeding to Determine Heirship as permitted by R.C. Chapter 2123, consider using and filing the form titled Complaint to Determine Heirship (HCPF 090) (including a list of all Defendants, using the form titled "Exhibit A – List of Defendants" (HCPF 090C). In that Complaint and List of Defendants, you will name as defendants all persons known to be the surviving spouse, beneficiaries, or next of kin.

- Together with the Complaint, you will file with the Court instructions for service, using the form titled Instructions for Service (HCPF 090D).
- To the extent possible you should have such persons sign a Waiver of Service of Summons, using the form titled Waiver of Service of Summons (GCPF 63.1), and file that Waiver with the Court.
- Finally, to the extent there are unknown beneficiaries or next of kin, you must arrange for service of summons by publication, which is started by filing with the Court the form titled Affidavit for Service by Publication (HCPF 090A), together with the form titled Instructions for Publication (GC PF 62.1).

#### Inventory and Appraisal.<sup>47</sup>

Although the applicant provides a summary description of the probate property in the Application for Authority to Administer Estate, after the applicant is appointed as the Estate Representative, the Estate Representative must file with the Court a detailed description of all probate property known to the Estate Representative no later than three months after appointment unless the Court grants an extension. However, the Estate Representative need not report any non-probate property.<sup>48</sup> Please review probate information sheet "Probate Process Overview" for a description of probate property and non-probate property. That detailed report of probate property is known as the "Inventory," but will be referred to below as the "Inventory."

With respect to the preparation and filing of the Inventory, consider the following:

- Spousal Notice. If the Decedent died with a surviving spouse, then the Estate Representative must deliver a written notice, stating the time and place of taking the inventory, to the surviving spouse at least five days before taking the inventory unless that notice is waived by the surviving spouse where indicated on the form titled Inventory and

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<sup>45</sup> R.C. Chapter 2123

<sup>46</sup> R.C. 2123.07

<sup>47</sup> See Geauga Probate Local rule 78.5(D)(1)

<sup>48</sup> R.C. 2115.02

Appraisal (Form 6.0).<sup>49</sup> The Estate Representative must use the form titled Spousal Notice of Taking the Inventory (GC PF 6.3A).

- Appraisal. As noted above, you need to decide which probate property must be appraised. As noted above, you may not need to appraise vehicles or real property.
  - If an appraisal is required, then file with the Court, before filing the Inventory, the form titled Appointment of Appraiser (Form 3.0), leaving sufficient time to determine the appraised values before preparing the Inventory. Depending on the nature of the probate property to be appraised, you may need to obtain more than one appraiser.
  - If an appraisal is not needed, then you should prepare and file the form titled Application for Order Dispensing with Appraisement (GF PF 4.7) before you file the Inventory, leaving sufficient time to obtain an appraiser if the Court declines that application.
  - You must file either the form titled Appointment of Appraiser (Form 3.0) or the form titled Application for Order Dispensing with Appraisement (GF PF 4.7) before the filing of the Inventory. Even if all probate property has a readily ascertainable value (e.g., bank accounts, stocks and bonds), the Estate Administrator must prepare and file with the Court the Application for Order Dispensing with Appraisement (GC PF 4.7).
- Selected Automobiles.<sup>50</sup> As noted in the probate information sheet titled Probate Process Overview any automobiles selected by the surviving spouse under R.C. 2106.18 are not probate property. Nevertheless, those automobiles must be noted as such on the Inventory. The surviving spouse can cause the transfer of title for such automobiles by presenting to the Bureau of Motor Vehicles the death certificate and the certificate of title.
- Digital Assets Disclosure.<sup>51</sup> Make a good faith examination to determine the extent and nature of the Decedent's Digital Assets. Review the probate information sheet titled Digital Assets. If necessary, in order to obtain a court order to obtain information regarding Custodial Digital Assets, prepare and file with the Court the form titled Application for Authority over Digital Assets (GC PF 6.5B).<sup>52</sup> Before or together with the filing of the Inventory, prepare and file with the Court the form titled Digital Asset Certification (GC PF 6.5).<sup>53</sup> Be prepared to file the form titled Supplemental Schedule of Assets (GC PF 6.1A) if requested by the Court.
- Tangible Personal Property Disclosure.<sup>54</sup> Make a good faith examination to determine the extent and nature of the Decedent's Tangible Personal Property (e.g., household goods, collections, precious coins, personal effects, clothing, artwork, jewelry, etc.). Before or together with the filing of the Inventory, prepare and file with the Court the form titled

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<sup>49</sup> See R.C. 2115.04 for a description of the notice.

<sup>50</sup> "automobile includes a motorcycle and includes a truck if the truck was used as a method of conveyance by the deceased spouse or the deceased spouse's family when the deceased spouse was alive

<sup>51</sup> Review Geauga Probate Local Rule 78.5(A)(3).

<sup>52</sup> See Geauga Probate Local Rule 78.5(A)(3)(c).

<sup>53</sup> See Geauga Probate Local Rule 78.5(A)(3)(a).

<sup>54</sup> See Geauga Probate Local Rule 78.5(A)(4).

Tangible Personal Property Certification (GC PF 6.6).<sup>55</sup> Be prepared to file the form titled Supplemental Schedule of Assets (GC PF 6.1A) if requested by the Court.

- Prepare and File Inventory. Review Geauga Probate Local Rule 78.5(D)(1) and the checklist titled Checklist – Inventory and Appraisal, which is located on the Court’s website.
  - The Estate Administrator shall prepare and file with the Court the Inventory (Form 6.0) and the Schedule of Assets (Form 6.1). There are two Forms 6.0. If the Decedent died after April 5, 2017, then be sure to use the form titled Inventory and Appraisal (Form 6.0) – (DOD 4-5-2017), otherwise use the other Form 6.0.
  - Consider preparing the Schedule of Assets (Form 6.1) before you prepare the Inventory (Form 6.0). On the first page of the Inventory and Appraisal (Form 6.0), you will provide a summary of values of the probate property, which must be derived from the property values set forth on the Schedule of Assets (Form 6.1).

