

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

Information Sheet  
Probate Process Overview

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**WARNING**

This Information Sheet is intended to provide you with a brief overview of the subject matter. It may not provide you with all information that you require to be fully informed of the law that is applicable to your case. Additionally, the information may not accurately describe the pertinent sections of the Ohio Revised Code that are referenced in the footnotes. You should read those sections that are referenced. The Ohio Revised Code has a link on the Court's website. Additionally, you should consider reading those sections that are footnoted using "Page's Ohio Revised Code Annotated," which can be found at the Geauga County Law Library in the basement of the Courthouse at 100 Short Ct. Street, Chardon, Ohio 44024. Page's Ohio Revised Code Annotated also will provide you a summary of applicable court decisions (known as "case law"). While the Help Center can provide you with a limited amount of information, the Help Center staff cannot provide you with legal advice, and this Information Sheet is not intended to provide you with legal advice that is applicable to your case. You must decide how to best use the information provided. In the footnotes you will see a reference such as "R.C. 2101.24." That refers to Ohio Revised Code Section 2101.24, which is found in R.C. Title 21, and in R.C. Chapter 2101.

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The Purpose of Probate

- Background. When a person dies owning probate property (the "Decedent"), the probate court judge ultimately holds the power to determine who should receive that probate property. Of course, the judge cannot take any action until an interested person: (i) notifies the judge of the death of the Decedent, (ii) applies to the judge to be appointed as the person responsible to handle the probate estate under the judge's direction and according to law, and (iii) informs the judge of the extent of Decedent's probate property ("Probate Property"), the valid creditor claims, and the identities the Decedent's beneficiaries and next-of-kin. Thus, probate is a legal proceeding to determine who is entitled to receive the Decedent's Probate Property.<sup>1</sup> The recipient of Probate Property could be a creditor, the surviving spouse, minor children, persons named in a valid Will (the "Beneficiaries), or next-of-kin if there is not a valid Will (the "Heirs"). Generally, the probate legal proceeding is conducted in the Decedent's county of residence.<sup>2</sup>
- Probate and Non-Probate Property. A Decedent can own two types of property, which are Probate Property and Non-Probate Property. The Judge is only concerned with the distribution of Probate Property. The Decedent's Will, if any, only affects the distribution of

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<sup>1</sup> See generally R.C. 2101.24 for a description of the types of matters handled by a probate court.

<sup>2</sup> R.C. 2107.11 and R.C. 2113.01

Probate Property. If the Decedent died without owning any Probate Property, then there is no need for a probate proceeding, even if the Decedent died with a valid Will.

- Probate Property. Essentially, Probate Property is property that the Decedent solely owns or owns jointly but without rights of survivorship. Examples of Probate Property are:
  - Real Property, where the deed shows the Decedent as an owner of that real property (but without survivorship rights, and without any Transfer on Death Designation Affidavit);<sup>3</sup>
  - Titled Personal Property (such as a car, truck, RV, motorcycle, watercraft, airplane etc.) where ownership is evidenced by a certificate of title (but without any survivorship rights or transfer-on-death designation);<sup>4</sup>
  - Tangible Personal Property, such as household goods, jewelry, artwork, collections, clothing, etc.;
  - Financial Accounts, such as bank or brokerage accounts, etc. (but without any survivorship rights or payable on death designation);
  - Digital Assets, which could be digital photos, videos, music, emails, social media accounts, etc. (see the probate information sheet titled “Digital Assets”);
  - Money owed to the Decedent, such as a personal injury claim, unpaid wages, tax refunds, rental security deposit, social security benefits, VA benefits, and a loan made by the Decedent, including a loan to a beneficiary, even if the Will forgives the repayment of that debt;<sup>5</sup>
  - Uncashed checks in Decedent’s name;
  - Wages paid by an employer to a surviving spouse, children, or parents before the appointment of the Estate Representative;<sup>6</sup>
  - Unclaimed funds;
  - Income tax refunds (e.g. federal, state, city);
  - Life insurance or annuities with no valid beneficiary designation;
  - Retirement accounts, such as IRAs or 401k accounts with no valid beneficiary designation; and
  - Business Interests.

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<sup>3</sup> Regarding a Transfer-On-Death Designation Affidavit, see R.C. 5302.22.

