

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

Information Sheet  
The Decedent's Will

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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

As explained in the probate information sheet "Probate Process Overview," after the expenses of the probate estate and the valid creditor claims are paid, and the rights of a surviving spouse (and minor children) are fully satisfied, the Estate Representative<sup>1</sup> will distribute the remaining probate property to those persons and entities entitled to receive it. Those persons and entities are determined in two ways. First, if the Decedent died with a Will and the Will was admitted to probate, then that Will determines who will receive the remaining probate property (the "Beneficiaries"). Second, if the Decedent died without a Will, or to the extent that the Will, which was admitted to probate, fails to dispose of all probate property, then the persons entitled to inherit are determined by the Statute of Descent and Distribution,<sup>2</sup> which essentially are those persons who are the Decedent's closest relatives, or rather nearest next-of-kin (the "Heirs"). If the Court determines that a Will presented to the probate court is not admitted to probate or that Will is admitted to probate but is successfully contested, then the Decedent's Heirs will benefit from the probate proceeding, and not those persons named as Beneficiaries under Decedent's Will.

Duty to Present a Will to Probate Court.

A person who possesses or control a Decedent's Will does not have a duty to either deposit that Will with the probate court or file an application to have that Will admitted to probate. However, if a person

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<sup>1</sup> "Estate Representative" is the person appointed by the probate court to manage 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> See R.C. Chapter 2105.

possesses or controls the Decedent's Will and that person refuses to deliver that Will to the Court without reasonable cause, then the Court may issue an order to have that person produce that Will. If the person refuses to abide by the court order, then the Court may order the person jailed until the Will is produced.<sup>3</sup>

Regardless of whether there is any probate court proceeding and irrespective of whether the probate court proceeding is a Full Administration or a Release from Administration, after the Decedent's death any person who possesses or has the power to control a Will executed by the Decedent should present the Will to the Court. The Will may be presented in two ways. First, the person may simply deposit the Will with the Court, without any commitment to be involved in the probate process.<sup>4</sup> Second, the person may file the Will with the Court together with an Application to Probate Will, which is discussed below. The person who files that application is not required to apply and serve as the Estate Representative, but he or she does have the duty of delivering a Notice of Probate of Will (to the extent the such notice is not waived) and a Certificate of Service of Notice of Probate of Will, as explained below.

If you believe that a person possesses or controls the Decedent's Will and if you desire to have that Will admitted to probate, then you may prepare and file with the Clerk the form titled Application to Probate Will (Form 2.0) (as explained in detail in the "Checklist – Probating Decedent's Will," located on our website). You will need to prepare and file an affidavit explaining the situation. After filing the Application to Probate Will, if that person refuses to deliver that Will to the Court, then you may prepare and file a Complaint for Writ of Citation to Produce Will, as permitted by R.C. 2107.09(A).

Note: You may consider using the Help Center form titled Complaint to Produce Will (HCPF 085).

#### Depositing a Will with the Court.<sup>5</sup>

Even if it appears that the Decedent died with only non-probate property,<sup>6</sup> and if a person has possession of or holds the power to control the Will, then that person should consider depositing the Will with the Court, as provided in R.C. 2107.07. It is possible that probate property will be found later, and thus the Will is preserved if it is deposited. If you intend to deposit the Will with the Court, then prepare and file the form titled "Will Deposit Information" (GC PF 45.1) and present it to the probate clerk, together with the original Will and court costs. See the "Checklist – Will Deposit," which is on the Court's website. However, if a person is a Beneficiary named in the Will and knows of the existence of the Will or has the power to control it, and if that person *neglects or refuses within that one-year period to cause it to be offered for or admitted to probate*, then that person forfeits his or her rights as a Beneficiary.<sup>7</sup> That person should consider two matters, with the advice of an attorney. First, if the named Beneficiary merely deposits the Will rather than files an application to have the Will admitted to probate, then that named Beneficiary may forfeit the rights to receive probate property under the Will. Second, if that named Beneficiary elects to file an application to have the Will admitted to probate, then that named Beneficiary may want to wait more than six months after date of death to commence the probate proceeding because of potential creditor claims. You should review the probate information sheet titled "Creditor Rights."

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<sup>3</sup> R.C. 2107.09

<sup>4</sup> R.C. 2107.07.