Note that on the Schedule of Assets (Form 6.1), you must list each item of real property, tangible personal property, and intangible personal property. Tangible personal property is property that you can touch or feel. Intangible personal property is property that you cannot touch or feel, but often is represented by an account statement or other document.

- Examples of intangible personal property are stocks, bonds, debts, claims, bank accounts, financial accounts, retirement accounts, life insurance, annuities, etc. As to such property, you should gather all documents that represent such property, such as stock certificates, bonds, promissory notes, bank and financial account statements that show date of death values, life insurance policies, annuity policies.
- Examples of tangible personal property are household goods, equipment, furnishings, clothing, jewelry, artwork, and other collections (e.g., firearms, precious coins, stamps, etc.). Regarding tangible personal property that does not have a significant value, consisting of household goods, furnishings, clothing, and other personal effects, you need not itemize such items on the Schedule of Assets (Form 6.1) - See Geauga Probate Local Rule 78.5(A)(4). You may indicate on the Schedule of Assets (Form 6.1) something like “household goods, clothing, furnishings” and assign a value based upon a reasonable estimate of what you could sell such items for at a public auction - ideally an aggregate value of less than \$5,000. However, as noted above, in all cases the Estate Representative must prepare and file with the Court the form titled Tangible Personal Property Certification (GC PF 6.6).<sup>56</sup> Depending upon the disclosure and value, the Court may require the Estate Representative to prepare and file the form titled Supplemental Schedule of Assets (GC PF 6.1A).
- Real Estate – must use the street address and permanent parcel number in the property description, but as noted below attach a copy of the most current county auditor’s tax bill; provided that if the real property is in Geauga County, Ohio, then a copy of the “Tax Card,” which is displayed <https://realestate.geauga.oh.gov/>, after completing the search.

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<sup>55</sup> See Geauga Probate Local Rule 78.5(A)(3)(a).

<sup>56</sup> See Geauga Probate Local Rule 78.5(A)(3)(a)

- Certificated Personal Property (e.g., vehicles, motorcycles, mobile homes, boats) – include the I.D. number and Title number in the property description, but as noted below attach a copy of the certificate of title if available, otherwise the registration.
- Firearms – set forth the name, a description, and the serial number.
- Note on the Schedule of Assets (Form 6.1) that as to each item of property, you must indicate whether the property was appraised.
- Evidence of Ownership.
  - Regarding any real property that is probate property, the Estate Representative must file with the Inventory a copy of the most current county auditor's tax bill; provided that if the real property is in Geauga County, Ohio, then a copy of the "Tax Card," which is displayed <https://realestate.geauga.oh.gov/>, after completing the search.
  - Regarding any certificated property (e.g., vehicles, motorcycles, recreational vehicles, four-wheelers, mobile homes, trailers, boats, airplanes, etc.) that are probate property, the Estate Representative must file with the Inventory a copy of the certificate of title for each such property (or the registration if the certificate of title is unavailable).<sup>57</sup>
  - Regarding financial accounts, the Estate Representative must file with the Inventory a copy of the statement showing the date of death value, the Estate Representative should redact account numbers (except the last four digits).
- Other Matters to Consider. Regarding the Inventory and Appraisal (Form 6.0), please consider the following:
  - While automobiles selected by a surviving spouse under R.C. 2106.18 are not considered probate property, you must account for that property on the Inventory as noted on the first page of the form titled Inventory and Appraisal (Form 6.0).
  - If any probate property is appraised, then the appraiser(s) must sign a certificate on the Inventory and Appraisal (Form 6.0).
  - The Inventory is a public record. Therefore, do not include on the Inventory any information concerning the identity of the Decedent or the probate property, known as "personal identifiers." Examples of personal identifiers are the Decedent's social security number, bank account numbers, or other brokerage or financial account numbers. Instead, provide such information to the Court by completing and filing the form titled Confidential Disclosure of Personal Identifier (Form 45(D)).<sup>58</sup> That form is not a public record, and the Court will keep it confidential. However, with respect to financial accounts that have a unique account number, you should place on the Inventory only the last four digits in the description of each such account.
  - If the surviving spouse is willing to waive the Notice of Taking of Inventory on page two of the Inventory, then the spouse must sign the Waiver where indicated. If the

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<sup>57</sup> See Geauga Probate Local Rule 78.5(D)(1)(d)

<sup>58</sup> See Geauga Probate Local Rule 57.2(C)

surviving spouse does not sign that waiver, then, as described above, the Fiduciary must timely deliver the form titled Spousal Notice of Taking Inventory (GC PF 6.3A) no less than five days before taking the Inventory and provide the Court with proof of service of that notice by preparing and filing with the Court the form titled Affidavit Evidencing Service of Notice (GC PF 41.6) together with a copy of each such notice and evidence of service (e.g., the “green card”) for each notice.

