

As Introduced

**124th General Assembly
Regular Session
2001-2002**

H. B. No. 85

**REPRESENTATIVES Hughes, Goodman, Sullivan, Setzer, Patton, Allen,
Jolivette, Niehaus, Webster, Redfern, Latta, DePiero, Reidelbach**

A B I L L

To amend sections 2106.01, 2106.02, 2106.13, 2107.19, 1
2107.76, 2109.07, 2109.09, 2109.11, 2109.12, 2
2109.18, 2109.24, 2109.30, 2109.31, 2109.32, 3
2113.28, 2113.53, 2113.64, 2115.09, and 5905.11, to 4
amend the version of section 2117.06 that was in 5
effect immediately prior to January 27, 1997, to 6
enact sections 2106.25, 2109.301, 2109.302, 7
2109.303, and 2117.51, and to repeal section 8
2113.533 of the Revised Code relative to a 9
surviving spouse's election whether to take under 10
the will, will contests, the final and distributive 11
account of an estate's administration, and other 12
provisions of probate law. 13
14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2106.01, 2106.02, 2106.13, 2107.19, 15
2107.76, 2109.07, 2109.09, 2109.11, 2109.12, 2109.18, 2109.24, 16
2109.30, 2109.31, 2109.32, 2113.28, 2113.53, 2113.64, 2115.09, and 17
5905.11 and the version of section 2117.06 that was in effect 18
immediately prior to January 27, 1997, be amended and sections 19
2106.25, 2109.301, 2109.302, 2109.303, and 2117.51 of the Revised 20

Code be enacted to read as follows: 21

Sec. 2106.01. (A) After the ~~probate of a will and the filing~~ 22
~~of the inventory and the appraisement~~ initial appointment of an 23
administrator or executor of the estate, the probate court shall 24
issue a citation to the surviving spouse, if any is living at the 25
time of the issuance of the citation, to elect whether to exercise 26
the surviving spouse's elective rights under Chapter 2106. of the 27
Revised Code, including, after the probate of a will, the right to 28
take under the will or under section 2105.06 of the Revised Code. 29

(B) If the surviving spouse elects to take under section 31
2105.06 of the Revised Code and if the value of the property that 32
the surviving spouse is entitled to receive is equal to or greater 33
than the value of the decedent's interest in the mansion house as 34
determined under section 2106.10 of the Revised Code, the 35
surviving spouse also is entitled to make an election pursuant to 36
division (A) of section 2106.10 of the Revised Code. 37

(C) If the surviving spouse elects to take under section 38
2105.06 of the Revised Code, the surviving spouse shall take not 39
to exceed one-half of the net estate, unless two or more of the 40
decedent's children or their lineal descendants survive, in which 41
case the surviving spouse shall take not to exceed one-third of 42
the net estate. 43

For purposes of this division, the net estate shall be 44
determined before payment of federal estate tax, estate taxes 45
under Chapter 5731. of the Revised Code, or any other tax that is 46
subject to apportionment under section 2113.86 or 2113.861 of the 47
Revised Code. 48

(D) Unless the will expressly provides that in case of an 49
election under division (A) of this section there shall be no 50

acceleration of remainder or other interests bequeathed or devised
by the will, the balance of the net estate shall be disposed of as
though the surviving spouse had predeceased the testator. If there
is a disposition by a will to an inter vivos trust that was
created by the testator, if under the terms of the trust the
surviving spouse is entitled to any interest in the trust or is
granted any power or nomination with respect to the trust, and if
the surviving spouse makes an election to take under section
2105.06 of the Revised Code, then, unless the trust instrument
provides otherwise, the surviving spouse is deemed for purposes of
the trust to have predeceased the testator, and there shall be an
acceleration of remainder or other interests in all property
bequeathed or devised to the trust by the will, in all property
held by the trustee at the time of the death of the decedent, and
in all property that comes into the hands of the trustee by reason
of the death of the decedent.

(E) The election of a surviving spouse to take under a will
or under section 2105.06 of the Revised Code may be made at any
time after the death of the decedent, but the surviving spouse
~~shall be made~~ not make the election later than ~~one month five~~
months from the ~~service date~~ of the ~~citation to elect~~ initial
appointment of an administrator or executor of the estate. On a
motion filed before the expiration of the ~~one-month~~ five-month
period, and for good cause shown, the court may allow further time
for the making of the election. If no action is taken by the
surviving spouse before the expiration of the ~~one-month~~ five-month
period, it is conclusively presumed that the surviving spouse
elects to take under the will. The election shall be entered on
the journal of the court.

When proceedings for advice or to contest the validity of a
will are begun within the time allowed by this division for making
the election, the election may be made within three months after

51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82

the final disposition of the proceedings, if the will is not set
aside. 83
84

(F) When a surviving spouse succeeds to the entire estate of 85
the testator, having been named the sole devisee and legatee, it 86
shall be presumed that the spouse elects to take under the will of 87
the testator. ~~No citation shall be issued to the surviving spouse 88
as provided in division (A) of this section, and no election shall 89
be required,~~ unless the surviving spouse manifests a contrary 90
intention. 91

Sec. 2106.02. (A) The citation to make the election referred 92
to in section 2106.01 of the Revised Code shall be sent to the 93
surviving spouse by certified mail. Notice that the citation has 94
been issued by the court shall be given to the administrator or 95
executor of the estate of the deceased spouse. 96

(B) The citation shall be accompanied by a general 97
description of the effect of the election to take under the will 98
or under section 2105.06 of the Revised Code and the general 99
rights of the surviving spouse under Chapter 2106. of the Revised 100
Code. The description shall include a specific reference to the 101
procedures available to the surviving spouse under section 2106.03 102
of the Revised Code and to the presumption that arises if the 103
surviving spouse does not make the election in accordance with 104
division (E) of section 2106.01 of the Revised Code. The 105
description of the general rights of the surviving spouse under 106
Chapter 2106. of the Revised Code shall include a specific 107
reference to the presumption that arises if the surviving spouse 108
does not make the election within the time period specified by 109
section 2106.25 of the Revised Code. The description of the effect 110
of the election and of the general rights of the surviving spouse 111
need not relate to the nature of any particular estate. 112

(C) A surviving spouse electing to take under the will may 113

manifest the election in writing within the times described in 114
division (E) of section 2106.01 of the Revised Code. 115

Sec. 2106.13. (A) If a person dies leaving a surviving spouse 116
and no minor children, leaving a surviving spouse and minor 117
children, or leaving minor children and no surviving spouse, the 118
surviving spouse, minor children, or both shall be entitled to 119
receive, subject to division (B) of this section, in money or 120
property the sum of forty thousand dollars as an allowance for 121
support. If the surviving spouse selected two automobiles under 122
section 2106.18 of the Revised Code, the allowance for support 123
prescribed by this section shall be reduced by the value of the 124
automobile having the lower value of the two automobiles so 125
selected. The money or property set off as an allowance for 126
support shall be considered estate assets. 127

(B) The probate court shall order the distribution of the 128
allowance for support described in division (A) of this section as 129
follows: 130