<sup>4</sup> R.C. 2131.12 and 2131.13

<sup>5</sup> R.C. 2115.11

<sup>6</sup> R.C. 2113.04

If the Probate Property includes real property located outside the State of Ohio, then the Estate Representative<sup>7</sup> will need to start a separate probate proceeding in the state where that real property is located and should consider obtaining legal advice to assist with that probate proceeding.

- Non-Probate Property. Non-Probate Property is property that, by its nature, determines who should receive the Non-Probate Property upon death. Title to Non-Probate Property passes directly to named survivors upon the Decedent's death. Non-Probate Property is NOT subject to the probate court, and with few exceptions, the Decedent's creditors have no claim against Non-Probate Property.<sup>8</sup> Examples of Non-Probate Property are:
  - Real Estate that is owned joint and survivor or with a Transfer on Death Designation Affidavit;<sup>9</sup>
  - Life insurance and annuity policies with valid beneficiary designation;
  - Retirement accounts, such as IRAs or 401k accounts, with valid beneficiary designation;
  - Financial Accounts, such as bank or brokerage accounts that are joint and survivor or payable on death accounts;
  - Property held in a valid Trust that the Decedent established and funded while living;
  - Vehicles that pass by right of survivorship or transfer-on-death designation; and
  - Vehicles selected by a surviving spouse under R.C. 2106.18.<sup>10</sup>

Regarding Non-Probate Property, if the person, who is named as the designated beneficiary or as the joint owner with survivorship rights of Non-Probate Property, does not survive the Decedent, then that property is deemed to be Probate Property. For example, if the Decedent has a bank account that is payable-on-death to his son and that son is not living when the Decedent died, then that bank account is the Decedent's Probate Property.

- Fundamental Purpose. The fundamental purpose of probate administration is to:
  - identify, gather, and safeguard the Decedent's Probate Property;

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<sup>7</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>8</sup> The state of Ohio, through the Medicaid Estate Recovery Program has the right to proceed against Non-Probate Property.

<sup>9</sup> R.C. 5302.22

<sup>10</sup> See generally Information Sheet "Rights of Surviving Spouse."

- inform the Court of the nature and extent of that Probate Property (typically, with a Full Administration, by the filing of an Inventory<sup>11</sup> or a report of newly discovered assets when needed);
- obtain an appraiser when required;
- investigate all potential creditor claims and identify the Decedent's creditors who have a valid claim against the probate estate or the Probate Property;<sup>12</sup>
- Identify both the Beneficiaries under a valid Will and the Decedent's next-of-kin (even if there is a valid Will), and determine each person's name, age, address, and degree of relationship to the Decedent;<sup>13</sup>
- Follow the Judge's instructions and abide by all filing date requirements and other requirements;
- With a Full Administration, periodically inform the Judge of the probate proceedings (typically by the timely filing of an Account<sup>14</sup> or written status report when needed); and
- Distribute the Probate Property in accordance with law, which generally means to the Decedent's:
  - Creditors, who have a valid claim against the probate estate or the Probate Property, including court costs, costs of administration (fiduciary and attorneys' fees), funeral and burial expenses, government claims (such as under the Medicaid Estate Recovery Program) – See the probate information sheet titled "Creditor Rights,"<sup>15</sup>
  - Surviving Spouse or minor children in accordance with those rights given to them by law<sup>16</sup> - See the probate information sheet titled "Rights of Surviving Spouse;"
  - Beneficiaries under a valid Will, or the Heirs if there is no valid Will or if the valid Will does not dispose of all the Probate Property.

Three Types of Probate Proceedings. There are three types of probate proceedings. The person, who seeks to be appointed as the Estate Representative, must determine which probate proceeding will be used. The three probate proceedings are known as:

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<sup>11</sup> "Inventory" means the forms Inventory and Appraisal (Probate Form 6.0) and the Schedule of Assets (Probate Form 6.1).

<sup>12</sup> See generally Information Sheet "Creditor Rights"

<sup>13</sup> Typically, the Decedent's Beneficiaries are those person and entities that are named in the Decedent's Will. The Decedent's next-of-kin are described in R.C. 2105.06 (see generally R.C. Chapter 2105). If the Decedent died without a valid Will, then those persons who inherit are the Decedent's nearest next-of-kin (the "Heirs").