- If interested persons are willing to waive Notice of Hearing on the Inventory, then have those persons sign the Waiver where indicated. Additionally, you may have such persons sign the form titled Waiver of Notice of Hearing on Inventory (Form 6.2), and then file with the Court that form together with the Inventory. Interested persons are those persons or entities that you identified on the form titled Surviving Spouse, Children, Next of Kin, Legatees and Devisees (Form 1.0). If the three-month Will Contest period has passed, then only beneficiaries under the Will (noted on page 2 of Form 1.0) are interested parties and entitled to Notice of Hearing on Inventory if they have not signed the waiver of notice (Form 6.2).
- As to those interested persons who did not sign the Waiver of Notice of Hearing on Inventory (Form 6.2), Geauga Probate Local Rule 78.5(D)(1)(e) requires the Estate Representative to notify those Interested Persons of the hearing date using the form titled Notice of Hearing on Inventory (Form 6.3). That notice must be delivered no less than 10 calendar days before the hearing date. The Estate Representative shall deliver a copy of that notice to each such person by certified mail, return receipt requested. Before the Hearing, the Estate Representative shall provide the Court with proof of service of that notice by preparing and filing with the Court the form titled Proof of Service of Notice of Hearing on Inventory (GC PF 6.4) together with a copy of each such notice, a copy of the waivers of notice, and the evidence of service of notice per Civ.R. 73(F). Unless the court orders otherwise, notice by publication is not required if the address of an interested person is unknown. See Geauga Probate Local Rule 78.5(D)(1)(c).
- In all events, whether notice is waived or served, the Estate Representative must file with the court the form titled Proof of Service of Notice of Hearing on Inventory (GC PF 6.4) together with a copy of each such notice, a copy of the waivers of notice, and the evidence of service.
- Newly Discovered Assets.
  - It is possible that, after filing the Inventory, the Estate Representative discovers probate property that was unknown at the time of filing. In that event, the Estate Representative must report the newly discovered probate property to the Court, and eventually account for its disposition. If the newly discovered probate property is discovered before the Court’s approval of the Final and Distributive Account (Form (13.0), then the Estate Representative must report the newly discovered probate property by preparing and filing with the Court a form titled Report of Newly Discovered Assets (GC PF 4.50) within 30 days after the discovery.
  - Additionally, the Estate Representative must deliver to the Court written proof or evidence of the newly discovered probate property and evidence of value, such as Auditor’s tax valuation (or REALink), Kelley Bluebook value, a bank statement or other financial account statement. If the newly discovered probate property must be appraised, then obtain an appraisal from a court-appointed appraiser.

- If a newly discovered asset is discovered **after** the probate estate is closed, then please review the probate information sheet titled Newly Discovered Assets.

### Insolvency.

If you determine that, after accounting for all probate costs and expenses, and the rights of a surviving spouse or minor children, and valid creditor claims exceed the aggregate value of the probate property, then the probate estate is insolvent. We recommend, in that case, that you seek legal advice from an attorney to verify that your analysis is correct, and to advise you on next steps. In that event, R.C. 2117.15 provides you with the option to report the insolvency to the Court, and then proceed in accordance with a Court order.<sup>59</sup> That process can be helpful if probate property is not sufficient to pay all of the valid creditor claims. Consider the following:

- Prepare and file with the Court the forms titled (i) Representation of Insolvency (Form 24.0) and (ii) Insolvency Schedule of Claims (Form 24.4), which describes the valid creditor claims.
- Following those filings, the Court will set a hearing date to determine the validity of the creditor claims and the amount and order of payment.<sup>60</sup>
- No less than 10 days before the hearing date, the Estate Representative shall deliver a notice to creditors noted on the Schedule of Claims, and all persons or entities listed on the Surviving Spouse, Children, Next of Kin, Legatees And Devisees (Form 1.0), using the form titled Insolvency Notice of Hearing (Form 24.2). The Estate Representative shall attach to that notice the Representation of Insolvency (Form 24.0) and the Schedule of Claims (Form 24.2) and shall file with the Court proof of service of that notice by preparing and filing with the Court the form titled Affidavit Evidencing Service of Notice (GC PF 41.6) together with a copy of each such notice and evidence of service (e.g., the “green card”) for each notice.

Illiquid Estate. An illiquid estate is an estate that has sufficient probate property to pay valid creditor claims but does not have sufficient cash to pay those claims or to make other needed payments, such as repairs to probate property before sale. An example would be a probate estate that consists primarily of real property. In that case, the Estate Representative may have a duty to file a complaint to obtain a court order to sell the real property under R.C. 2127 titled Land Sale. For more information, see the probate information sheet titled Land Sale and the information set forth below regarding the sale of real property.

If such payments must be made and the only available cash is cash that the Estate Representative (or that of other family members), who are willing to loan money to the probate estate, then the Estate Representative (or other family members) should not make payments on behalf of the probate estate from his or her personal checking account, but rather should consider loaning the required cash to the probate estate for deposit in the estate checking account. Then the Estate Representative can make the required payments directly from the estate checking account. Handling payments in this manner results in a better method of accounting for all probate estate payments. Eventually, the loan made by the Estate Representative (or other family member) may be paid after the illiquid probate property is sold, assuming the sale proceeds are sufficient.

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<sup>59</sup> See R.C. 2117.15, 2117.17, and 2117.25 for requirements regarding an insolvent probate estate.

<sup>60</sup> R.C. 2117.17

### Sale of Property.

If (i) the Decedent dies with a Will that is admitted to probate, (ii) that Will expressly gives the Executor the power to sell probate property, and (iii) the Executor determines the sale to be in the best interest of the probate estate, then the Executor may proceed to sell without a court order.<sup>61</sup> Otherwise, before the Estate Representative may sell probate property, whether personal or real property, the Judge must first determine if the sale is in the best interest of the probate estate, and the Estate Representative must obtain a court order approving the sale. Typically, the Court will not permit a sale of probate property until after the Inventory is filed and approved by the Court. If there is no Will admitted to probate that grants the Executor the power to sell probate property, and the Estate Representative desires to sell probate property, then consider the following:

- Sale of Personal Property.<sup>62</sup>
  - Authorization to Sell. If the Judge determines that the sale of personal property is in the best interest of the probate estate, then the Judge may authorize a public or private sale of personal property at a fixed price or for the best price obtainable, and for cash or on terms that the Judge determines, except the following:
    - Property that the surviving spouse desires to take at the appraised value (see the probate information sheet titled Rights of Surviving Spouse);
    - In case of a sale before the expiration of the time within which the surviving spouse may elect to take at the appraised value, then before the sale the Estate Representative shall give the surviving spouse at least a 10-day notice of the sale, unless the surviving spouse consents to the sale or waives notice of the sale (see below for details); provided however, that notice is not required as to the sale of perishable property;
    - Property specifically given under the Will, if the sale of that property is not necessary for the payment of debts, provided that the property may be sold with the consent of the person entitled to the property, including executors, administrators, guardians, and trustees;
    - Property as to which distribution in kind has been demanded before the sale by the surviving spouse or other beneficiary entitled to the distribution in kind;
    - Property that the Judge directs shall not be sold pursuant to a wish expressed in the Decedent's Will; but at any later period, on the application of an interested party, the Judge may, and for good cause shall, require the sale to be made; or
    - The Judge may permit the itemized list of personal property being sold to be incorporated in documents and records relating to the sale, by reference to other documents and records that have been filed in the Court; provided

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<sup>61</sup> See R.C. 2113.39 (personal property) and 2127.01 (real property); and Geauga Probate Local rule 63.1.