(1) If the person died leaving a surviving spouse and no 131
minor children, one hundred per cent to the surviving spouse; 132

(2) If the person died leaving a surviving spouse and minor 133
children, and if all of the minor children are the children of the 134
surviving spouse, one hundred per cent to the surviving spouse; 135

(3) If the person died leaving a surviving spouse and minor 136
children, and if not all of the minor children are children of the 137
surviving spouse, in equitable shares, as fixed by the probate 138
court in accordance with this division, to the surviving spouse 139
and the minor children who are not the children of the surviving 140
spouse. In determining equitable shares under this division, the 141
probate court shall do all of the following: 142

(a) Consider the respective needs of the surviving spouse, 143

the minor children who are children of the surviving spouse, and 144
the minor children who are not children of the surviving spouse; 145

(b) Allocate to the surviving spouse, the share that is 146
equitable in light of the needs of the surviving spouse and the 147
minor children who are children of the surviving spouse; 148

(c) Allocate to the minor children who are not children of 149
the surviving spouse, the share that is equitable in light of the 150
needs of those minor children. 151

(4) If the person died leaving minor children and no 152
surviving spouse, in equitable shares, as fixed by the probate 153
court in accordance with this division, to the minor children. In 154
determining equitable shares under this division, the probate 155
court shall consider the respective needs of the minor children 156
and allocate to each minor child the share that is equitable in 157
light of the child's needs. 158

(C) If the surviving spouse selected two automobiles under 159
section 2106.18 of the Revised Code, the probate court, in 160
considering the respective needs of the surviving spouse and the 161
minor children when allocating an allowance for support under 162
division (B)(3) of this section, shall consider the benefit 163
derived by the surviving spouse from the transfer of the 164
automobile having the lower value of the two automobiles so 165
selected. 166

(D) If, pursuant to this section, the probate court must 167
allocate the allowance for support, the administrator or executor, 168
within five months of the initial appointment of an administrator 169
or executor, shall file with the probate court an application to 170
allocate the allowance for support. 171

(E) The administrator or executor shall pay the allowance for 172
support unless a competent adult or a guardian with the consent of 173
the court having jurisdiction over the guardianship waives the 174

allowance for support to which the adult or the ward represented 175
by the guardian is entitled. 176

(F) For the purposes of this section, the value of an 177
automobile that a surviving spouse selects pursuant to section 178
2106.18 of the Revised Code is the value that the surviving spouse 179
specifies for the automobile in the affidavit executed pursuant to 180
division (B) of section 4505.10 of the Revised Code. 181

Sec. 2106.25. Unless otherwise specified by a provision of 182
the Revised Code or this section, a surviving spouse shall 183
exercise all elective rights within five months of the initial 184
appointment of an executor or administrator of the estate. It is 185
conclusively presumed that a surviving spouse has waived any 186
elective right not exercised within that five-month period or 187
within any longer period of time allowed by the court pursuant to 188
this section. Upon the filing of a motion to extend the time for 189
exercising an elective right and for good cause shown, the court 190
may allow further time for exercising the elective right that is 191
the subject of the motion. 192

Sec. 2107.19. (A)(1) Subject to divisions (A)(2) and (B) of 193
this section, when a will has been admitted to probate, the 194
fiduciary for the estate or another person specified in division 195
(A)(4) of this section promptly shall give a notice as described 196
in this division and in the manner provided by Civil Rule 73(E) to 197
the surviving spouse of the testator, to all persons who would be 198
entitled to inherit from the testator under Chapter 2105. of the 199
Revised Code if ~~he~~ the testator had died intestate, and to all 200
legatees and devisees named in the will. The notice shall mention 201
the probate of the will and, if a particular person being given 202
the notice is a legatee or devisee named in the will, shall state 203
that the person is named in the will as beneficiary. A copy of the 204
will admitted to probate is not required to be given with the 205

notice. 206

(2) A person entitled to be given the notice described in 207
division (A)(1) of this section may waive that right by filing a 208
written waiver of the right to receive the notice in the probate 209
court. The person may file the waiver of the right to receive the 210
notice at any time prior to or after the will has been admitted to 211
probate. 212

(3) The fact that the notice described in division (A)(1) of 213
this section has been given, subject to division (B) of this 214
section, to all persons described in division (A)(1) of this 215
section who have not waived their right to receive the notice, 216
and, if applicable, the fact that certain persons described in 217
that division have waived their right to receive the notice in 218
accordance with division (A)(2) of this section, shall be 219
evidenced by a certificate that shall be filed in the probate 220
court in accordance with division (A)(4) of this section. 221

(4) The notice of the admission of the will to probate 222
required by division (A)(1) of this section and the certificate of 223
giving notice or waiver of notice required by division (A)(3) of 224
this section shall be given or filed by the fiduciary for the 225
estate or by the applicant for the admission of the will to 226
probate, the applicant for a release from administration, any 227
other interested person, or the attorney for the fiduciary or for 228
any of the preceding persons. The certificate of giving notice 229
shall be filed not later than two months after the appointment of 230
the fiduciary unless the court grants an extension of that time. 231
Failure to file the certificate in a timely manner shall subject 232
the fiduciary to the citation and penalty provisions of section 233
2109.31 of the Revised Code. 234

(B) The fiduciary or another person specified in division 235
(A)(4) of this section is not required to give a notice pursuant 236

to division (A)(1) of this section to persons who have been 237
notified of the application for probate of the will or of a 238
contest as to jurisdiction or to persons whose names or places of 239
residence are unknown and cannot with reasonable diligence be 240
ascertained, and a person authorized by division (A)(4) of this 241
section to give notice shall file in the probate court a 242
certificate to that effect. 243

Sec. 2107.76. ~~No person who has received or waived the right~~ 244
~~to receive the notice of the admission of a will to probate~~ 245
~~required by section 2107.19 of the Revised Code~~ may commence an 246
action permitted by section 2107.71 of the Revised Code to contest 247
the validity of the will more than four the latest of two months 248
after the filing of the certificate described in division (A)(3) 249
of section 2107.19 of the Revised Code ~~certifying the giving of~~ 250
~~that notice to or the waiver of that notice by that person, one~~ 251
month after the filing of the inventory under section 2115.02 of 252
the Revised Code, or four months after the testator's death. ~~No~~ 253
~~other person may commence an action permitted by section 2107.71~~ 254
~~of the Revised Code to contest the validity of the will more than~~ 255
~~four months after the initial filing of a certificate described in~~ 256
~~division (A)(3) of section 2107.19 of the Revised Code~~ The filing 257
of an amendment or supplement to the inventory, or a report of 258
newly discovered assets does not extend the time for contesting 259
the validity of the will. A person under any legal disability 260
nevertheless may commence an action permitted by section 2107.71 261
of the Revised Code to contest the validity of the will within 262
~~four~~ two months after the disability is removed, but the rights 263
saved shall not affect the rights of a purchaser, lessee, or 264
encumbrancer for value in good faith and shall not impose any 265
liability upon a fiduciary who has acted in good faith, or upon a 266
person delivering or transferring property to any other person 267
under authority of a will, whether or not the purchaser, lessee, 268

encumbrancer, fiduciary, or other person had actual or 269
constructive notice of the legal disability. 270