<sup>14</sup> "Account" means the forms Fiduciary's Account (Probate Form 13.0), Receipts and Disbursements (Probate Form 13.1), and Assets Remaining in the Fiduciary's Hands (Probate Form 13.2).

<sup>15</sup> See generally Information Sheet "Creditor Rights"

<sup>16</sup> See generally Information Sheet "Rights of Surviving Spouse"

- Full Administration – See probate information sheet titled “Full Administration.”
- Release from Administration<sup>17</sup> – See probate information sheet titled “Release from Administration.”
- Summary Release from Administration<sup>18</sup> – See probate information sheet titled “Summary Release from Administration.”

In all circumstances, the interested person can select a Full Administration by filing the appropriate forms with the Probate Court. If a Will is presented, that person must be named in the Will as the Executor, and if appointed by the Judge, that person is known as the “Executor.” If a Will is not presented (to the knowledge of that person no Will exists), then the applicant, if appointed by the Judge, is known as the “Administrator.” If a Will is admitted to probate, but the applicant is not named as the Executor in the Will and no person named in the Will as Executor is available or suitable for appointment, then, if appointed by the Judge, the applicant is known as the “Administrator with Will Annexed.”

**Key Point** - Typically, a Full Administration is the most complex and time-consuming of the three types of probate proceedings. Depending upon the value of the Probate Property, the interested person could apply for a Release from Administration or a Summary Release from Administration, with a Summary Release from Administration typically being the least complex. Thus, the interested person should carefully consider which probate proceeding the interested person should choose before filing any application with the probate court. Before applying to be appointed the Executor or Administrator, you should review the probate information sheets regarding those two proceedings, perhaps with the assistance of legal counsel.

If the interested person files an application to be appointed as Executor or Administrator, and if the probate court so appoints the applicant, then, at a later date, the Executor or Administrator cannot proceed with a Release from Administration or a Summary Release from Administration without a court order permitting the conversion. If the Executor or Administrator decides that a Release from Administration or a Summary Release from Administration is more appropriate, then that Fiduciary may seek a court order to convert the Full Administration by preparing and filing with the Court the form titled “Motion to Convert Decedent’s Estate Proceeding” (GC PF 4.33).

### Who are the Beneficiaries and the Next-of-Kin (or the Heirs)?

Any person who is at least 18 years old, of sound mind and memory, and not under restraint may make a Will, and thus decide who will receive his or her Probate Property.<sup>19</sup> The Will must be executed in accordance with law.<sup>20</sup> For example, a person has the right to leave all of his or her Probate Property to a charity or a friend, and thus disinherit all of his or her family members,

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<sup>17</sup> R.C. 2113.03

<sup>18</sup> R.C. 2113.031

<sup>19</sup> R.C. 2107.02

<sup>20</sup> R.C. Chapter 2107 provides the specifics of creating a Will, and more specifically, R.C. 2107.03.

including a spouse and children.<sup>21</sup> However, if a person dies without a valid Will (possibly as the result of a Will Contest),<sup>22</sup> or if the valid Will does not dispose of all of the Probate Property, then that Probate Property not disposed of by a valid Will must be distributed in accordance with a statute known as the “Statute of Descent and Distribution.”<sup>23</sup> In effect, that statute defines who receives the Probate Property to the extent that a valid Will does not name all persons entitled to receive the Probate Property. Those persons identified in the Statute of Descent and Distribution are known as the Decedent’s “next-of-kin” or “Heirs.” There are several categories of next-of-kin or Heirs depending upon who survives the Decedent and the survivor’s relationship to the Decedent, and those categories are prioritized. For example, R.C. 2105.06 includes the following:

*When a person dies intestate<sup>24</sup> having title or right to any personal property, or to any real property or inheritance, in this state, the personal property shall be distributed, and the real property or inheritance shall descend and pass in parcenary, except as otherwise provided by law, in the following course:*

