



*Helping Older Persons With
Legal & Long-Term Care
Problems*

Probate and Estate Taxes

1. What Is Probate?

Probate is the court process which distributes the property owned by a person (the decedent) at the time of death. This procedure is needed whether or not the decedent had a will. It is also important to note that not all property is subject to the probate process. [1] "Probate property" is property owned in the decedent's individual name not covered by another contract. Other types of property that has a designated beneficiary or survivorship clause are not subject to probate and pass directly to the named beneficiaries upon the decedent's death. More information about this type of property, often called "non-probate property" is found below in [question 8](#).

2. What Is Involved When Probating An Estate?

When a person dies with a will, the will must be filed in the county probate court. [2] Next, within two weeks of admission of the will to probate, notice of the will's filing must be sent to the surviving spouse, to all beneficiaries under the will and to all who would be entitled to inherit if there were no will. [3] [4] [5] The court gives letters of authority appointing the personal representative and granting him or her power to act on behalf of the decedent. [6] [8] That representative is called the executor, if named in the will, or the administrator, if there is no will. [7] [9]

3. What Is "Release From Administration" And When Can It Be Used?

"Release from Administration" is a simplified probate procedure which can be used when:

- (a) the value of the estate assets is \$35,000 or less; [10] or
- (b) if the surviving spouse is entitled to all the estate assets, the value of the estate assets can be \$100,000 or less. [10] [11]

See our *Small Estates* pamphlet for more details regarding Release from Administration.

4. Who Can Be Executor Or Administrator?

To qualify as executor, the person named in the will must be 18, competent, and [\[12\]](#) [\[13\]](#)

- (a) an Ohio resident, or
- (b) a nonresident related to the decedent by blood or marriage. [\[14\]](#)

If there was no will, the court will appoint an Ohio resident as administrator in the following order of preference

- (a) spouse;
- (b) next of kin; or
- (c) another suitable Ohio resident. [\[15\]](#)

To qualify as administrator, the person must be 18, competent and an Ohio resident.

Executors and Administrators must accept the appointment in writing and give bond if required. [\[16\]](#) [\[17\]](#) [\[18\]](#) [\[19\]](#)

5. What Are The Duties Of The Executor/Administrator?

The executor or administrator must:

- (a) file, within three months of appointment, an inventory listing the value of all property owned by the deceased; [\[20\]](#) [\[21\]](#)
- (b) pay all valid debts decedent owed at the time of death from the estate's assets; [\[22\]](#) [\[23\]](#)
- (c) file a Federal Estate Tax return if required; [\[24\]](#)
- (d) file decedent's Federal Income Tax return; [\[26\]](#)
- (e) file decedent's Ohio Income Tax return; [\[27\]](#) [\[28\]](#)
- (f) distribute the remaining estate property to the heirs or the beneficiaries under the will; [\[29\]](#) and
- (g) file a final and distributive account. [\[22\]](#)

6. What Time Limits Apply To Probate?

Some key time limits are:

- (a) surviving spouse has five months from the date of initial appointment of executor or administrator to elect to inherit probate assets as allowed by Ohio law instead of according to the will; [\[30\]](#) [\[31\]](#) [\[32\]](#)
- (b) decedent's creditors must file their claim within six months after decedent's death; [\[33\]](#) [\[34\]](#)
- (c) a will must be contested within three months after the filing of the certificate that all notices of the will's admission to probate have been given; [\[35\]](#)

- (d) Federal Estate Tax return must be filed within nine months of death; [\[36\]](#) [\[37\]](#)
and
- (e) Federal and Ohio Estate Income Tax returns must be filed by April 15th following the end of the estate's taxable year. [\[38\]](#) [\[39\]](#)

7. Who Inherits If There Is No Will?

If there is no will, Ohio law decides who will inherit.

- (a) If the decedent had a surviving spouse and no children, or only children with the surviving spouse, the spouse will inherit the entire estate.
- (b) If the decedent had a surviving spouse and children with someone other than the spouse, there is a division of assets between the two, depending on the circumstances.
- (c) If the decedent had no surviving spouse or children or grandchildren, the estate would go to his parents.
- (d) If his parents have predeceased him, to his brothers and sisters or their children.
- (e) Ohio law provides further distribution even after this. [\[40\]](#)

Also in Ohio, the children of a deceased heir inherit their parents' share except when all descendants are equally related, in which case they divide the estate equally. [\[41\]](#)

8. What Property Passes Outside The Probate Estate?

Property of the decedent that passes automatically to survivors or named beneficiaries without being subject to probate includes:

- (a) property owned by the decedent and another as joint tenants with right of survivorship, such as land or bank accounts; [\[42\]](#)
- (b) financial accounts that are "payable on death (of)"; [\[43\]](#) [\[45\]](#)
- (c) land transferred under a transfer-on-death deed or subject to a transfer-on-death affidavit; [\[44\]](#)
- (d) assets which pass to a named beneficiary based on a contract, such as retirement accounts, bank accounts payable on death and life insurance policies; [\[46\]](#)
- (e) property in trusts funded prior to death; and
- (f) up to two automobiles (not over \$40,000 FMV for both), one watercraft, and one outboard motor selected by a surviving spouse, not otherwise transferred. [\[47-50\]](#)

Non-probate property may still be subject to estate or beneficiaries' income taxes.