<sup>62</sup> See R.C. 2113.40 through 2113.44.

that a court order is not required to permit the public sale of personal property.

- Application to Sell. Review Geauga Probate Local Rule 63.1. If the Estate Representative desires to obtain a court order approving the sale of personal property, then the Estate Representative must:
  - prepare and file with the Court a form titled Application to Sell Personal Property (Form 9.0). That application must include an adequate description of the property. Again, typically the Court will not issue an order of sale before the filing of the Inventory.<sup>63</sup> Notice on the Application that, to the extent possible, the Estate Representative should obtain a consent to sell and waiver of notice from the surviving spouse and other interested persons;
  - if needed because of the number of persons who need to waive and consent, then prepare and file with the Court the form titled Consent to Sell and Waiver of Notice (GC PF 9.0A); and
  - prepare and file the form titled Entry Authorizing Sale of Personal Property (Form 9.1) – inserting only the name of the Estate and Case Number at the top of the Entry.
- Notice of Hearing on Application to Sell Personal Property. If all persons entitled to notice of the hearing date do not sign the consent and waiver, then the Estate Representative must deliver a written notice of the hearing date to those persons who did not consent and waive, using the form titled Notice of Hearing (GC PF 4.18) and provide proof of service of that notice to the Court by preparing and filing with the Court the form titled Affidavit Evidencing Service of Notice (GC PF 41.6) together with a copy of each such notice and evidence of service (e.g., the “green card”) for each notice.
- Surviving Spouse - Notice of Sale of Personal Property.<sup>64</sup> If the surviving spouse does not consent to or waive notice of the sale of personal property, then the Estate Representative must deliver to the surviving spouse, at least 10 days before the sale, a notice using the form titled Notice of Sale of Personal Property (Form 9.2).
- Report of Sale.<sup>65</sup> Within 30 days after any public or private sale of the personal property of a probate estate, the Estate Representative must make and file with the Court the form titled Report of Sale of Personal Property (“GC PF 9.3).
- Public Sale Notice.<sup>66</sup> If the personal property is sold by public auction, the Estate Representative must follow the requirements in R.C. 2113.41, and the public auction must be advertised in a newspaper of general circulation in the county where the sale is to take place.

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<sup>63</sup> Sup.R. 63 (Ohio Rules of Superintendence)

<sup>64</sup> R.C. 2113.40(B)

<sup>65</sup> See Geauga Probate Local Rule 63.1(E).

<sup>66</sup> R.C. 2113.41



- Sale of Real Property. If (i) the Estate Representative desires to sell real property, and (ii) no Will was admitted to probate that grants the Executor the power to sell real property without a court order, then the Estate Representative must follow the requirements of R.C. Chapter 2127. In that case the Estate Representative should consider obtaining legal advice from an attorney. Generally, R.C. Chapter 2127 requires that the Estate Representative start a new legal action by filing a complaint, all of which is discussed in the probate information sheet titled Land Sale. However, R.C. Chapter 2127 allows for an exception to filing a complaint, described below.
- Sale by Consent.
  - Requirements.<sup>67</sup>
    - If no Will is admitted to probate, or the Will was admitted to probate, but does not grant the Fiduciary the power to sell real property, then R.C. 2127.011 provides a method to sell real property without filing a complaint to sell Real Property (what is known as a Land Sale proceeding) and without a court order. The requirements are the following:
      - all persons who have an interest in the probate estate, including a surviving spouse, all persons named in the Will, and all next-of-kin give their written consent; provided however, that none of those interested persons is a minor (under age 18); and
      - the sale price is at least 80 percent of the appraised value.
    - The Estate Representative should prepare, obtain signatures, and file with the Court the form titled Consent to Power to Sell Real Estate (Form 11.0).
- Repair of Real Property. Unless you are appointed Executor and the Decedent's will, which was admitted to probate, contains language that authorizes you to make repairs to real property, if you decide to make repairs to real property (typically in connection with the sale of the real property), then you need to obtain a court order authorizing the expenditure. To obtain a court order, you should prepare and file the form titled Application to Repair Real Property (GC PF 8.1). To the extent possible you should obtain the waiver and consent of all heirs or beneficiaries. Otherwise, the Court may require a hearing and notice of hearing to all interested persons.
- Rental of Real Property. If no Will was admitted to probate that grants the Executor the power to rent real property without a court order, then the Estate Representative should consider obtaining advice from an attorney regarding the rental of real property. R.C. 2113.311 governs the process for obtaining a court order to manage rental real property, including the collection of rents, making repairs, paying taxes, obtaining insurance, proceeding with evictions actions, entering into lease agreements, etc.

#### Distribution of Probate Property.<sup>68</sup>

Geauga Probate Local Rule 78.5(D)(2) provides that, unless otherwise permitted by court order, the Estate Representative may not make any distribution of probate property until after the filing

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<sup>67</sup> R.C. 2127.011

<sup>68</sup> See R.C. 2113.53 through 2113.56.

and approval of the Inventory.<sup>69</sup> Except for “in-kind” probate property (explained below), at any time after the filing and approval of the Inventory, the Estate Representative may distribute probate property as follows: (1) if a will was admitted to probate and there is no action pending to contest the Will admitted to probate, then to the beneficiaries entitled to distribution under the terms of the will, or (2) if no will is admitted to probate, then to the heirs at law entitled to distribution. However, the Estate Representative must be cautious that the valid creditor claims and the statutory rights of a surviving spouse or minor children are fully paid or satisfied.<sup>70</sup> Consider the following before making a distribution of probate property.