Sec. 2109.07. (A) The bond required of an administrator by 271
section 2109.04 of the Revised Code shall not be required in 272
either of the following cases: 273

(1) It shall not be required of a surviving spouse to 274
administer the deceased spouse's estate if the surviving spouse is 275
entitled to the entire net proceeds of the estate. 276

(2) It shall not be required of an administrator to 277
administer an estate if there is no will, if the administrator is 278
the next of kin, and if the administrator is entitled to the 279
entire net proceeds of the estate. 280

(B) The bond otherwise required by section 2109.04 of the 281
Revised Code of an administrator shall be conditioned as follows: 282

(1) To file with the probate court within the time required 283
by section 2115.02 of the Revised Code an inventory of all 284
tangible and intangible personal property of the deceased that is 285
to be administered and that comes to the administrator's 286
possession or knowledge and an inventory of the deceased's 287
interest in real estate located in this state; 288

(2) To administer and distribute according to law all 289
tangible and intangible personal property of the deceased, the 290
proceeds of any action for wrongful death or of any settlement, 291
with or without suit, of a wrongful death claim, and the proceeds 292
of all real estate in which the deceased had an interest, that is 293
located in this state, and that is sold, when the property or 294
proceeds have come to the possession of the administrator or to 295
the possession of a person for the administrator; 296

(3) To render a just and true account of the administrator's 297
administration at the times required by section ~~2109.30~~ 2109.301 298

of the Revised Code; 299

(4) To deliver the letters of administration into court if a 300
will of the deceased is proved and allowed. 301

Sec. 2109.09. (A) Unless the testator has specified otherwise 302
in the will, the bond required of an executor by section 2109.04 303
of the Revised Code shall not be required of the executor to 304
administer an estate in accordance with the will of the testator 305
if the executor is the next of kin and if the executor is entitled 306
to the entire net proceeds of the estate. 307

(B) The bond otherwise required of an executor by section 308
2109.04 of the Revised Code shall be conditioned as follows: 309

(1) To file with the probate court within the time required 310
by section 2115.02 of the Revised Code an inventory of all the 311
tangible and intangible personal property of the testator that is 312
to be administered and that comes to the executor's possession or 313
knowledge and an inventory of the testator's interest in real 314
estate located in this state; 315

(2) To administer and distribute according to law and the 316
will of the testator all the testator's tangible and intangible 317
personal property, the proceeds of any action for wrongful death 318
or of any settlement, with or without suit, of a wrongful death 319
claim, and the proceeds of all real estate in which the testator 320
had an interest, that is located in this state, and that is sold, 321
when the property or proceeds have come to the possession of the 322
executor or to the possession of another person for the executor; 323

(3) To render a just and true account of the executor's 324
administration at the times required by section ~~2109.30~~ 2109.301 325
of the Revised Code. 326

Sec. 2109.11. The bond required by section 2109.04 of the 327
Revised Code of a testamentary trustee shall be conditioned as 328

follows: 329

(A) To make and return to the probate court within the time 330
required by section 2109.58 of the Revised Code a true inventory 331
of all moneys, chattels, rights, credits and real estate belonging 332
to the trust that come to ~~his~~ the trustee's possession or 333
knowledge; 334

(B) To administer and distribute according to law and the 335
will of the testator all moneys, chattels, rights, credits, and 336
real estate belonging to the trust that come to the possession of 337
the trustee or to the possession of any other person for ~~him~~ the 338
trustee; 339

(C) To render a just and true account of ~~his~~ the trustee's 340
administration at the times required by section ~~2109.30~~ 2109.303 341
of the Revised Code. 342

Sec. 2109.12. Any bond required by or pursuant to section 343
2109.04 of the Revised Code of a guardian shall be conditioned as 344
follows: 345

(A) If applicable, to make and return to the probate court 346
within the time required by section 2111.14 of the Revised Code a 347
true inventory of all moneys, chattels, rights, credits, and real 348
estate belonging to the ward that come to ~~his~~ the guardian's 349
possession or knowledge; 350

(B) To administer and distribute according to law all moneys, 351
chattels, rights, credits, and real estate belonging to the ward 352
that come to the possession of the guardian or to the possession 353
of any other person for ~~him~~ the guardian; 354

(C) To render a just and true account of ~~his~~ the guardian's 355
administration at any times required by or pursuant to section 356
~~2109.30~~ 2109.302 of the Revised Code. 357

Sec. 2109.18. A surety of a fiduciary or the executor or administrator of a surety may make application at any time to the probate court to be released from the bond of such fiduciary. Such surety shall file ~~his~~ a written request therefor with the probate judge of such court and give at least five days' notice in writing to such fiduciary. If, upon the hearing, the court is of the opinion that there is good reason therefor, it shall release such surety. The death of a surety shall always be good cause.

A fiduciary may make application at any time to the court for the release of ~~his~~ the fiduciary's sureties. Such fiduciary shall file ~~his~~ a written request therefor with the judge of such court and give at least five days' notice in writing to such sureties. If, upon the hearing, the court is of the opinion that there is good reason to release such sureties, it shall order the fiduciary to file an account, as provided by section ~~2109.30~~ 2109.301, 2109.302, or 2109.303 of the Revised Code, and such sureties shall be released after the fiduciary files a new bond which is approved by the court.

If such fiduciary fails to give new bond as directed, ~~he~~ the fiduciary shall be removed and ~~his~~ the fiduciary's letters of appointment superseded. Such original sureties shall not be released until the fiduciary gives a bond, but shall be liable for such fiduciary's acts only from the time of executing the original bond to the filing and approval by the court of the new bond.

The costs of such proceeding shall be paid by the surety applying to be released, unless it appears to the court that the fiduciary is insolvent, incompetent, or is wasting the assets of the estate.

Sec. 2109.24. The probate court at any time may accept the resignation of any fiduciary upon ~~his~~ the fiduciary's proper

accounting, if the fiduciary was appointed by, is under the 388
control of, or is accountable to the court. 389

If a fiduciary fails to make and file an inventory as 390
required by sections 2109.58, 2111.14, and 2115.02 of the Revised 391
Code or to render a just and true account of ~~his~~ the fiduciary's 392
administration at the times required by section ~~2109.30~~ 2109.301, 393
2109.302, or 2109.303 of the Revised Code, and if the failure 394
continues for thirty days after the fiduciary has been notified by 395
the court of the expiration of the relevant time, the fiduciary 396
forthwith may be removed by the court and shall receive no 397
allowance for ~~his~~ the fiduciary's services unless the court enters 398
upon its journal its findings that the delay was necessary and 399
reasonable. 400

The court may remove any such fiduciary, after giving the 401
fiduciary not less than ten days' notice, for habitual 402
drunkenness, neglect of duty, incompetency, or fraudulent conduct, 403
because the interest of the trust demands it, or for any other 404
cause authorized by law. 405

