

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 next-of-kin will benefit if

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.

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. The person who merely files that application is not required to apply and serve as 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

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 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.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

³ R.C. 2107.07.

⁴ R.C. 2107.10

⁵ R.C. 2107.09

⁶ See Geauga Probate Local Rule 59.1

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) merely deposit the Will with the Court, per R.C. 2107.07; or (2) file the Will with the Court and prepare and file the form titled Application to Probate Will (Form 2.0) to determine whether the Will should be admitted to probate.

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.⁷ 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 prepare and filing the form titled Residency Affidavit (GC PF 4.52).

- Non-Ohio Domiciliary.⁸ 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.⁹ 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

- Gather the Decedent’s Will(s). Before an Applicant files an Application to Probate Will, the Applicant must examine the Court’s Index of Wills to be sure that the Will possessed by

⁷ R.C. 2107.11(A)(1)

⁸ R.C. 2107.11(A)(1). But see R.C. 2107.11(A)(3) and R.C. 2107.11(B) for more details

⁹ R.C. 2107.61

the Applicant is indeed the Decedent's last Will.¹⁰ Moreover, 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 contest, 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 the case, the applicant should obtain copies (or other evidence) of that lost Will.¹¹

- Death Certificate. Obtain a copy of the Death Certificate so that you can file it with the form titled 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 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 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 (i.e., 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 or any deceased siblings).
- 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 C. Smith, aka John C. Smith Jr."

- 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

¹⁰ Sup.R. 59(A) (Ohio Rules of Superintendence).

¹¹ See Geauga Probate Local Rule 59.1(C)

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** (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 1.0.¹²
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 whether this form is applicable if in fact at death the Decedent resided in Geauga County.
4. **Notice of Admission to Probate of Will** – those persons identified on Form 1.0 (the "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 (i) sign that Waiver of Notice of Probate of Will on Form 2.0, 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) to those persons.¹³ 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 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.

¹² See Geauga Probate Local Rule 78.5(A)(2)

¹³ R.C. 2107.19(A)(2).

- Admission to Probate.¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸ 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. However, 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: If the delivery of a Notice of Probate of Will (Form 2.2) is required, then the Applicant shall deliver a copy of that notice to each such person by certified mail, return receipt requested 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 the “green card” for each notice.

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.

¹⁴ R.C. 2107.18.

¹⁵ Sup.R. 73(E) governs the method for service of Notice to Probate of Will.

¹⁶ R.C. 2107.19

¹⁷ Sup.R. 59(B) (Ohio Rules of Superintendence).

¹⁸ R.C. 2107.19(A)(1) and 2109.31(A)

- 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.¹⁹
 - 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.
 - If all interested Persons have signed a Waiver of Notice of Probate of Will and the Estate Representative has signed a Certificate of Waiver of Notice on the Application to Probate Will, then no further action is required.
 - If all Interested Persons have not waived notice of probate of the Will upon the filing of the Application to Probate Will, then 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 to all Interested Persons 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.²⁰ If the Applicant fails to timely file that Certificate with the Court, then the Applicant may be cited and is subject to penalties.²¹ 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.²²

Lost, Spoliated, or Destroyed Will.²³ 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.

¹⁹ See Sup.R. 73(E)(7), which refers to Civ.R. 4.2.

²⁰ R.C. 2107.19(A)(4) and Sup.R. 59(B) (Ohio Rules of Superintendence).

²¹ R.C. 2107.19(A)(4)

²² R.C. 2107.76

²³ R.C. 2107.26, 2107.27, and 2107.28

- 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.

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.²⁴
- Second Condition. No person opposing the admission of that Will proves by a "preponderance of the evidence" that the Decedent has revoked that Will.²⁵
- 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 those persons who are named as beneficiaries 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 - Admission to Probate of Lost , Spoliated, or Destroyed Will (GF PF 2.1A) - to the extent feasible.
 - File a copy of that Will.

²⁴ R.C. 2107.26(A)

²⁵ R.C. 2107.26

- Arrange for the method of payment of the court cost deposit.
- Notice of Hearing.²⁶ 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). 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. 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.”
 - 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 signing the form titled Waiver of Notice of Hearing - Admission to Probate of Lost, Spoliated, or Destroyed Will (GF PF 2.1A). The Estate Representative should file that form together with the form titled Application for Admission to Probate Lost, Spoliated, or Destroyed Will (GC PF 42.1).
- 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, publication of the notice should be made, and could be made on the Court’s website 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). In that case you should prepare and file with the probate clerks form “GC PF 62.0 - Affidavit for Notice by Publication” together with a copy of the notice.

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 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.

²⁶ R.C. 2107.27

- 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).²⁷ 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).²⁸ 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 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.

²⁷ R.C. 2107.71

²⁸ R.C. 2107.76