- (A) If there is no surviving spouse, to the children of the intestate or their lineal descendants, per stirpes;*
- (B) If there is a spouse and one or more children of the decedent or their lineal descendants surviving, and all the decedent’s children who survive or have lineal descendants surviving also are children of the surviving spouse, then the whole to the surviving spouse;*
- (C) If there is a spouse and one child of the decedent or the child’s lineal descendants surviving and the surviving spouse is not the natural or adoptive parent of the decedent’s child, the first twenty thousand dollars plus one-half of the balance of the intestate estate to the spouse and the remainder to the child or the child’s lineal descendants, per stirpes;*
- (D) If there is a spouse and more than one child or their lineal descendants surviving, the first sixty thousand dollars if the spouse is the natural or adoptive parent of one, but not all, of the children, or the first twenty thousand dollars if the spouse is the natural or adoptive parent of none of the children, plus one-third of the balance of the intestate estate to the spouse and the remainder to the children equally, or to the lineal descendants of any deceased child, per stirpes;*

The Estate Representative needs to determine who are the next-of-kin as defined by R.C. 2105.06 even if the Decedent has a valid Will and that Will disposes of all the Probate Property. The reason is that the next-of-kin are entitled to be notified if the Court admits the Will to probate. For example, they have a right to contest the Will, and if successful, then the Probate Property would pass to the nearest next-of-kin (the Heirs”) – See the probate information sheet titled “The Decedent’s Will.”

Note that the surviving spouse is a next-of-kin and has rights to receive Probate Property even if the surviving spouse is not named as a beneficiary in a valid Will. That results from R.C. 2106.01. Please read the probate information sheet titled “Rights of Surviving Spouse” if the Decedent is survived by a surviving spouse.<sup>25</sup>

The Estate Representative should make every reasonable effort to determine whether the Decedent died with a Will. In addition to searching the Decedent’s home and contacting the Decedent’s attorney, if known, the Estate Representative should inquire as to whether the

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<sup>21</sup> However, see generally the Information Sheet “Rights of a Surviving Spouse,” which describes other rights of a surviving spouse to Probate Property, regarding of the provisions in the Will.

<sup>22</sup> See R.C. 2107.71 for a description of a Will Contest.

<sup>23</sup> R.C. 2105.06. See generally R.C. Chapter 2105.

<sup>24</sup> “Intestate” means there is no valid Will, or the valid Will does not dispose of all the Probate Property.

<sup>25</sup> See generally R.C. Chapter 2106 regarding rights of surviving spouse.

Decedent had a safe deposit box, perhaps at the bank where the Decedent has a checking account.<sup>26</sup> Additionally, the Estate Representative should check with the probate clerk of courts office. A Will may have been deposited with the probate court or filed with the probate court after death.<sup>27</sup> The Court maintains a Will Index that identifies all Wills that were deposited.

### Appraisal of Probate Property.

For several reasons, it is important to know the value of Probate Property. If the value of any Probate Property is not “readily ascertainable,” then, unless the Court dispenses with an appraisal by court order, the Estate Representative must hire an appraiser and have the appraiser perform an appraisal, and prepare and deliver to the Estate Representative an appraisal report that is acceptable to the Judge.<sup>28</sup>

Examples of Probate Property that have a readily ascertainable value, and thus an appraisal is not needed as to those items, include:

- Bank accounts
- Financial accounts
- Retirement accounts
- Publicly-traded stocks and bonds

Examples of Probate Property that do NOT have a readily ascertainable value, and thus an appraisal is likely to be required as to those items, include:

- Real property (however, in lieu of an appraisal, you may be able to establish the value using the value set forth on the latest assessment by the county auditor for determining real estate taxes – or “letter of valuation” from the County Auditor’s Office).
- Vehicles [automobiles, trucks, RVs, motorcycles, boats, etc.] (however, in lieu of an appraisal, you may be able to establish the value using the value set forth in Kelley Blue Book)
- Digital Assets – domain names, customer lists, etc.
- A business (for example a sole proprietorship, or ownership interest in a non-public business entity, such as a corporation, limited liability company, partnership)
- Debts owed to the Decedent that may not be fully collectible
- Artwork
- Collections
- Jewelry

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” or “REALink” information from the County Auditor’s Office or other methods of valuation, including appraisal, before assigning a value to Probate Property.

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<sup>26</sup> See the “Checklist – Safe Deposit Box” on the Court’s website

<sup>27</sup> R.C. 2107.07

<sup>28</sup> R.C. 2115.02 and Loc.R. 5 of the Court of Common Pleas of Geauga County, Probate Division.