- Timing of Distribution. The Estate Representative may be personally liable for any premature distribution that prejudices any valid creditor claims or the statutory rights of a surviving spouse or minor children. Additionally, the recipients of a distribution of probate property may have liability to a surviving spouse whose rights are prejudiced by a distribution of probate property. Thus, the Estate Representative should be cautious in making any distribution before being assured that (1) all valid creditor claims have been or will be paid, (2) the statutory rights of a surviving spouse or minor children are fully satisfied, and (3) if a Will is admitted to probate, then that Will cannot be successfully contested or set aside. Generally, the time period for contesting a Will that is admitted to probate expires three months after the filing of the Certificate of Service of Notice of Probate of Will (Form 2.4) – see the probate information sheet titled The Decedent’s Will.
- With few exceptions, the time period for presenting creditor claims to an Executor or Administrator expires six months after the Decedent’s date of death.<sup>71</sup> Please review the probate information sheet titled Creditor Rights. Two exception are (i) claims made under the Medicaid Estate Recovery Programs, and (ii) claims made by the federal government or the State of Ohio, typically taxes that have not be paid.
- The Estate Representative should account for the effect of the Medicaid Estate Recovery Program before distributing the probate property. Review the probate information sheet titled Creditors Rights. Please note that the Estate Representative may be required to deliver to the Administrator of the Medicaid Estate Recovery Program a notice, using the form titled Notice to Administration of Medicaid Estate Recovery Program (Form 7.0(A)), and that the Administrator of the Medicaid Estate Recovery Program must present Ohio’s claim for recovery to the Estate Representative within 90 days after receipt of that notice.<sup>72</sup> Promptly after the delivery of the Notice to Administration of Medicaid Estate Recovery Program, the Estate Representative must prepare and file with the Court a Certification of Notice to Administrator of Medicaid Estate Recovery Program (Form 7.0).
- Unknown Beneficiaries or Next-of-Kin.<sup>73</sup> If the Estate Representative cannot locate any of the next-of-kin or beneficiaries under the Will, and thus cannot distribute to them their inheritance, then the Fiduciary may file with the Court the form titled Application to Invest Unclaimed Funds (GC PF 41.7), to obtain a court order to invest the funds for a period not to exceed two years. The Court will allow the Estate Representative to invest those funds in a court-approved manner, set up in the Judge’s name. The Court may simply order the funds to be paid to the Geauga County Treasurer. The Court may order that a court-

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<sup>69</sup> See Geauga Probate Local Rule 78.5(D)(2).

<sup>70</sup> See R.C. 2113.53

<sup>71</sup> R.C. 2117.06(B)

<sup>72</sup> R.C. 2117.061

<sup>73</sup> See R.C. 2113.64 and R.C. 2117.65.

approved investigation company be retained to locate those heirs at law, whose addresses are unknown.

- Delivery of Copy of Account.<sup>74</sup> The Fiduciary's Account (Form 13.0) contains the following Notice: "The distributee may be liable to the estate up to the value of the distribution and may be required to return all or any part of the value of the distribution if a valid claim is subsequently made against the estate within the time permitted under this section." The Estate Representative must timely provide a copy of that Account to each heir or beneficiary – see below regarding preparing and filing of an Account.
- Serving Notice to a Distributee. R.C. 2117.06(K) requires the Estate Representative to service a notice if the distribution is made before the six-month period expires for presentation of creditor claims. Use the form titled Notice of Distribution (GC PF 4.42) for such notice. That notice must be served as set forth in Geauga Probate Local Rule 78.13. A distribution should not be made until the Estate Representative receives a signed acknowledgement on the bottom of the form titled Notice to Distributee (GC PF 4.42).
- Distribution on Application.<sup>75</sup> When five months have expired after the appointment of an Estate Representative, if the surviving spouse has made an election under R.C. 2106.01, then a legatee or distributee may apply to the Court for an order requiring the Estate Representative to distribute the probate property, either in whole or in part, in cash or in kind. The Judge will inquire into the condition of the probate estate, and if all valid creditor claims have been paid, or adequate provision has been or can be made for their payment, then the Judge may issue a court order with reference to distribution of probate property, as the condition of the probate estate and the protection of all parties interested in the probate estate demand.

#### Distribution of Probate Property In Kind.<sup>76</sup>

- The Executor shall distribute any probate property that is tangible personal or real property ("Property In Kind") that is identified in the Will and given to a person or entity. Please review the probate information sheet titled Probate Process Overview for an explanation of tangible personal property and intangible personal property.
- If the Property In Kind is a motor vehicle, then prepare and file with the Court the form titled Application for Transfer of Motor Vehicle (Form 9.C). After the Judge has signed the judgment entry, a certified copy of that court order should be delivered to the Title Bureau and a new certificate of title should be issued. However, this does not apply to any automobile selected by a surviving spouse under RC 2106.18 because those automobiles are not probate property.
- If the Property In Kind is real property, then prepare and file with the Court the forms titled Application for Certificate of Transfer (Form 12.0) and Certificate of Transfer (Form 12.1). When the Court issues the Certificate of Transfer, then file it first with the County Auditor's office, and then with the Court Recorder's office. The Estate Representative may file those documents with the Court any time after the filing and approval of the Inventory, which identifies that real property and before the filing of the Final and Distributive Account.