The court may remove a trustee upon the written application 406
of more than one-half of the persons having an interest in the 407
estate controlled by the trustee, but the trustee ~~himself~~ is not 408
to be considered as a person having an interest in the estate 409
under the proceedings; except that no trustee appointed under a 410
will shall be removed upon such written application unless for a 411
good cause. 412

Sec. 2109.30. (A) ~~Except as provided in division (B) of this~~ 413
~~section, within nine months after appointment, every~~ Every 414
executor and administrator shall render an account of the 415
executor's and administrator's administration at the time and in 416
the manner prescribed in section 2109.301 of the Revised Code. 417
Every guardian or conservator shall render an account of the 418

ward's estate at the time and in the manner prescribed in section 419
2109.302 of the Revised Code. Every testamentary trustee and other 420
fiduciary not subject to sections 2109.301 and 2109.302 of the 421
Revised Code shall render an account of the testamentary trustee's 422
or other fiduciary's administration at the time and in the manner 423
prescribed in section 2109.303 of the Revised Code. Except as 424
provided in division (B) of this section, after the initial 425
account is rendered, every executor and administrator shall render 426
further accounts at least once each year. Except as provided in 427
divisions (C) and (D) of this section, every fiduciary, other than 428
an executor, administrator, or guardian of the person only, shall 429
render an account of the administration of the fiduciary's estate 430
or trust at least once in each two years. An account shall be 431
rendered by a guardian of the person only at any time, or, subject 432
to division (D) of this section, by any other fiduciary at any 433
time other than those mentioned in this section, upon the order of 434
the court either at its own instance, or upon the motion of any 435
person interested in the estate or trust, for good cause shown. 436
Except as provided in divisions (B) and (C) of this section, every 437
fiduciary, other than a guardian of the person only, shall render 438
a final account within thirty days after completing the 439
administration of the estate or the termination of the fiduciary's 440
trust or within any other period of time that the court may order. 441

Every account shall include an itemized statement of all 443
receipts of the fiduciary during the accounting period and of all 444
disbursements and distributions made by the fiduciary during the 445
accounting period. The itemized disbursements and distributions 446
shall be verified by vouchers or proof, except in the case of an 447
account rendered by a corporate fiduciary subject to section 448
1111.28 of the Revised Code. In addition, the account shall 449
include an itemized statement of all funds, assets, and 450

~~investments of the estate or trust known to or in the possession
of the fiduciary at the end of the accounting period and shall
show any changes in investments since the last previous account.
The accounts of testamentary trustees shall, and the accounts of
other fiduciaries may, show receipts and disbursements separately
identified as to principal and income.~~

451
452
453
454
455
456

~~Every account shall be upon the signature of the fiduciary.
When an account is rendered by two or more joint fiduciaries, the
court may allow the account upon the signature of one of them.~~

457
458
459

~~Upon the filing of every account, the fiduciary, except
corporate fiduciaries subject to section 1111.28 of the Revised
Code, shall exhibit to the court, for its examination, the
securities shown in the account as being in the hands of the
fiduciary, or the certificate of the person in possession of the
securities, if held as collateral or pursuant to section 2109.13
or 2131.21 of the Revised Code, and a passbook or certified bank
statement showing as to each depository the fund deposited to the
credit of the trust. The court may designate a deputy clerk, an
agent of a corporate surety on the bond of the fiduciary, or
another suitable person whom the court appoints as commissioner to
make the examination and to report the person's findings to the
court. When securities are located outside the county, the court
may appoint a commissioner or request another probate court to
make the examination and to report its findings to the court. The
court may examine the fiduciary under oath concerning the account.~~

460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475

~~When a fiduciary is authorized by law or by the instrument
governing distribution to distribute the assets of the estate or
trust, in whole or in part, the fiduciary may do so and include a
report of the distribution in the fiduciary's succeeding account.~~

476
477
478
479

(B) An account showing complete administration before
distribution of assets shall be designated "final account." An
account filed subsequent to the final account and showing

480
481
482

distribution of assets shall be designated "account of 483
distribution." An account showing complete administration and 484
distribution of assets shall be designated "final and distributive 485
account." 486

~~(B)(1) In estates of decedents in which the sole legatee, 487
devisee, or heir also is the executor or administrator, no partial 488
accountings are required, and no final account or final and 489
distributive account shall be filed. The executor or administrator 490
shall be discharged by filing with the court within thirty days 491
after completing the administration of the estate a certificate of 492
termination of an estate that states all of the following: 493~~

~~(a) That all debts and claims presented to the estate have 495
been paid in full or settled finally; 496~~

~~(b) That an estate tax return, if required under Chapter 497
5731. of the Revised Code, has been filed, and any estate tax due 498
under that chapter has been paid; 499~~

~~(c) That all attorney's fees have been waived by or paid to 500
counsel of record of the estate, and all fiduciary fees have been 501
waived or paid; 502~~

~~(d) The amount of attorney's fees and the amount of fiduciary 503
fees that have been paid; 504~~

~~(e) That all assets remaining after completion of the 505
activities described in divisions (B)(1)(a) to (d) of this section 506
have been distributed to the sole legatee, devisee, or heir. 507~~

~~In estates of decedents in which none of the legatees, 508
devisees, or heirs is under a legal disability, each partial 509
accounting of an executor or administrator may be waived by the 510
written consent of all the legatees, devisees, or heirs filed in 511
lieu of a partial accounting otherwise required. 512~~

~~(C)(1) The court may waive, by order, an account that 513~~

~~division (A) of this section requires of a guardian of the estate
or a guardian of the person and estate, other than an account made
pursuant to court order, if any of the following circumstances
applies:~~

514
515
516
517

~~(a) The assets of the estate consist entirely of real
property.~~

518
519

~~(b) The assets of the estate consist entirely of personal
property, that property is held by a bank, savings and loan
association, or trust company in accordance with section 2109.13
of the Revised Code, and the court has authorized expenditures of
not more than five thousand dollars annually for the support,
maintenance, or, if applicable, education of the ward.~~

520
521
522
523
524
525

~~(c) The assets of the estate consist entirely of real
property and of personal property that is held by a bank, savings
and loan association, or trust company in accordance with section
2109.13 of the Revised Code, and the court has authorized
expenditures of not more than five thousand dollars annually for
the support, maintenance, or, if applicable, education of the
ward.~~

526
527
528
529
530
531
532

~~(2) The order of a court entered pursuant to division (C)(1)
of this section is prima-facie evidence that a guardian of the
estate or a guardian of the person and estate has authority to
make expenditures as described in division (C)(1)(b) or (c) of
this section.~~

533
534
535
536
537

~~(D)(1) As used in this division:~~

538

~~(a) "Charitable trust" has the same meaning as in section
109.23 of the Revised Code.~~

539
540

~~(b) "Qualified community foundation" means any foundation
that is exempt from federal income taxation under sections
170(b)(1)(A)(vi) and 501(c)(3) of the "Internal Revenue Code of
1986," 100 Stat. 2085, as amended; that is further described in~~

541
542
543
544

~~section 1.170A-9(10) and (11) of Title 26 of the Code of Federal Regulations, 26 C.F.R. 1.170A-9(10) and (11), as amended; and that publishes at least annually and circulates widely within its community an audited report of its fund balances, activities, and donors.~~

545
546
547
548
549

~~(c) "Testamentary charitable trust" means any charitable trust that is created by a will.~~

550
551

~~(2) If the assets of a testamentary charitable trust are held and managed by a fiduciary who is an individual or by a corporate fiduciary and if the trust merges into a qualified community foundation, then, after the fiduciary files with the court a final and distributive account pertaining to the trust and activities up to the effective date of the merger, the fiduciary and any successors of the fiduciary shall not be required to render any accounting to the court pertaining to the merged trust and activities that follow the effective date of the merger.~~

552
553
554
555
556
557
558
559
560

Sec. 2109.301. (A) An administrator or executor shall render an account at any time other than a time otherwise mentioned in this section upon an order of the probate court issued for good cause shown either at its own instance or upon the motion of any person interested in the estate. Except as otherwise provided in division (B)(2) of this section, an administrator or executor shall render a final account within thirty days after completing the administration of the estate or within any other period of time that the court may order.