9. How Is The Transfer Of Land Handled After Death?

Before filing the final account, the executor or administrator must request the court to issue a certificate of transfer for the real estate. The court then issues a certificate to be recorded in the county in which the land is located. [\[51\]](#)

If real estate is held jointly with the right of survivorship, the survivor(s) must file with the county recorder a transfer on death designation affidavit, stating the date of death, the names and address(es) of the survivorship owner(s), the description of the property, and a certified copy of the death certificate. [\[42\]](#)

Land subject to a transfer-on-death deed or transfer-on-death affidavit is similarly transferred by filing a transfer on death designation affidavit (see above) with the county recorder that must also include certified copies of the death certificates of non-surviving beneficiaries. [\[44\]](#)

10. Are Executors And Administrators Paid By The Estate?

Yes, they receive fees, based on the value of the estate and its income during probate, and the proceeds of any sold real estate, calculated as follows: [\[52\]](#)

- (a) 4% on the first \$100,000; plus
- (b) 3% on the amount between \$100,000 and \$400,000; plus
- (d) 2% on the amount over \$400,000; plus
- (e) 1% of the value of real estate not sold and of non-probate property (other than joint and survivorship property) includable for Ohio estate tax purposes.

11. What Happens To Bank Accounts And Safety Deposit Boxes During Probate?

The Ohio Estate Tax has been repealed for the estates of individuals dying on or after January 1, 2013. This eliminated the requirement that written permission be obtained from the Tax Commissioner before certain assets of a decedent may be transferred to another person. When a depositor dies on or after 2013, a bank may transfer 100% of the total value of the account without consent of the Tax Commissioner. [\[53\]](#)

Ohio law states that a safe deposit box must first be inventoried in the presence of the Tax Commissioner's agent before being released. However, this requirement has been waived by the Ohio Tax Commissioner and no consent is currently required for financial institutions to release the contents of safe deposit boxes. [\[54\]](#) [\[55\]](#)

12. Are Ohio Estate Taxes Due On Inherited Property?

No. The Ohio Estate Tax has been repealed. For the estates of individuals dying on or after January 1, 2013, there is no Ohio Estate Tax. [\[53\]](#)

13. When Must Federal Estate Taxes Be Paid?

Federal estate taxes must be paid when the taxable estate exceeds \$5 million in 2010. A cost of living adjustment is applied each subsequent year to increase this amount. In 2014, Federal estate taxes only apply if the gross estate is over \$5.34 million. [56] Note: While insurance proceeds payable to a named beneficiary are not taxable in Ohio, they are subject to Federal estate tax. [57] [58]

© Copyright 2014

Pro Seniors' Legal Hotline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Hotline or consult an attorney in elder law.

Copyright © 2014 by:

Pro Seniors, Inc.
7162 Reading Rd.
Suite 1150
Cincinnati, Ohio 45237

Switchboard: 513.345.4160
Clients Toll-free: 800.488.6070
Fax: 513.621.5613
TDD: 513.345.4160

E-mail: proseniors@proseniors.org

Web Site: www.proseniors.org

Endnotes:

[1] [O.R.C. § 2101.24](#) (probate court jurisdiction)

[2] [O.R.C. § 2107.11](#) (jurisdiction, county probate courts)

[3] [O.R.C. § 2107.19\(A\)\(1\)](#) (notice, admission to probate)

[4] [O.R.C. § 2107.19\(A\)\(4\)](#) (certificate of notice of probate of will within 2 months of appointment unless court grants extension)