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<sup>74</sup> R.C. 2109.32(B)

<sup>75</sup> R.C. 2113.54

<sup>76</sup> R.C. 2113.55

- If probate property in Kind is not specifically given in the Will (or if no Will is admitted to probate), then the Estate Representative may not distribute any Property in Kind, including Digital Assets or Tangible Personal Property,<sup>77</sup> without first obtaining either (i) a court order, or (ii) the written consent of all of the legatees or distributees whose interests may be affected by such distribution.
  - Written Consent. If written consent can be obtained, then the Estate Representative should prepare and file with the Court (i) the form titled Consent to Distribution of Tangible Personal Property (GC PF 6.6A) for the distribution of Tangible Personal Property, and (ii) the form titled Consent to Distribution of Digital Assets (GC PF 6.5A) for the distribution of Digital Assets.
  - Court Order. If a court order is required, regarding both Tangible Personal Property (e.g., household goods, collections, jewelry, clothing) and Digital Assets, the Estate Representative should prepare and file with the Court the form titled Application to Distribute in Kind (Form 10.0); together with the form titled Order Approving Distribution in Kind (Form 10.1).
  - Notice of Hearing. If the Court sets a hearing on that application, then the applicant shall notify all Interested Persons, by certified mail, return receipt requested, using the form titled Notice of Hearing (GC PF 4.18) no less than 10 court days before the hearing and provide proof of service of that notice by preparing and filing with the Court the form titled "Affidavit Evidencing Service of Notice" (GC PF 41.6) together with a copy of each such notice and evidence of service (e.g., the "green card") for each notice.
- Monetary Share to Surviving Spouse.<sup>78</sup> Subject to the statutory right of the surviving spouse to elect to receive the Decedent's interest in the mansion house pursuant to R.C. 2106.10, the monetary share payable to a surviving spouse under R.C. 2105.06(B), (C), or (D) shall be paid out of the tangible and intangible personal property in the probate estate to the extent that the personal property is available for distribution. The personal property distributed to the surviving spouse, other than cash, shall be valued at the appraised value. Please review the probate information sheet titled Rights of Surviving Spouse.

Accounting. Review Geauga Probate Local Rules 64.1 and 64.2.

- Background. R.C. 2109.30 and 2109.301 require the Estate Representative to periodically prepare and file with the Court an accounting, which essentially reports to the Court the receipts and disbursements of the probate estate during a specific time period. To fully understand the purpose and preparation of an Account, you need to understand how the Account relates to the Inventory. As noted above, the Inventory informs the Court of the nature and date of death value of the probate property. The first Account that is filed reports to the Court: (1) the probate property as of the first day of the accounting period, which is the filing date of the Inventory, then (2) the receipts and disbursements during the accounting period, and then (3) the probate property as of the last day of the accounting period, which is noted on the Account form as the "Assets Remaining in Fiduciary's Hand." Until the probate estate is closed and all probate property is distributed, the Estate Representative has a continuing duty to periodically prepare and file with the

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<sup>77</sup> See Geauga Probate Local Rules 78.5(A)(3)(b) and 78.5(A)(4)(b) and R.C. 2113.55.

<sup>78</sup> R.C. 2106.11

Court an Account, with the last Account typically being the Final and Distributive Account (Form 13.0)

- Timing for Filing Accounts. Review Geauga Probate Local Rule 64.2(A). Unless the Estate Representative timely files with the Court an “Application to Extend Administration (Form 13.8) and the Court grants the extension, the Estate Representative shall file the Final and Distributive Account (or Certificate of Termination - see below) no later than six months after the date of appointment.
- Extend Administration.<sup>79</sup> Review Geauga Probate Local Rule 64.2(B). The Estate Representative may seek to extend the administration of the probate estate and the requirement to file a Final and Distribution Account (or Certificate of Termination), beyond six months after the date of appointment, by filing with the Court, before the filing date for the Final and Distributive Account, one of two forms as applicable.
  1. Notice to Extend Administration. If the estate qualifies for extended administration beyond six months under R.C. §2109.301(B)(1)(a)-(e), then the Fiduciary shall file with the Court SC Form 13.10 “Notice to Extend Administration.” To be effective, the Fiduciary shall file that notice before the date the initial six-month administration period expires. The factors that permit the filing of that notice (i.e., SC Form 13.10) are:
    - An Ohio estate tax return must be filed for the estate.
    - A proceeding contesting the validity of the decedent's will pursuant to R.C. § 2107.71 has been commenced.
    - The surviving spouse has filed an election to take against the will.
    - The administrator or executor is a party in a civil action.
    - The estate is insolvent.
  2. Application to Extend Administration. If the estate does not qualify for extended administration under R.C. §2109.301(B)(1)(a)-(e), but the Fiduciary contends that the estate qualifies for extended administration under R.C. §2109.301(B)(1)(f) or (g) and desires an extension, then the Fiduciary shall file SC Form 13.8 “Application to Extend Administration.” That application shall be filed no less than five Court Days before the date the initial six-month administration period expires to enable the Court adequate time to consider and rule on the application.
- Partial Accounts.<sup>80</sup> Review Geauga Probate Local Rule 64.2(C) and (D). In all events, not later than 13 months after appointment, the Estate Representative must prepare and file a partial account of the probate administration, unless: (1) a partial account is waived by all interested persons;<sup>81</sup> or (2) a certificate of termination is filed – see below.<sup>82</sup> After the initial partial account is rendered or a waiver of a partial account is filed, the Estate Representative, at least once each year, must prepare and file further partial accounts or file waivers of partial accounts until the probate estate is closed, unless a Certificate of Termination is filed – see below.

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<sup>79</sup> R.C. 2109.301. See Sup.R. 78(B) (Ohio Rules of Superintendence) and Geauga Probate Local Rule 64.2(B).

<sup>80</sup> R.C. 2109.301(B)(4)

<sup>81</sup> R.C. 2109.301(A)

<sup>82</sup> R.C. 2109.301(B)(2)

**Note:** Rather than file a partial account, if the Estate Representative seeks to file a waiver by all interested persons, then prepare and obtain the signatures of all interested persons by using the form titled Waiver of Partial Account (Form 13.4) and file that form with the Court before the due date for filing the partial account.

**Note:** Rather than file the Waiver of Partial Account, the Estate Representative may file the Certificate of Termination (Form 13.6), but only if applicable (see below).