<sup>5</sup> See Geauga Probate Local Rule 59.1

<sup>6</sup> See the probate information sheet titled "Probate Process Overview" for a description of non-probate property.

<sup>7</sup> R.C. 2107.10

## Filing the Will with the Court for Admission to Probate.

If you decide to have the Decedent's Will admitted to probate, then you should read "Checklist – Probate Decedent's Will."

## Determine Jurisdiction and Venue.

Please read the probate information sheet titled "Jurisdiction in Ohio Probate Courts" before you proceed to apply to have a Decedent's Will admitted to probate by this Court. In summary the essential factors to consider are the following. Whether this Court has jurisdiction is determined under R.C. 2107.11 and depends upon whether the Decedent was domiciled in Ohio on the date of death. Domicile is different from residency. While a person can have more than one residence, a person can only have one state of domicile. The factors that a Court will use to determine domicile include the state where the person (i) has a driver's license, (ii) is registered to vote, (iii) files a federal and state income tax return, or (iv) has declared domicile in a legal instrument (e.g., a Will or a Trust).

- Ohio Domiciliary.<sup>8</sup> If the Decedent was domiciled in Ohio on the date of death then the Decedent's Will shall be admitted to probate in the Ohio county where the Decedent resided on the date of death. Typically, the Decedent's residence is indicated on the death certificate. Residence is a matter of the Decedent's intent as of the date of death.

**Note:** If the Decedent's residence is not properly reflected on the Decedent's death certificate then consider preparing and filing the form titled Residency Affidavit (GC PF 4.52).

- Non-Ohio Domiciliary.<sup>9</sup> If the Decedent was domiciled in another state on the date of death then the Will shall be admitted to probate in any Ohio county where the Decedent's real or personal property is located, but only if the Decedent's Will was not admitted to probate in any other Ohio county or in any other State.

A Will has no legal effect until a probate court admits the Will to probate.<sup>10</sup> If a person possessing or controlling the Will decides to file the Will with the Court to have the Will admitted to probate, then that person should read the Court's Checklist - Probating Decedent's Will, which is on the Court's website.

## Initial Steps

- Gather the Decedent's Will(s). Before a person (the "Applicant") files an Application to Probate Will (Form 2.0), the Applicant must examine the Court's Index of Wills to be sure that the Will possessed by the Applicant is indeed the Decedent's last Will.<sup>11</sup> Moreover, the Applicant must make a reasonable effort to determine whether the Decedent's has prepared other Wills that are not deposited with the Court. Generally, the Applicant should apply to have the latest Will admitted to probate. However, if that Will is not admitted to probate or is successfully contested, then an earlier Will may be admitted to probate. Finally, the Applicant should determine whether the Decedent has a Will that is lost, destroyed, or partially modified in some manner. In that case, the Applicant should obtain copies (or other evidence) of that lost Will.<sup>12</sup>

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<sup>8</sup> R.C. 2107.11(A)(1)

<sup>9</sup> R.C. 2107.11(A)(1). But see R.C. 2107.11(A)(3) and R.C. 2107.11(B) for more details

<sup>10</sup> R.C. 2107.61

<sup>11</sup> Sup.R. 59(A) (Ohio Rules of Superintendence).

<sup>12</sup> See Geauga Probate Local Rule 59.1(C)

- 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>13</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. Typically, the funeral director can obtain a copy for you. Before filing with the Court, the Applicant must: (1) shrink the size of the death certificate to letter size and (2) redact the Decedent's social security number.
- 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.
- Identify Heirs. In addition to a list of the Beneficiaries, the Applicant should create a list of the name of each person who is an Heir of the Decedent and as to each such person, the address, the relationship to the Decedent, and the birthdate of any minor. The Heirs are determined by R.C. Chapter 2105, with a focus on R.C. 2105.06. Identify those Heirs 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 full and 1/2 surviving brothers and sisters (and the lineal descendants or any deceased siblings).
  - Moreover, the Decedent may have filed a written declaration with the probate court that declares a person, who does not otherwise qualify as an Heir under R.C. 2105.06, to be an Heir of the Decedent. An example would be a friend of the Decedent.<sup>14</sup> If so, include such persons in the list of Heirs.
- Determine the Decedent's Name. 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"

- 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). Moreover, gather information concerning any criminal acts that you were convicted of or that you pled guilty to.