- [5] [O.R.C. §2105.06](#) (statute of descent and distribution)
- [6] [O.R.C. §2113.01](#) (probate courts, letters testamentary and of administration)
- [7] [O.R.C. §2113.05](#) (letters testamentary)
- [8] [O.R.C. §2109.02](#) (appointment and duties of fiduciary)
- [9] [O.R.C. §2113.31](#) (responsibility of executor or administrator)
- [10] [O.R.C. §2113.03\(A\)](#) (release from administration)
- [11] [O.R.C. §2113.031](#) (summary release from administration, surviving spouse defined)
- [12] [O.R.C. §2113.05](#) (general requirement for executor)
- [13] [O.R.C. §2113.13](#) (minority of executor)
- [14] [O.R.C. §2109.21\(B\)](#) (residence requirements of executors)
[O.R.C. §2109.21\(A\)](#) (residence requirements of administrators)
- [15] [O.R.C. §2113.06](#) (to whom letters of administration shall be granted)
- [16] [O.R.C. §2109.02](#) (fiduciary duties/acceptance)
- [17] [O.R.C. §2109.04](#) (bond requirement)
- [18] [O.R.C. §2109.07](#) (bond exemptions - administrators)
- [19] [O.R.C. §2109.09](#) (bond exemptions - executors)
- [20] [O.R.C. §2115.02](#) (inventory and set forth value of assets within 3 months of appointment, unless court grants and extension)("shall")
- [21] [O.R.C. §2115.09](#) (contents of inventory)
- [22] [O.R.C. Sec. 2109.301\(B\)\(1\)](#) (6 months to file final and distributive account unless specified circumstances apply)
- [23] [O.R.C. §2117.25](#) (order in which debts are to be paid)
- [24] [I.R.C. §6018\(a\)](#) (federal estate tax returns)
- [26] [IRS Form 1040](#) (Under General Information write: Death of a Taxpayer)
- [27] [IRS Form 1041](#) (federal estate income tax form)
- [28] [Ohio Form IT-1041](#) (Ohio estate income tax) (replaced IT 1041-E)
- [29] [O.R.C. §2113.53](#) (distribution of assets)("may")
- [30] [O.R.C. §2106.01\(E\)](#) (election by surviving spouse)

- [31] [O.R.C. §2113.54](#) (distribution upon application of legatee or distributee after 5 months)
- [32] [O.R.C. §2106.16](#) (surviving spouse may purchase property)
- [33] [O.R.C. §2117.06\(B\)](#) (presentation and allowance of creditors' claims)
- [34] [O.R.C. §2117.07](#) (acceleration of bar against claims of potential claimants by giving written notice)
- [35] [O.R.C. §2107.76](#) (contest of will within 3 months after certification of notices)
- [36] [O.R.C. §5731.23](#) (time for payment of Ohio estate taxes)
- [37] [I.R.C §6075\(a\)](#) (time for filing Federal estate tax return)
- [38] [O.R.C. § 5747.08\(G\)](#) (time for filing Ohio income and estate income tax returns)
- [39] [I.R.C. §6072\(a\)](#) (time for filing federal income and estate income tax returns)
- [40] [O.R.C. §2105.06](#) (statute of descent and distribution)
- [41] [O.R.C. §2105.12](#) (descent when all descendants of equal degree of consanguinity)
- [42] [O.R.C. §5302.17](#) (survivorship deeds)
- [43] [O.R.C. §1109.07](#) (bank accounts); See, [Wright v. Bloom](#), 69 O. St. 3d 596, 635 N.E.2d 31 (1994)
- [44] [O.R.C. §§5302.222 & 5302.23](#) (transfer on death deeds and affidavits)
- [45] [O.R.C. §2131.10](#) (payable on death accounts)
- [46] [O.R.C. §5731.12](#) (insurance on life of decedent payable to beneficiaries other than estate itself)
- [47] [O.R.C. §2106.18](#) (right of surviving spouse to automobile of decedent)
- [48] [O.R.C. §2106.19](#) (transfer of title to watercraft or outboard motor)
- [49] [O.R.C. §2131.12](#) (joint tenants with right of survivorship to a motor vehicle)
- [50] [O.R.C. §2131.13](#) (transfer on death title to a motor vehicle)
- [51] [O.R.C. §2113.61](#) (certificate of transfer)
- [52] [O.R.C. §2113.35](#) (commissions for administrators and executors)
- [53] [O.R.C. §5731.39\(B\)](#) (release of deposits) (See, House Bill 153, 129th General Assembly) (See also, [Ohio Department of Taxation, FAQ 19](#) and Ohio Department of Taxation, [Tax Alert, December 19, 2012](#)(pdf))
- [54] [O.R.C. §5731.39\(F\)](#) (safe deposit boxes)

- [55] [O.R.C. §5731.39\(G\)\(1\)](#) (requirements waived by tax commissioner, [Ohio Department of Taxation Memo, December, 2000](#)) (See also, [Ohio Department of Taxation, FAQ 205](#))
- [56] [I.R.C. §2010](#) (unified credit against estate tax) (prospective amendment: sunset of amendments: amendments do not apply to estates of decedents dying after 12/31/10 and I.R.C. of 1986 applies.)
[I.R.C. §§2001-2210](#) (federal estate tax provisions as a whole)
- [57] [I.R.C. §2042](#) (life insurance proceeds)
- [58] [O.R.C. §5731.12](#) (value of gross estate does not include life insurance payable to beneficiaries other than decedent's estate)