561
562
563
564
565
566
567
568
569

Every account shall include an itemized statement of all receipts of the administrator or executor during the accounting period and of all disbursements and distributions made by the executor or administrator during the accounting period. In addition, the account shall include an itemized statement of all funds, assets, and investments of the estate known to or in the

570
571
572
573
574
575

possession of the administrator or executor at the end of the
accounting period and shall show any changes in investments since
the last previous account.

576
577
578

Every account shall be upon the signature of the
administrator or executor. When two or more administrators or
executors render an account, the court may allow the account upon
the signature of one of them. The court may examine the
administrator or executor under oath concerning the account.

579
580
581
582
583

When an administrator or executor is authorized by law or by
the instrument governing distribution to distribute the assets of
the estate, in whole or in part, the administrator or executor may
do so and include a report of the distribution in the
administrator's or executor's succeeding account.

584
585
586
587
588

In estates of decedents in which none of the legatees,
devisees, or heirs is under a legal disability, each partial
accounting of an executor or administrator may be waived by the
written consent of all the legatees, devisees, or heirs filed in
lieu of a partial accounting otherwise required.

589
590
591
592
593

(B)(1) Every administrator and executor, within six months
after appointment, shall render a final and distributive account
of the administrator's or executor's administration of the estate
unless one or more of the following circumstances apply:

594
595
596
597

(a) An Ohio estate tax return must be filed for the estate.

598

(b) A proceeding contesting the validity of the decedent's
will pursuant to section 2107.71 of the Revised Code has been
commenced, or the time for contesting the will has not yet
expired.

599
600
601
602

(c) The surviving spouse has filed an election to take
against the will, or the time for making the election has not yet
expired.

603
604
605

(d) The administrator or executor is a party in a civil action. 606
607

(e) The estate is insolvent. 608

(f) For other reasons set forth by the administrator or executor, subject to court approval, it would be detrimental to the estate and its beneficiaries or heirs to file a final and distributive account. 609
610
611
612

(2) In estates of decedents in which the sole legatee, devisee, or heir is also the administrator or executor of the estate, no partial accountings are required, and the administrator or executor shall not file a final account or final and distributive account. In lieu of filing a final account, the administrator or executor of an estate of that type shall be discharged by filing with the court within thirty days after completing the administration of the estate a certificate of termination of an estate that states all of the following: 613
614
615
616
617
618
619
620
621

(a) All debts and claims presented to the estate have been paid in full or settled finally. 622
623

(b) An estate tax return, if required under the provisions of the Internal Revenue Code or Chapter 5731. of the Revised Code, has been filed, and any estate tax has been paid. 624
625
626

(c) All attorney's fees have been waived by or paid to counsel of record of the estate, and all executor or administrator fees have been waived or paid. 627
628
629

(d) The amount of attorney's fees and the amount of administrator or executor fees that have been paid. 630
631

(e) All assets remaining after completion of the activities described in divisions (B)(2)(a) to (d) of this section have been distributed to the sole legatee, devisee, or heir. 632
633
634

(3) Not later than twelve months after appointment, every 635

administrator and executor shall render an account of the 636
administrator's or executor's administration, unless a certificate 637
of termination is filed under division (B)(2) of this section. 638
Except as provided in divisions (B)(1) and (2) of this section, 639
after the initial account is rendered, every administrator and 640
executor shall render further accounts at least once each year. 641

Sec. 2109.302. (A) Every guardian or conservator shall render 642
an account of the administration of the ward's estate at least 643
once in each two years. The guardian or conservator shall render 644
an account at any time other than a time otherwise mentioned in 645
this section upon the order of the probate court issued for good 646
cause shown either at its own instance or upon the motion of any 647
person interested in the estate. Except as provided in division 648
(B) of this section, every guardian or conservator shall render a 649
final account within thirty days after completing the 650
administration of the ward's estate or within any other period of 651
time that the court may order. 652

Every account shall include an itemized statement of all 653
receipts of the guardian or conservator during the accounting 654
period and of all disbursements and distributions made by the 655
guardian or conservator during the accounting period. The itemized 656
disbursements and distributions shall be verified by vouchers or 657
proof, except in the case of an account rendered by a corporate 658
fiduciary subject to section 1111.28 of the Revised Code. In 659
addition, the account shall include an itemized statement of all 660
funds, assets, and investments of the estate known to or in the 661
possession of the guardian or conservator at the end of the 662
accounting period and shall show any changes in investments since 663
the last previous account. 664

Every account shall be upon the signature of the guardian or 665
conservator. When two or more guardians or conservators render an 666

account, the court may allow the account upon the signature of one
of the guardians or conservators.

Upon the filing of every account, the guardian or
conservator, except a corporate fiduciary subject to section
1111.28 of the Revised Code, shall exhibit to the court for its
examination both of the following: the securities shown in the
account as being in the hands of the guardian or conservator, or
the certificate of the person in possession of the securities, if
held as collateral or pursuant to section 2109.13 or 2131.21 of
the Revised Code; and a passbook or certified bank statement
showing as to each depository the fund deposited to the credit of
the ward's estate. The court may designate a deputy clerk, an
agent of a corporate surety on the bond of the guardian or
conservator, or another suitable person whom the court appoints as
commissioner to make the examination and to report the person's
findings to the court. When securities are located outside the
county, the court may appoint a commissioner or request another
probate court to make the examination and to report its findings
to the court. The court may examine the guardian or conservator
under oath concerning the account.

When a guardian or conservator is authorized by law to
distribute the assets of the estate, in whole or in part, the
guardian or conservator may do so and include a report of the
distribution in the guardian's or conservator's succeeding
account.

(B)(1) The court may waive, by order, an account that
division (A) of this section requires of a guardian of the estate
or of a guardian of the person and estate, other than an account
made pursuant to court order, if any of the following
circumstances apply:

(a) The assets of the estate consist entirely of real
property.