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<sup>13</sup> See R.C. 5817.02

<sup>14</sup> See R.C. 2105.15

Filing the Application to Probate Will. Review the Court's Checklist – Probating Decedent's Will, which is on the Court's website. Prepare and file with the Court the following.

1. **Form 1.0 Surviving Spouse, Children, Next of Kin, Legatees and Devisees** (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 brothers and sisters (and the lineal descendants of any deceased siblings). Moreover, you must correctly check one of the boxes toward the bottom of the front page of Form 1.0.<sup>15</sup>
2. **Form 2.0 Application to Probate Will** (if in your possession or control, file the original Will with the Court together with Form 2.0)
3. **Copy of Death Certificate** - (1) must redact the social security number and (2) must be shrunk to letter-size.
  - **Form GC PF 4.52 Residency Affidavit** - if the Decedent's address on the Death Certificate is not in Geauga County, then consider preparing and filing this form if in fact at death the Decedent resided in Geauga County.
4. **Notice of Admission to Probate of Will** – those persons identified in R.C. 2107.19 (generally those persons who are Beneficiaries or Heirs (collectively "Interested Persons"), are entitled to know the date that the Court admits the decedent's Will to probate. That notice is critical if any of the Interested Person desire to contest the Will. However, an Interested Person may waive such notice in writing.
  - Waiver of Notice of Probate of Will. Notice that the Application to Probate Will (Form 2.0) has a section titled "Waiver of Notice of Probate of Will." If all Interested Persons either sign (i) that Waiver of Notice of Probate of Will on Form 2.0, or (ii) a separate waiver using the form titled Waiver of Notice of Probate of Will (Form 2.1), then the Applicant need not deliver a Notice of Probate of Will (Form 2.2) to those persons.<sup>16</sup> If all Interested Persons have signed a Waiver of Notice of Probate of Will, then the Applicant should also complete that section on the Application to Probate Will (Form 2.0), which is titled Certificate of Waiver of Notice.

**Note:** In addition to using the waiver of notice clause on the Application to Probate the Will (Form 2.0), you can use the separate waiver form titled Waiver of Notice of Probate of Will (Form 2.1). That form is helpful if you need to mail the Waiver of Notice of Probate of Will to Interested Persons at various locations.
  - Admission to Probate.<sup>17</sup> After the Will is filed with the Court, together with the required other forms, the Court will examine the Will. If the Will, on its face, appears to be valid, then the Court will issue an order admitting the Will to probate. Notice that page two of the Application to Probate Will (Form 2.0) provides a judgment entry to admit the Will to Probate and if

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<sup>15</sup> See Geauga Probate Local Rule 78.5(A)(2)

<sup>16</sup> R.C. 2107.19(A)(2).

<sup>17</sup> R.C. 2107.18.

admitted, to order the Applicant to notify those Interested Persons who have not waived service of the Notice of Probate of Will. The Court may schedule a hearing and require the Applicant to present at the hearing at least one witness who can testify that the Will was executed in accordance with law, which is set forth in R.C. 2107.03.

- Notice of Probate of Will.<sup>18</sup> If any Interested Persons have not signed a Waiver of Notice of Probate of Will, then within two weeks after the Court has ordered that the Will is admitted to probate, the Applicant must deliver a written notice, by certified mail, return receipt requested, to each Interested Person who did not sign the Waiver of Notice of Probate of Will, which notice informs the recipient: (i) of the Decedent's death, (ii) that the Court has admitted the Decedent's Will to probate, and (iii) that such person has a right to contest the validity of the Will.<sup>19</sup> The Applicant must use the form titled Notice of Probate of Will (Form 2.2). A Waiver of Notice to Probate of Will may not be signed by any minor, or on behalf of a minor 16 or 17 years of age.<sup>20</sup> The law does not require the Applicant to deliver a copy of the Will to the Interested Persons, because after the Court orders the Will admitted to probate, the Will is public record.<sup>21</sup> The Applicant must exercise reasonable diligence to ascertain the address of each Interested Person. However, as to Interested Persons who are unknown, or whose address is unknown, if the Applicant has used reasonable diligence to ascertain their information, then under R.C. 2107.19(B), the Applicant is not required to provide such persons with a Notice of Probate of Will. In that case you must make the appropriate notation on the Certificate of Service of Notice of Probate of Will (Form 2.4) – see below.