- Certificate of Termination; Sole Beneficiary.<sup>83</sup> If the Estate Representative is the sole beneficiary of the probate estate, then no partial accountings are required. In that case, the Estate Representative need only file with the Court: (i) a Final and Distributive Account, or (ii) in lieu of filing a Final and Distributive Account, within 30 days after completing the administration of the probate estate, file a certificate using the form titled Certificate of Termination (Form 13.6).<sup>84</sup> Please note that in addition to those items identified in R.C. 2109.301(B)(2), the Court will accept a Certificate of Termination if the sole beneficiary of the estate is a Trust, and if the Fiduciary and the Trustee are the same person or entity. This is helpful if the surviving spouse or sole child receives all of the probate property and is the Estate Representative. However, the Estate Representative could be liable to creditors whose valid claims are not paid.<sup>85</sup>

There are several considerations, depending upon whether a Will was admitted to Probate.

- If a Will was Not admitted to probate – a Certificate of Termination is not appropriate if:
  - Inventory has not been approved
  - Co-Administrators
  - Form 1.0 does not reflect a sole next-of-kin
  - Form 1.0 reflects that surviving spouse is NOT the natural or adoptive parent of all of Decedent's children
- If a Will was admitted to probate – a Certificate of Termination is not appropriate if:
  - After filing Certificate of Service of Notice of Probate, three months has NOT elapsed (the Will Contest Period)
  - Inventory has not been approved
  - Co-Executors
  - Form 1.0 does not reflect that Executor is the sole beneficiary
  - Sole beneficiary is a trustee
- Written Status Report. A written status report must be prepared and filed in two instances:
  - Review Geauga Probate Local Rule 64.2(G). When the Estate Representative files a partial account, or a partial account is waived, then the Estate Representation must file a written status report with the Court using the form titled Status Report (GC PF 13.12).

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<sup>83</sup> R.C. 2109.301(B)(2)

<sup>84</sup> R.C. 2109.301(B)(2)

<sup>85</sup> R.C. 2109.301(B)(3)

- Review Superintendence Rule 78(C). If the probate estate remains open more than 13 months after the appointment date of the Estate Representative, then the Estate Representative must file a written status report with the Court<sup>86</sup> using the form titled Status Report (GC PF 13.12).
- Preparation and Filing Accounts. Review Geauga Probate Local Rule 64.1. When preparing and filing any Account, the Estate Representative shall use the forms titled Fiduciary's Account (Form 13.0), the Receipts and Disbursements (Form 13.1), and the Assets Remaining in the Fiduciary's Hands (Form 13.2). Please consider the following:
  - Indicate the type of Account on the form titled Fiduciary's Account (Form 13.0). If prior Accounts have been filed, then insert information, where indicated, regarding prior Accounts. Page two of Form 13.0 provides a summary of all receipts and disbursements.
  - On the form titled Receipts and Disbursements (Form 13.1), itemize each receipt (e.g., income) and disbursement (e.g., expenses and distributions). The Estate Representative must have written evidence of each Disbursement, that is any payments of expenses, fees, or costs, and of distributions to beneficiaries or heirs (ideally a cancelled check from the estate checking account). However, unless the Court orders otherwise, when filing any Account (Partial or Final) with one except the Estate Representative need not file with the Receipts and Disbursements (Form 13.1) a photocopy of cancelled checks or receipts that support each Disbursement that are listed, excepting the proof of payment of the funeral bill, as noted next.<sup>87</sup> Please review Geauga Probate Local Rule 64.2(G). The Estate Representative must provide proof of transfer of title or payment of distributions to Interested Persons (e.g., surviving spouse, beneficiaries or next-of-kin).
  - On the form titled Assets Remaining in Fiduciary's Hands (Form 13.2), describe each probate property remaining at the end of the accounting period. The Court requires documentation to support the continuing ownership of certain assets. If there are remaining assets at the end of the accounting period that are intangible personal property, then as to each item of intangible personal property the Fiduciary shall deliver a copy of the evidence of ownership as of the end of the accounting period, which shall include the value of each such item as of the end of the accounting period.<sup>88</sup> Examples are bank account statements, brokerage statements of stocks and bonds, etc. Regarding a copy of a financial statement with an account number, the Fiduciary shall redact all of the account numbers except for the last four digits - see Geauga Probate Local Rule 57.2(C).
  - Funeral Bill. Together with the first Fiduciary's Account, file a copy of the paid funeral director's bill with the Court, and proof of payment by the payor (ideally the payor's cancelled check). If that funeral bill has not been paid, then file a written waiver of payment or a copy of the funeral bill and a written agreement for payment. If the funeral bill is still owed, then no distribution may be made to beneficiaries or next-of-kin until that bill is paid in full and the Estate Representative files with the Court proof of payment. If there is no funeral expense, typically the result of the Decedent having

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<sup>86</sup> Sup.R. 78(C) (Ohio Rules of Superintendence)

<sup>87</sup> See Geauga Probate Local Rule 64.1(C)(5).

<sup>88</sup> See Geauga Probate Local Rule 64.1(C)(5).

donated the body, and the body was cremated by the donee institution, then obtain a statement from that institution explaining the event and file a copy of that statement in lieu of the paid funeral director's bill.