(b) The assets of the estate consist entirely of personal property, that property is held by a bank, savings and loan association, or trust company in accordance with section 2109.13 of the Revised Code, and the court has authorized expenditures of not more than ten thousand dollars annually for the support, maintenance, or, if applicable, education of the ward. 699
700
701
702
703
704

(c) The assets of the estate consist entirely of real property and of personal property that is held by a bank, savings and loan association, or trust company in accordance with section 2109.13 of the Revised Code, and the court has authorized expenditures of not more than ten thousand dollars annually for the support, maintenance, or, if applicable, education of the ward. 705
706
707
708
709
710
711

(2) The order of a court entered pursuant to division (B)(1) of this section is prima-facie evidence that a guardian of the estate or a guardian of the person and estate has authority to make expenditures as described in divisions (B)(1)(b) and (c) of this section. 712
713
714
715
716

(3) Notwithstanding the requirements for accounts by other guardians under this section, a guardian of the person is not required to render an account except upon an order of the court that the court issues for good cause shown either at its own instance or upon the motion of any person interested in the estate. 717
718
719
720
721
722

Sec. 2109.303. (A) Except as provided in division (B) of this section, every testamentary trustee shall, and every other fiduciary not subject to section 2109.301 or 2109.302 of the Revised Code may, render an account of the trustee's or other fiduciary's administration of the estate or trust at least once in each two years. Any testamentary trustee or other fiduciary shall render an account, subject to division (B) of this section, at any 723
724
725
726
727
728
729

time other than a time otherwise mentioned in this section upon an 730
order of the court issued for good cause shown either at its own 731
instance or upon the motion of any person interested in the estate 732
or trust. Every testamentary trustee shall, and every other 733
fiduciary may, render a final account within thirty days after 734
completing the administration of the estate or trust or shall file 735
a final account within any other period of time that the court may 736
order. 737

Every account shall include an itemized statement of all 738
receipts of the testamentary trustee or other fiduciary during the 739
accounting period and of all disbursements and distributions made 740
by the testamentary trustee or other fiduciary during the 741
accounting period. The itemized disbursements and distributions 742
shall be verified by vouchers or proof, except in the case of an 743
account rendered by a corporate fiduciary subject to section 744
1111.28 of the Revised Code. In addition, the account shall 745
include an itemized statement of all funds, assets, and 746
investments of the estate or trust known to or in the possession 747
of the testamentary trustee or other fiduciary at the end of the 748
accounting period and shall show any changes in investments since 749
the last previous account. The accounts of testamentary trustees 750
shall, and the accounts of other fiduciaries may, show receipts 751
and disbursements separately identified as to principal and 752
income. 753

Every account shall be upon the signature of the testamentary 754
trustee or other fiduciary. When two or more testamentary trustees 755
or other fiduciaries render an account, the court may allow the 756
account upon the signature of one of them. 757

Upon the filing of every account, the testamentary trustee or 758
other fiduciary, except a corporate fiduciary subject to section 759
1111.28 of the Revised Code, shall exhibit to the court for its 760

examination both of the following: the securities shown in the 761
account as being in the hands of the testamentary trustee or other 762
fiduciary, or the certificate of the person in possession of the 763
securities, if held as collateral or pursuant to section 2109.13 764
or 2131.21 of the Revised Code; and a passbook or certified bank 765
statement showing as to each depository the fund deposited to the 766
credit of the estate or trust. The court may designate a deputy 767
clerk, an agent of a corporate surety on the bond of the 768
testamentary trustee or other fiduciary, or another suitable 769
person whom the court appoints as commissioner to make the 770
examination and to report the person's findings to the court. When 771
securities are located outside the county, the court may appoint a 772
commissioner or request another probate court to make the 773
examination and to report its findings to the court. The court may 774
examine the testamentary trustee or other fiduciary under oath 775
concerning the account. 776

When a testamentary trustee or other fiduciary is authorized 777
by law or by the instrument governing distribution to distribute 778
the assets of the estate or trust, in whole or in part, the 779
testamentary trustee or other fiduciary may do so and include a 780
report of the distribution in the testamentary trustee's or 781
fiduciary's succeeding account. 782

(B) If the assets of a testamentary charitable trust are held 783
and managed by a testamentary trustee or other fiduciary who is an 784
individual or by a corporate fiduciary and if the trust merges 785
into a qualified community foundation, then, after the 786
testamentary trustee or other fiduciary files with the court a 787
final and distributive account pertaining to the trust and 788
activities up to the effective date of the merger, the 789
testamentary trustee or other fiduciary and any successors of the 790
testamentary trustee or other fiduciary shall not be required to 791
render any accounting to the court pertaining to the merged trust 792

<u>and activities that follow the effective date of the merger.</u>	793
<u>(C) As used in this section:</u>	794
<u>(1) "Charitable trust" has the same meaning as in section 109.23 of the Revised Code.</u>	795 796
<u>(2) "Qualified community foundation" means any foundation that is exempt from federal income taxation under sections 170(b)(1)(A)(vi) and 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 170(b)(1)(A)(vi) and 501 (c)(3), as amended; that is further described in section 1.170A-9(10) and (11) of Title 26 of the Code of Federal Regulations, 26 C.F.R. 1.170A-9(10) and (11), as amended; and that publishes at least annually and circulates widely within its community an audited report of its fund balances, activities, and donors.</u>	797 798 799 800 801 802 803 804 805
<u>(3) "Testamentary charitable trust" means any charitable trust that is created by a will.</u>	806 807
<u>(4) "Other fiduciary" means a fiduciary other than an executor, administrator, guardian, conservator, or testamentary trustee.</u>	808 809 810
Sec. 2109.31. (A) If a fiduciary neglects or refuses to file an account, inventory, <u>certificate of notice of probate of will,</u> or report when due according to section <u>2107.19,</u> 2109.30, 2111.49, or 2115.02 of the Revised Code or when ordered by the probate court, the court at its own instance may issue, and on the application of any interested party or of any of the next of kin of any ward shall issue, a citation as described in division (B) of this section to such fiduciary pursuant to Civil Rules 4.1 to 4.6 to compel the filing of the overdue account, inventory, <u>certificate of notice of probate of will,</u> or report.	811 812 813 814 815 816 817 818 819 820
(B) The citation that is required by division (A) of this section may contain any of the following:	821 822

(1) A statement that the particular account, inventory, certificate of notice of probate of will, or report is overdue; 823
824

(2) An order to the fiduciary to file the account, inventory, certificate of notice of probate of will, or report, or otherwise 825
826
to appear before the court on a specified date; 827

(3) A statement that, upon the issuance of the citation, a 828
continuance to file the account, inventory, certificate of notice 829
of probate of will, or report may be obtained from the court only 830
on or after the date specified pursuant to division (B)(2) of this 831
section. 832

(C) If a citation is issued to a fiduciary in accordance with 833
divisions (A) and (B) of this section and if the fiduciary fails 834
to file the account, inventory, certificate of notice of probate 835
of will, or report prior to the appearance date specified in the 836
citation, the court may order, on that date, one or more of the 837
following: 838

(1) The removal of the fiduciary; 839

(2) A denial of all or part of the fees to which the 840
fiduciary otherwise would be entitled; 841

(3) A continuance of the time for filing the account, 842
inventory, certificate of notice of probate of will, or report; 843