**Note:** While notice by publication is not required by R.C. 2107.19(B), R.C. 2703.14(E) and Probate Local Rule 78.14(B) give the fiduciary the option to publish the Notice of Probate of Will on the Court's website.

- Service of Notice Upon Minor or Incompetent. Civ.R. 4.2 governs how to serve notice upon a minor (under age 16) or an "incompetent" person.<sup>22</sup>
  - Civ.R. 4.2(B) provides that if the Interested Person is under 16 years of age, then the notice shall be served upon the guardian (e.g., natural parent) where that minor resides.
  - Civ.R. 4.2(C) provides that if the interested person is "incompetent," then the notice shall be served upon the incompetent's guardian, or if none, then upon the incompetent.
- Certificate of Service of Notice of Probate of Will.
  - Upon either (i) obtaining and filing a Waiver of Notice of Probate of Will, which is signed by all Interested Persons, or (ii) serving a Notice of Probate of Will (Form 2.2) upon all Interested Persons with a known address and who did not sign a Waiver of

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<sup>18</sup> Sup.R. 73(E) governs the method for service of Notice to Probate of Will.

<sup>19</sup> R.C. 2107.19

<sup>20</sup> Sup.R. 59(B) (Ohio Rules of Superintendence).

<sup>21</sup> R.C. 2107.19(A)(1) and 2109.31(A)

<sup>22</sup> See Sup.R. 73(E)(7), which refers to Civ.R. 4.2.

Notice of Probate of Will, the Estate Representative must prepare and file the form titled Certificate of Service of Notice of Probate of Will (Form 2.4). The Applicant must file that Certificate with the Court, together with copies of each Notice of Probate of Will (Form 2.2), with the applicable “green card” attached, not later than: (i) two months after the appointment of the Estate Representative, or (ii) two months after the admission of the Will to probate (unless the Court grants an extension of time) if no Estate Representative is appointed.<sup>23</sup> If the Applicant fails to timely file that Certificate with the Court, then the Applicant may be cited and is subject to penalties.<sup>24</sup> The timely delivery of that Certificate is critical because, in addition to informing the Court, the date of filing of that Certificate determines the time period for filing a will contest action.<sup>25</sup>

Lost, Spoliated, or Destroyed Will.<sup>26</sup> If the Applicant: (i) believes that the Decedent executed a Will in accordance with law, but the original Will is either lost, damaged, or destroyed, either before or after the Decedent’s death, and (ii) has a copy of that Will or evidence of its contents, then there is a process that may permit that Will to be admitted to probate.

- Preparation.
  - Before preparing and filing the required forms, obtain the name, address, and relationship of each person to the Decedent who is:
    - an Heir;
    - a Beneficiary named in that lost, spoliated, or destroyed Will; and
    - a Beneficiary named in the most recent Will prior to that Will, a copy of which is being presented.
  - Determine whether an attorney prepared that Will and contact that attorney for details regarding its execution.
  - Determine the amount of the court cost deposit.

Unlike when the original Will is filed with the Court as discussed above, the Court will hold a hearing to determine whether to admit that Will to probate, and will do so if two conditions are met at a Hearing after all Interested Persons are properly notified:

- First Condition. The Applicant proves to the Court, by “clear and convincing evidence:”
  - that the Will was executed with the formalities required at the time of execution by the jurisdiction in which it was executed; AND
  - the contents of the Will.<sup>27</sup>

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<sup>23</sup> R.C. 2107.19(A)(4) and Sup.R. 59(B) (Ohio Rules of Superintendence).

<sup>24</sup> R.C. 2107.19(A)(4)

<sup>25</sup> R.C. 2107.76

<sup>26</sup> R.C. 2107.26, 2107.27, and 2107.28

<sup>27</sup> R.C. 2107.26(A)