- Financial Statements. If probate property has one or more financial accounts (e.g., checking, savings, certificate of deposit, securities, etc.), then for each such account, file a copy of the financial statement that shows the account balance equal to the value set forth on the Assets Remaining in the Fiduciary's Hands (Form 13.2).<sup>89</sup>
- Sale of Real Property. If real property is sold during the accounting period, then file a copy of the closing statement with the Account.
- Vehicle Transfer. If a vehicle is sold during the accounting period, then file a copy of the transferee's Certificate of Title to the Account.
- Appraiser's Fee. If the Estate Representative paid an appraiser's fee during the accounting period, then the Fiduciary shall deliver a copy of the appraiser's invoice, marked paid-in-full.
- An Account is a public record. Do not include on any Accounting any information concerning the identity of the Decedent or the probate property, known as "personal identifiers." Examples of personal identifiers are the Decedent's social security number, bank account numbers, or other brokerage or financial account numbers. Instead, provide such information to the Court by completing and filing the form titled Confidential Disclosure of Personal Identifier (Form 45(D)).<sup>90</sup> That form is not a public record, and the Court will keep it confidential. However, with respect to financial accounts that have a unique account number, you should include the last four digits in the description of each such account.
- Computation of Fiduciary Fee. The Estate Representative must prepare and submit with the account for the period in which a fiduciary fee is paid using the form titled Computation of Executor or Administrator Fee (GC PF 13.11).
- Waiver of Notice of Hearing on Account. To the extent possible, the Fiduciary should have all Interested Persons sign a Waiver of Notice of Hearing on Account (Form 13.7), and file that form with the Court no later than five Calendar Days before the Hearing Date. Please review Geauga County Local Rule 64.2(J). An Interested Person means:
  - If the Decedent died without a will admitted to probate (i.e. intestate), then an Interested Person is the Decedent's next-of-kin as determined by R.C. §2105.06;
  - If the Decedent died with a will admitted to probate (i.e. testate), then an Interested Person is the Decedent's next-of kin and the vested beneficiaries of the will, except that if the will contest period has expired and no will contest is pending, then an Interested Person is only the vested beneficiaries of the will; and
  - In each instance, only Interested Persons whose address is known.

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<sup>89</sup> See Geauga Probate Local Rule 64(C)(4)

<sup>90</sup> See Geauga Probate Local Rule 57.2(C).



- Notice of Hearing on Account.<sup>91</sup> As to those Interested Persons (as defined above) who did not sign the Waiver of Notice of Hearing on Account (Form 13.7), the Estate Representative must notify those Interested Persons using the form titled Notice of Hearing on Account (Form 13.5) of the hearing date. That notice must be delivered no less than 15 calendar days before the hearing date. The Estate Representative shall deliver a copy of that notice to each such person in accordance with Civ.R. 73(E). Before the hearing, the Estate Representative shall provide the Court with proof of service of that notice by preparing and filing with the Court the form titled Affidavit Evidencing Service of Notice (GC PF 41.6) together with a copy of each such notice and evidence of service (e.g., the “green card”) for each notice.
- Delivery of a Copy of the Account. The Estate Representative shall deliver a copy of each account to all Interested Persons (as defined above). Before or simultaneously with the filing of the account, the Fiduciary shall file with the Court the form titled Certificate of Service of Account to Heirs and Beneficiaries (Form 13.9) as required under R.C. §2109.32(B)(2).
  - Note that pursuant to R.C. §2109.32(B)(2), the Estate Representative need not deliver a copy of an account to:
    - an heir or a beneficiary whose residence is unknown; or
    - a beneficiary of a specific bequest or devise who has received the beneficiary's distribution and for which a receipt has been filed or exhibited with the court.<sup>92</sup>
  - Also note that if §2109.32(B)(2) is applicable, then it must be noted on form Certificate of Service of Account to Heirs and Beneficiaries (Form 13.9)
- Consent to Approval of Account. If an Interested Party has received, has reviewed, and is willing to consent to the Court's approval of the Account, then the Fiduciary should (i) consider having that Interested Party sign form GCPF 13.7A – “Consent to Approval of Account” and insert the date that the Account was received, and (ii) file that form with the Court.
- Final Approval and Discharge of Estate Representative. The Court may not approve the Final and Distributive Account until the following events have occurred: (a) three months have passed since the Decedent's death; and (b) the surviving spouse has filed an election to take under or against the Will, or the time for making the election has expired.<sup>93</sup> Moreover, the Court may not approve a Final and Distributive Account if the Estate Representative has not paid all creditors who have a valid claim and who have filed a copy of the presentation of claim with the Court in accordance with R.C. 2117.06(A)(1)(b).<sup>94</sup> Upon approval of a Final and Distributive Account required by R.C. 2109.301(B)(1), the Court may order the surety bond for the Estate Representative terminated. Unless otherwise ordered by the Court, the Estate Representative shall be discharged without further order 12 months following the approval of the Final and Distributive Account.

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<sup>91</sup> See Geauga Probate Local Rule 64.2(I) and R.C. 2109.33.

<sup>92</sup> See R.C. 2109.32(B)(1).

<sup>93</sup> R.C. 2109.32(B)(3)

<sup>94</sup> See R.C. 2117.06(I) and Geauga Probate Local Rule 62.1(C).

Other Matters to Consider.

- Decedent's Federal Income Tax Issues. The Internal Revenue Service may be a creditor of the Decedent's estate. As noted in the probate information sheet titled Creditor Rights, when appointed as the Estate Representative of the Decedent's estate, you may have duties and liabilities to the Internal Revenue Service regarding the filing of Decedent's tax returns and the payment of income taxes as noted in IRS Publication 559. You should discuss that publication with your tax advisor. Moreover, before distributing probate property, you should discuss with your tax advisor whether you should file (i) IRS form 56, noting that you are terminating your fiduciary relationship, (ii) IRS form 4810, which is a request to the Internal Revenue Service to promptly assess the Decedent's income tax liabilities, and (iii) IRS form 5495, which is a request to the Internal Revenue Service to discharge you from any liability to the Internal Revenue Service as the fiduciary of the Decedent's estate.
- Estate Income Tax Issues. You should discuss with your tax advisor whether you need to file an income tax return (federal or state) on behalf of the estate.
- Payment of Legal Fees. Before paying legal fees, please review Geauga Probate Local Rule 71.1. With two exceptions (including the filing of a Certificate of Termination, a Fiduciary may not pay legal fees without a court order authorizing such payment.
- Termination of Surety Bond. After the probate estate is concluded, if a surety bond was issue, then the Estate Representative must obtain from the Court a judgment entry terminating the surety bond requirement. The Estate Representative must present the judgment entry to the surety bond company to terminate the continuing cost of the surety bond.
- Resignation as Estate Representative.<sup>95</sup> Review Geauga Probate Local Rule 78.6.

**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.**

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<sup>95</sup> R.C. 2109.24. See Geauga Probate Local Rule 78.6(A).