

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

Information Sheet
The Decedent's Will

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. 2105.06." That refers to Ohio Revised Code Section 2105.06, which is found in R.C. Title 21, and in R.C. Chapter 2105.

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 Representative¹ 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 valid Will, then that Will determines who will receive the remaining Probate Property (the "Beneficiaries"). Second, if the Decedent died without a valid Will, or to the extent that the Will fails to dispose of all Probate Property, then the persons entitled to inherit are determined by the Statute of Descent and Distribution,² which essentially are those persons who are the Decedent's closest relatives, or rather nearest next-of-kin (the "Heirs"). Thus, to the extent that the Beneficiaries named in the Decedent's Will are not the Decedent's nearest next-of-kin, those persons who are the nearest

¹ "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."

² R.C. 2105.06.

next-of-kin will benefit if the Court determines that a Will presented to the probate court does not comply with law and is invalid.

Duty to Present a Will to Probate Court.

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.³ Second, the person may file the Will with the Court together with an Application to Probate Will, which is discussed below. In that case, the person who merely files that application is not committed to serve as, and take on the duties of, the Estate Representative, but he or she does take on the duty of delivering a Notice of Probate of Will and a Certificate of Service of Notice of Probate of Will, as explained below.

If a person is a Beneficiary under the Will and knows of the existence of the Will or has the power to control it, and if that person fails to present the Will to the Court within one year after the Decedent's death, then that person forfeits his or her rights as a Beneficiary.⁴

If a person 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.⁵

Depositing a Will with the Court.⁶

Even if it appears that the Decedent died with only Non-Probate Property, 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 of Court, together with the original Will and court costs. See the Checklist – Will Deposit, which is on the Court's website.

Filing the Will with the Court for Admission to Probate.

If the Decedent died with a Will and the Decedent owned Probate Property, then the person who possesses, or holds the power to control, the Will should either: (1) deposit the Will with the Court, per R.C. 2107.07; or (2) file the Will with the Court and apply to the Court to determine whether the Will should be "admitted to probate." Which probate court should be selected is determined under R.C. 2107.11, but typically it is the probate court in the county of the Decedent's residence at the time of death. A Will has no legal effect until a probate court admits

³ R.C. 2107.07.

⁴ R.C. 2107.10

⁵ R.C. 2107.09

⁶ See Geauga Probate Local Rule 59.1

the Will to probate.⁷ If the person (the “Applicant”) possessing or controlling the Will decides to file the Will with the Court to have the Will admitted to probate, then the Applicant should read the Court’s Checklist - Probating Decedent’s Will, which is on the Court’s website.

Initial Steps

- Examine the Index of Wills. Before an Applicant files an Application to Probate Will (see next paragraph), 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.⁸ If there are earlier Wills, then the Applicant shall file those Wills in the probate estate proceeding for record purposes only. Of course, if there is a later Will, then the Applicant shall file that later Will with the Application to Probate Will.⁹
- 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: (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 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 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 has survived the Decedent, including, as to each such person, the address, the relationship to the Decedent, and the birthdate of any minor. Identify those next-of-kin whose current address is unknown but include the last known address. Again, the identity of the next-of-kin is defined by the Statute of Descent and Distribution.¹⁰
- 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 C. Smith, aka John C. Smith Jr.”

⁷ R.C. 2107.61

⁸ Sup.R. 59(A) (Ohio Rules of Superintendence).

⁹ See Geauga Probate Local Rule 59.1(C)

¹⁰ R.C. 2105.06.

- 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.

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**
2. **Form 2.0 Application to Probate Will** (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.
4. **Identification** - [if applicant is not represented by an attorney - see Geauga Probate Local Rule 78.10] (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).
5. **Notice of Probate of Will**
 - Waiver of Notice of Probate of Will. Notice that an Application to Probate Will (2.0) has a section titled "Waiver of Notice of Probate of Will." If all persons listed in the form titled "Surviving Spouse, Children, Next of Kin, Legatees and Devisees" (Form 1.0) either (i) sign that Waiver of Notice of Probate of Will, or (ii) sign 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)¹¹ – see below the discussion regarding the Notice of Probate of Will. 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 (2.0), which that 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 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.

¹¹ R.C. 2107.19(A)(2).

- Admission to Probate.¹² 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 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.¹³ 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.¹⁴ 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.¹⁵ The Applicant need not 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.¹⁶ 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.

Note: Upon return of the "green cards" indicating service of notice upon all persons entitled to the Notice of Probate of Will, the Estate Representative shall file with the probate Clerk of Court those green cards, together with a copy of the applicable Notice of Probate of Will attached, and t the Certificate of Service of Notice of Probate – see below.

- 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.¹⁷
 - 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.

¹² R.C. 2107.18.

¹³ Sup.R. 73(E) governs the method for service of Notice to Probate of Will.

¹⁴ R.C. 2107.19

¹⁵ Sup.R. 59(B) (Ohio Rules of Superintendence).

¹⁶ R.C. 2107.19(A)(1) and 2109.31(A)

¹⁷ See Sup.R. 73(E)(7), which makes reference to Civ.R. 4.2.