- Second Condition. No person opposing the admission of that Will proves by a “preponderance of the evidence” that the Decedent has revoked that Will.<sup>28</sup>
  - Initial Filing. See the Checklist – Probating Decedent’s Will.
    - Prepare and file with the Court the form titled Application for Admission to Probate Lost, Spoliated, or Destroyed Will (GC PF 42.1). Be sure to identify on page two the Beneficiaries named in a prior Will;
    - Prepare and file the form titled Surviving Spouse, Children, Next-of Kin, Legatees and Devises (Form 1.0);
    - Prepare, obtain signatures, and file the form titled Waiver of Notice of Hearing and Consent - Admission to Probate of Lost, Spoliated, or Destroyed Will (GF PF 2.1A) - to the extent feasible; otherwise consider the form titled Waiver of Notice of Hearing - Admission to Probate of Lost, Spoliated, or Destroyed Will (GF PF 2.1B) for those Interested Persons unwilling to consent;
    - File a copy of that Will (or other written evidence of content); and
    - Arrange for the method of payment of the court cost deposit.
      - Notice of Hearing.<sup>29</sup> Except to the extent that Interested Persons sign a waiver of notice, as explained below, after obtaining the hearing date from the Clerk, the Applicant must prepare and deliver a Notice of Hearing to all persons that are listed on page two of the Application for Admission to Probate Lost, Spoliated, or Destroyed Will (GC PF 42.1), no less than 10 days before the hearing date. The Applicant shall use the form titled Notice of Hearing on Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (GC PF 42.2) to notify those persons. The Applicant shall deliver a copy of that notice to each such person by certified mail, return receipt requested only. 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.
  - Waiver of Notice of Hearing. Those persons entitled to Notice of Hearing as described in the preceding paragraph may waive their right to such notice by and consent to probating the Will by signing the form titled Waiver of Notice of Hearing and Consent - Admission to Probate of Lost, Spoliated, or Destroyed Will (GF PF 2.1A). The Estate Representative should consider filing that form together with the form titled Application for Admission to Probate Lost, Spoliated, or Destroyed Will (GC PF 42.1). If form GCPF 2.1A is filed and all Interested Persons have signed (all persons listed on Form 1.0), then the Court is not likely to require a hearing. For those persons who are willing to waive notice of hearing, but are unwilling to consent to admit the Will to probate, use the form titled Waiver of Notice of Hearing - Admission to Probate of Lost, Spoliated, or Destroyed Will (GF PF 2.1B)
    - Notice by Publication. While R.C. 2107.27 does not specifically required notice by publication for an Interested Person whose name or address is unknown,

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<sup>28</sup> R.C. 2107.26

<sup>29</sup> R.C. 2107.27

publication of the notice shall be made on the Court's website, in accordance with Probate Local Rule 78.14, after the Applicant has made a reasonable effort to ascertain the residence, or if there are unknown interested persons – see Probate Local Rule 78.14(B), or service cannot be complete as provided in Probate Local Rule 78.13.

**Warning.** Because of the complexity of the proceeding, and the necessity to present to the Court at the Hearing “clear and convincing” evidence, the Help Center highly recommends that the Applicant seek the assistance of an attorney.

- **Post Hearing Date.** If the Court admits the Lost, Spoliated, or Destroyed Will to probate, then the Applicant must provide all Interested Persons with a Notice of Probate of Will (Form 2.2) in the same manner as explained above on pages 4, 5, and 6 as if the original Will had been admitted above. Again, the Interested Persons must be notified because they have a right to file a Will contest action. Moreover, as explained above, the Estate Representative must prepare and file the form titled Certificate of Service of Notice of Probate of Will (Form 2.4). Unless waived as noted below, the Applicant must file with that certificate copies of each Notice of Probate of Will (Form 2.2), with the applicable “green card” attached,
  - **Note** that, as explained above, the Notice of Probate of Will may be waived using the form titled Waiver of Notice of Probate of Will (Form 2.1), which waiver must be filed with the Clerk.

#### Other Matters to Consider.

- **Will Contest Action.** With a few exceptions, any Interested Person may file an action in the Court challenging the validity of the Will, including an Interested Person who signed a Waiver of Notice of Probate of Will (Form 2.2).<sup>30</sup> However, an Interested Person must file the will contest action with the Court not later than three months after the filing of the Certificate of Service of Notice of Probate (Form 2.4).<sup>31</sup> Thus, if the Decedent dies with a Will and the Will is admitted to probate, then the Applicant should consider delivering the Notice of Probate of the Will (Form 2.2) and file the Certificate of Service of Notice of Probate of the Will (Form 2.4) with the Court at the earliest opportunity. Until that three-month period for contesting the Will expires, there is no certainty as to who are the Beneficiaries or Heirs of the probate estate, and the distribution of the probate property is likely to be delayed. The Help Center highly recommends obtaining legal advice from an attorney before taking any such action.
- **Will Construction Action.**<sup>32</sup> If a will is admitted to probate, then the Estate Representative will distribute the probate property in accordance with the terms of the will. Sometimes the provisions of the Decedent's will are vague or ambiguous. In that case, the Estate Representative may file a complaint in the Court asking the judge to review and construe the meaning of the words in question and thus provide the Estate Representative with guidance as to how to proceed regarding distributions. If the Estate Representative does not file such complaint, but an Interested Person