(4) An assessment against the fiduciary of a penalty of one 844
hundred dollars and costs of twenty-five dollars for the hearing, 845
or a suspension of all or part of the penalty and costs; 846

(5) That the fiduciary is in contempt of the court for the 847
failure to comply with the citation and that a specified daily 848
fine, imprisonment, or daily fine and imprisonment may be imposed 849
against the fiduciary, beginning with the appearance date, until 850
the account, inventory, certificate of notice of probate of will, 851
or report is filed with the court; 852

(6) If the fiduciary does not appear in the court on the 853
specified appearance date, that the fiduciary is in contempt of 854
the court for the failure to comply with the citation, and that 855
one of the following may occur: 856

(a) The fiduciary shall be taken into custody by the sheriff 857
or a deputy sheriff and brought before the court. 858

(b) The fiduciary shall appear before the court on a 859
specified date or otherwise be taken into custody by the sheriff 860
or a deputy sheriff and brought before the court. 861

(D) The assessments, fines, and other sanctions that the 862
court may impose upon a fiduciary pursuant to this section may be 863
imposed only upon a fiduciary and shall not be imposed upon the 864
surety of any fiduciary. 865

Sec. 2109.32. (A) Every fiduciary's account required by 866
section 2109.30, 2109.301, 2109.302, or 2109.303 of the Revised 867
Code shall be set for hearing before the probate court. The 868
hearing on the account shall be set not earlier than thirty days 869
after the filing of the account. 870

At the hearing upon an account required by section 2109.302 871
or 2109.303 of the Revised Code and, if ordered by the court, upon 872
an account required by section 2109.301 of the Revised Code, the 873
court shall inquire into, consider, and determine all matters 874
relative to the account and the manner in which the fiduciary has 875
executed ~~his~~ the fiduciary's trust, including the investment of 876
trust funds, and may order the account approved and settled or 877
make any other order as the court considers proper. If, at the 878
hearing upon an account, the court finds that the fiduciary has 879
fully and lawfully administered the estate or trust and has 880
distributed the assets of the estate or trust in accordance with 881
the law or the instrument governing distribution, as shown in the 882
account, the court shall order the account approved and settled 883

and may order the fiduciary discharged. Upon approval of a final 884
and distributive account required by division (B)(1) of section 885
2109.301 of the Revised Code, the court may order the surety bond 886
for the fiduciary terminated. Unless otherwise ordered by the 887
court, the fiduciary shall be discharged without further order 888
twelve months following the approval of the final and distributive 889
account. 890

(B)(1) An administrator or executor filing an account 891
pursuant to section 2109.301 of the Revised Code shall provide at 892
the time of filing the account a copy of the account to each heir 893
of an intestate estate or to each beneficiary of a testate estate. 894
An administrator or executor is not required to provide a copy of 895
the account to a beneficiary of a specific bequest or devise who 896
has received his or her distribution and for which a receipt has 897
been filed or exhibited with the court. 898

(2) The probate court shall not approve the final account of 899
any executor or administrator until the following events have 900
occurred: 901

~~(A)~~(a) Three months have passed since the death of the 902
decedent~~+~~. 903

~~(B)~~(b) The surviving spouse has filed an election to take 904
under or against the will, or the time for making the election has 905
expired. 906

(3) If an administrator or executor learns of the existence 907
of newly discovered assets after the filing of the final account 908
or otherwise comes into possession of assets belonging to the 909
estate after the filing of the final account, the executor or 910
administrator shall file a supplemental final account with respect 911
to the disposition of the assets and shall provide a copy of the 912
supplemental final account to each heir of an intestate estate or 913
to each beneficiary of a testate estate, as provided in division 914
(B)(1) of this section. 915

(C) The rights of any person with a pecuniary interest in the estate are not barred by approval of an account pursuant to divisions (A) and (B) of this section. These rights may be barred following a hearing on the account pursuant to section 2109.33 of the Revised Code. 916
917
918
919
920

Sec. 2113.28. The time allowed by the probate court to collect the assets of an estate shall not operate as an allowance of further time to file the accounts required by section ~~2109.30~~ 2109.301 of the Revised Code. 921
922
923
924

Sec. 2113.53. (A) At any time after the appointment of an executor or administrator, the executor or administrator may distribute to the beneficiaries entitled to assets of the estate under the will, if there is no action pending to set aside the will, or to the heirs entitled to assets of the estate by law, in cash or in kind, any part or all of the assets of the estate. Each beneficiary or heir is liable to return the assets, or the proceeds from the assets, if they are necessary to satisfy the share of a surviving spouse who elects to take against the will pursuant to section 2106.01 of the Revised Code, or to satisfy any claims against the estate as provided in this section. ~~If any~~ 925
926
927
928
929
930
931
932
933
934
935

(B) After distribution pursuant to division (A) of this section, a distributee shall be personally liable to a claimant who presents a claim within the time set forth in division (B) of section 2117.06 of the Revised Code, subject to the following limitations: 936
937
938
939
940

(1) The personal liability of any distributee shall not exceed the lesser of the following: 941
942

(a) The amount the distributee has received reduced by the amount, if any, previously returned or otherwise used for the payment of the spouse's share or claims finally allowed; 943
944
945

(b) The distributee's proportionate share of the spouse's share or of claims finally allowed. Any distributee's proportionate share of the spouse's share or of claims finally allowed shall be determined by the following fraction: 946
947
948
949

(i) The numerator shall be the total amount received by the distributee, reduced by all amounts, if any, previously returned or otherwise used for the payment of the spouse's share or claims finally allowed. 950
951
952
953

(ii) The denominator shall be the total amount received by all distributees reduced by all amounts, if any, previously returned or otherwise used for the payment of the spouse's share or claims finally allowed. 954
955
956
957

(C) If there is a surviving spouse and if the executor or administrator distributes any part of the assets of the estate before the expiration of the times described in division (E) of section 2106.01 of the Revised Code for the making of an election by a surviving spouse, he is the executor or administrator shall be personally liable to any surviving spouse who subsequently elects to take against the will. If the executor or administrator distributes any part of the assets of the estate within three months after the death of the decedent, the executor or administrator is shall be personally liable only to those claimants who present their claims within that three-month period. If the executor or administrator distributes any part of the assets of the estate more than three months but less than one year after the death of the decedent, the executor or administrator is shall be personally liable only to those claimants who present their claims before the time of distribution and within the time set forth in division (B) of section 2117.06 of the Revised Code. If the executor or administrator distributes any part of the assets of the estate more than one year after the death of the decedent, he is personally liable only to those claimants who 958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977

~~present their claims within one year after the death of the 978
decedent. The executor or administrator shall be liable only to 979
the extent a claim is finally allowed. 980~~

The executor or administrator shall be liable only to the 981
extent that the sum of the remaining assets of the estate and the 982
assets returned by the beneficiaries or heirs is insufficient to 983
satisfy the share of the surviving spouse and to satisfy the 984
claims against the estate. The executor or administrator shall not 985
be liable in any case for an amount greater than the value of the 986
estate that existed at the time that the distribution of assets 987
was made and that was subject to the spouse's share or to the 988
claims. 989