- 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. Regardless of whether all Interested Persons and waive notice of probate of the Will, the Applicant must prepare and file with the Court a certificate, informing the Court that either: (i) a Notice of Probate of Will has been delivered or (ii) that a Waiver of Notice of Probate of Will has been signed by all Interested Persons. The Applicant must use 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.¹⁸ If the Applicant fails to timely file that Certificate with the Court, then the Applicant may be cited and is subject to penalties.¹⁹ 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.²⁰

Lost, Spoliated, or Destroyed Will.²¹ 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. The Applicant should present the copy of that Will to the Court, together with the form titled “Application for Administration to Probate Lost, Spoliated, or Destroyed Will” (GC PF 42.1).

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.²²
- Second Condition. No person opposing the admission of that Will proves by a “preponderance of the evidence” that the Decedent has revoked that Will.²³

¹⁸ R.C. 2107.19(A)(4) and Sup.R. 59(B) (Ohio Rules of Superintendence).

¹⁹ R.C. 2107.19(A)(4)

²⁰ R.C. 2107.76

²¹ R.C. 2107.26, 2107.27, and 2107.28

²² R.C. 2107.26(A)

If the Applicant determines to submit to the Court a copy of a Will that was lost, spoliated, or destroyed, then the Applicant must proceed as follows:

- Preparation.
 - Before preparing and filing the required forms, obtain the name, address, and relationship of each person to the Decedent who:
 - is entitled to inherit the Decedent's probate property if the Decedent died without a valid Will, as defined in R.C. 2105.06; and
 - is named in that lost, spoliated, or destroyed Will; and
 - is named in the most recent Will prior to that Will, a copy of which is being present.
 - Determine whether an attorney prepared that Will and contact that attorney for details regarding its execution.
 - Determine the amount of the court cost deposit.
- 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).
 - Prepare and file the form titled "Surviving Spouse, Children, Next-of Kin, Legatees and Devises" (Form 1.0)
 - File a copy of that Will
 - Arrange for the method of payment of the court cost deposit.
- Notice of Hearing. Unlike the filing of the original Will, the Court must hold a hearing to determine whether to admit to probate a lost, spoliated, or destroyed Will. After obtaining the hearing date from the Clerk, the Applicant must prepare and deliver a Notice of Hearing to all interested persons that are listed in the "Application for Admission to Probate Lost, Spoliated, or Destroyed Will." That Notice of Hearing may not be waived. 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). The Applicant shall deliver a copy of that notice to each interested 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 "Service of Notice."

²³ R.C. 2107.26(B)

- Notice by Publication. If an interested person's address is unknown after the applicant has made a reasonable effort to ascertain the residence, or if there are unknown interested persons, then the Applicant should notify such person(s) by publication, by the following steps:
 - Affidavit for Service by Publication. The Estate Representative must prepare and file with the probate court an Affidavit that notifies the Court of interested persons with an unknown address. The Estate Representative shall file with the Court an Affidavit as required by Civ. R. 73(E)(6), using the form titled "Affidavit for Notice by Publication" (GC PF 62.0) - with a copy of the applicable notice attached, and instructions, using the form titled "Instructions for Service by Publication" (GC PF 62.1).²⁴ For the notice, consider the form titled "Notice of Hearing on Appointment" (GC PF 62.0B). See Geauga Probate Local Rule 78.14.
 - Contact Publisher. After filing and receiving authorization from the probate clerk of courts, the Estate Representation will (i) contact the publisher as instructed by the probate clerk (most likely The News-Herald), (ii) deliver the appropriate notice to the publisher, (iii) request the notice be published once a week for three consecutive weeks,²⁵ and (iv) arrange for payment of the publication. The News-Herald is at 7085 Mentor Ave., Willoughby, Ohio 44094, telephone (440)-951-0000, and email address - legals@news-herald.com.
 - Completion of Service.²⁶ Service of notice by publication is deemed completed on the date of the last publication.

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 legal counsel.
- Post Hearing Date. If the Court admits the Lost, Spoliated, or Destroyed Will to probate, then the Applicant must perform the following:
 - Waiver of Notice of Probate of Will. To the extent possible, have all persons listed on the form titled "Surviving Spouse, Children, Next-of Kin, Legatees and Devises" (Form 1.0) (the "Interested Persons") sign the form titled "Waiver of Notice of Probate of Will" (Form 2.1).
 - Notice of Probate of Will. If any Interested Persons have not signed a Waiver of Notice of Probate of Will (Form 2.1), then within two weeks after the Court has ordered that the Will is admitted to probate, the

²⁴ See Geauga Probate Local Rule 78.14.

²⁵ Civ.R. 73(E)(6)

²⁶ Civ.R. 73(F)

Applicant must deliver to each such person a “Notice of Probate of Will” (Form 2.2) in the same manner as provided above.

- Service of Notice Upon Minor or an Incompetent. Civ.R. 4.2 governs how to service notice upon a minor (under age 16) or an incompetent person.²⁷
 - 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. Following the delivery of the Notice of Probate of Will or if no notice is required by all Interested Persons have signed the Waiver of Notice to Probate of Will, the Applicant must prepare and file with the Court a “Certificate of Service of Notice of Probate of Will” (Form 2.4), in the same manner as provided above

- 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).²⁸ 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).²⁹ Thus, if the Decedent dies with a Will and the Will is admitted to probate, 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 Next of Kin of the probate estate, and the distribution of the Probate Property is likely to be delayed.

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

²⁷ See Sup.R. 73(E)(7), which makes reference to Civ.R. 4.2.

²⁸ R.C. 2107.71

²⁹ R.C. 2107.76

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.