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<sup>30</sup> R.C. 2107.71

<sup>31</sup> R.C. 2107.76

<sup>32</sup> See R.C. 2101.24(A)(1)(k), R.C. 2721.03, and R.C. 2721.05(C).

believes that a Will Construction action is needed, then that Interested Person may deliver a written request to the Estate Representative asking the Estate Representative to file such complaint, and if the Estate Representative fails to file such complaint within 30 days after receipt of such written request, then that Interested Person may file such complaint with the Court.<sup>33</sup> The plaintiff must attach a copy of the will to the complaint. In any case all Interested Persons must receive a copy of the complaint and a summons from the Clerk. However, an Interested Person need not file an answer to the complaint but may do so to assert a particular claim.<sup>34</sup> If the Estate Representative is both the plaintiff and a beneficiary under the will, then the Estate Representative should also be named as a defendant. The Help Center recommends that before filing such complaint the Estate Representative or an Interested Person who files such complaint should obtain legal advice and assistance from an attorney. The Help Center has a sample complaint form that the Estate Representative or an Interested Person could consider.

- Requirements for Making a Will.<sup>35</sup> With one exception, which is discussed below (i.e., an Oral Will), a Decedent's will must be in writing, but may be handwritten or typewritten. It must be signed at the end by the Decedent (i.e., the Testator) or by another person in the conscious presence of the Testator and at the Testator's express direction. The Will must be signed by two or more competent witnesses in the conscious presence of the Testator, who either saw the Testator sign or heard the Testator acknowledge his signature. A witness must be at least 18 years of age.<sup>36</sup>
- Witness is a Beneficiary under the Will.<sup>37</sup> If one of the two witnesses is a beneficiary under Decedent's Will (i.e., a devisee or legatee), then that does not render the Will invalid. However, the bequest to that witness is void. Nevertheless, if that witness would have been entitled to a share of the Testator's estate in case the will was not established, then that witness takes so much of the share that does not exceed the bequest or devise to that witness.
- Possible Admission of Written Will if Noncompliant.<sup>38</sup> Even if Decedent's Will does not fully comply with the requirements set forth in R.C. 2107.03, the Court may still determine that the Will is valid and will admit it to probate, if
  - The Decedent prepared the document or caused the document to be prepared;
  - The Decedent signed the document and intended the document to constitute the decedent's will; and
  - The Decedent signed the document in the conscious presence of two or more witnesses. "Conscious presence" means within the range of any of the witnesses' senses, excluding the sense of sight or sound that is sensed by telephonic, electronic, or other distant communication.

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<sup>33</sup> R.C. 2107.46

<sup>34</sup> See *In re Iles*, 17 Ohio Op. 2 451 (1960); *Hood v. Garrett*, 53 Ohio App. 464 (1936); and Ohio Probate Practice and Procedure, Sec. 18.02, page 18-4.

<sup>35</sup> R.C. 2107.03

<sup>36</sup> R.C. 2107.06.

<sup>37</sup> R.C. 2107.15

<sup>38</sup> R.C. 2107.24

The person seeking to have that Will admitted to probate must convince the court of those requirements by clear and convincing evidence.

- Oral Will.<sup>39</sup> An oral will, made in the last sickness, shall be valid in respect to personal property if reduced to writing and subscribed by two competent disinterested witnesses within 10 days after the speaking of the testamentary words. The witnesses must prove that the Testator was of sound mind and memory, not under restraint, and that the Testator called upon some person present at the time the testamentary words were spoken to bear testimony to the disposition as the Testator's will. No oral will shall be admitted to record unless it is offered for probate within three months after the death of the testator. Unlike a written Will signed by the testator (i.e., the Decedent), which is valid even if one of the witnesses is an Interested Person (e.g., a Beneficiary under the oral will), both witnesses of an oral will must be disinterested.<sup>40</sup>

**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 MANAGING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO MANAGE 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>39</sup> R.C. 2107.60

<sup>40</sup> See *Rogers v. Helmes*, 69 Ohio St.2d 33 (1982)