A grey area is household goods (other than valuable antiques) or articles of clothing. These items typically can be assigned a value in bulk, based upon an estimate of what could be received from a yard sale or house auction. Ultimately, after you list the Probate Property and file it with the Court, the Judge will determine whether there must be an appraisal of those items of tangible personal property.

Characteristics of an Effective Estate Representative The following characteristics of an effective Estate Representative are:

- being highly organized;
- keeping complete and accurate records;
- capable of establishing and managing a checking account solely for the probate estate administration, to account for the receipt of all income or other payments to the probate estate and the payment of all disbursements;
- learning and carrying out all procedures required, in a timely manner, to complete the administration of the probate estate;
- understanding and attending to the rights of creditors and the surviving spouse or minor children;
- keeping a positive relationship with the beneficiaries and next-of-kin, and keeping them informed; and
- understanding personal limits and seeking professional advice when needed.

#### Using Legal Counsel

While there are reasons why persons may choose not to hire an attorney to represent them, including financial considerations, you should consider whether you need an attorney.

#### **You may need an attorney if:**

- you do not have the time or capability to fully understand the law that applies to your case, including applicable statutes and tax requirements;
- the Decedent had creditors, including bank loans, credit cards, judgement creditors, etc. (an attorney can provide you with a plan to deal with those creditors);
- you need some legal advice (the Help Center cannot give you legal advice), for example whether to proceed under a Full Administration, Release from Administration, or Summary Release from Administration, or whether certain creditors should be paid or not paid;
- the Decedent has a surviving spouse or surviving minor children, who have special rights under the law;
- one or more of the Decedent's Beneficiaries or Next-of-Kin may object to your actions or the provisions in the Decedent's Will;



- one or more of the creditors, Beneficiaries or Next-of-Kin have hired an attorney;
- you are too close to the probate matter, too emotional, and you will have a difficult time thinking logically and objectively; or
- the Decedent was self-employed or owned a business.

You may not need an attorney if

- the probate estate is straight-forward and all interested persons or entities (creditors, surviving spouse, beneficiaries, next-of-kin) will agree with the actions you intend to take;
- the probate estate can be handled as a Release from Administration or a Summary Release from Administration;
- you understand all options and can make informed choices;
- you are willing to learn and have the time needed to understand the applicable law and the rules of procedure;
- you have the time required to handle your duties and to do so in a timely manner;
- you understand your obligations regarding all tax filings; and
- you are capable of following instructions and work on your own.

#### Risks of Representing Yourself

The risks of representing yourself including the following:

- you could violate federal or state tax law regarding the filing of the Decedent's tax returns;
- you could violate state law regarding the Medicaid Estate Recovery Program;
- you could be sued by a disgruntled creditor, beneficiary, or next-of-kin; or
- you could violate the rights provided to a surviving spouse or surviving minor children.

#### Tips for Representing Yourself

If you decide to proceed without being represented by an attorney, you should consider the following:

- Research the law that is applicable to your case. The Court's website has links that are helpful for you to research the law on the Internet. Additionally, the Help Center has various probate information sheets that may assist you. Those probate information sheets contain footnotes that specifically reference applicable law. You might consider a limited consultation with an attorney just to make sure you are on the right track.

- Read all the probate information sheets that are applicable to your case.
- Check the Ohio Unclaimed Funds website, searching under the Decedent's name.<sup>29</sup>
- Keep track of all deadlines, especially deadlines for filing documents with the Court, tax authorities, and the Medicaid Estate Recovery Program.
- If the Decedent has creditors, consider a consultation with an attorney, BEFORE you file any documents with the court, and develop a strategy regarding the timing of all filings and the payment of creditors.
- Establish a checking account solely for the probate estate administration, to account for the receipt of all income or other payments to the probate estate and the payment of all disbursements.
- Maintain a calendar and tickler system to remind you of filing deadlines, and other requirements.
- Consider a consultation with a tax advisor regarding required tax filings.
- Consider whether the Decedent's death will cause the payment of special benefits under social security or the Veteran's Administration.
- Determine whether the Decedent had a safe deposit box.
- If the Decedent was employed, consider whether the employer may owe past due wages or bonuses.

**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>29</sup> <<https://www.com.ohio.gov/unfd/>>