~~Any (D) The~~ executor or administrator may provide for the 990
payment of rejected claims or claims in suit by setting aside a 991
sufficient amount of the assets of the estate for paying the 992
claims. The assets shall be set aside for the payment of the 993
claims in a manner approved by the probate court. Each claimant 994
for whom assets are to be set aside shall be given notice, in the 995
manner as the court shall order, of the hearing upon the 996
application to set aside assets and shall have the right to be 997
fully heard as to the nature and amount of the assets to be set 998
aside for payment of ~~his~~ the claim and as to all other conditions 999
in connection with the claim. In any case in which the executor or 1000
administrator may set aside assets as provided in this section, 1001
the court, upon its own motion or upon application of the executor 1002
or administrator, as a condition precedent to any distribution, 1003
may require any beneficiary or heir to give a bond to the state 1004
with surety approved and in an amount fixed by the court, 1005
conditioned to secure the return of the assets to be distributed, 1006
or the proceeds from the assets or as much of the assets as may be 1007
necessary to satisfy the claims that may be recovered against the 1008
estate, and to indemnify the executor or administrator against 1009

loss and damage on account of such distribution. The bond may be 1010
in addition to the assets to be set aside or partially or wholly 1011
in lieu of the assets, as the court shall determine. 1012

Sec. 2113.64. If a sum of money ~~directed by a decree or order~~ 1013
~~of the probate court~~ to be distributed to heirs, next of kin, or 1014
legatees, or owing from an estate to a creditor ~~thereof~~ of the 1015
estate, remains ~~for six months~~ unclaimed prior to the filing of a 1016
final account, the court may order it turned into the county 1017
treasury as provided in section 2113.65 of the Revised Code, or 1018
may order the executor or administrator to invest it as the court 1019
directs for a period not to exceed ~~one year~~ two years, to 1020
accumulate for the benefit of the persons entitled ~~thereto~~ to the 1021
sum of money. Such investment shall be made in the name of the 1022
probate judge of the court for the time being and shall be subject 1023
to the order of the judge and ~~his~~ the judge's successors in 1024
office. 1025

Sec. 2115.09. The inventory required by section 2115.02 of 1026
the Revised Code shall contain a particular statement of all 1027
securities for the payment of money ~~which~~ that belong to the 1028
deceased and are known to ~~such~~ the executor or administrator. Such 1029
inventory shall specify the name of the debtor in each security, 1030
the date, the sum originally payable, the indorsements thereon 1031
with their dates, the serial numbers or other identifying data as 1032
to each security, and the sum ~~which~~ that, in the judgment of the 1033
appraisers, can be collected on each claim. 1034

Such inventory ~~must~~ shall contain a statement of all debts 1035
and accounts belonging to the deceased ~~which~~ that are known to 1036
such executor or administrator and specify the name of the debtor, 1037
the date, the balance or thing due, and the value or sum ~~which~~ 1038
that can be collected thereon, in the judgment of the appraisers. 1039

Such inventory ~~must~~ shall contain an account of all moneys 1040

~~which~~ that belong to the deceased and have come to the hands of 1041
the executor or administrator. If none has come to ~~his~~ the 1042
executor's or administrator's hands, the fact ~~must~~ shall be stated 1043
in the inventory. 1044

The inventory shall contain a statement whether or not, 1045
insofar as it can be ascertained, the filing of an Ohio estate tax 1046
return will be required. 1047

Sec. 2117.06. (A) All creditors having claims against an 1048
estate, including claims arising out of contract, out of tort, on 1049
cognovit notes, or on judgments, whether due or not due, secured 1050
or unsecured, liquidated or unliquidated, shall present their 1051
claims in one of the following manners: 1052

(1) To the executor or administrator in a writing; 1053

(2) To the executor or administrator in a writing, and to the 1054
probate court by filing a copy of the writing with it; 1055

(3) In a writing that is sent by ordinary mail addressed to 1056
the decedent and that is actually received by the executor or 1057
administrator within the appropriate time specified in division 1058
(B) of this section. For purposes of this division, if an executor 1059
or administrator is not a natural person, the writing shall be 1060
considered as being actually received by the executor or 1061
administrator only if the person charged with the primary 1062
responsibility of administering the estate of the decedent 1063
actually receives the writing within the appropriate time 1064
specified in division (B) of this section. 1065

(B) All claims shall be presented within one year after the 1066
death of the decedent, whether or not the estate is released from 1067
administration or an executor or administrator is appointed during 1068
that one-year period. Every claim presented shall set forth the 1069
claimant's address. 1070

(C) A claim that is not presented within one year ~~ater~~ AFTER 1071
the death of the decedent shall be forever barred as to all 1072
parties, including, but not limited to, devisees, legatees, and 1073
distributees. No payment shall be made on the claim and no action 1074
shall be maintained on the claim, except as otherwise provided in 1075
sections 2117.37 to 2117.42 of the Revised Code, with reference to 1076
contingent claims. 1077

(D) In the absence of any prior demand for allowance, the 1078
executor or administrator shall allow or reject all claims, except 1079
tax assessment claims, within thirty days after their 1080
presentation, provided that failure of the executor or 1081
administrator to allow or reject within that time shall not 1082
prevent ~~him~~ the executor or administrator from doing so after that 1083
time and shall not prejudice the rights of any claimant. Upon the 1084
allowance of a claim, the executor or the administrator, on demand 1085
of the creditor, shall furnish the creditor with a written 1086
statement or memorandum of the fact and date of ~~such~~ the 1087
allowance. 1088

(E) If the executor or administrator has actual knowledge of 1089
a pending action commenced against the decedent prior to ~~his~~ the 1090
decedent's death in a court of record in this state, ~~such~~ the 1091
executor or administrator shall file a notice of ~~his~~ the 1092
appointment of the executor or administrator in ~~such~~ the pending 1093
action within ten days after acquiring ~~such~~ that knowledge. If the 1094
administrator or executor is not a natural person, actual 1095
knowledge of a pending suit against the decedent shall be limited 1096
to the actual knowledge of the person charged with the primary 1097
responsibility of administering the estate of the decedent. 1098
Failure to file the notice within the ten-day period does not 1099
extend the claim period established by this section. 1100

(F) This section applies to any person who is required to 1101
give written notice to the executor or administrator of a motion 1102

or application to revive an action pending against the decedent at 1103
the date of the death of the decedent. 1104

(G) Nothing in this section or in section 2117.07 of the 1105
Revised Code shall be construed to reduce the time mentioned in 1106
section 2125.02, 2305.09, 2305.10, 2305.11, or 2305.12 of the 1107
Revised Code, provided that no portion of any recovery on a claim 1108
brought pursuant to any of those sections shall come from the 1109
assets of an estate, unless the claim has been presented against 1110
the estate in accordance with Chapter 2117. of the Revised Code. 1111

(H) Any person whose claim has been presented, and has not 1112
~~thereafter been~~ rejected, after presentment is a creditor as that 1113
term is used in Chapters 2113. to 2125. of the Revised Code. 1114
Claims that are contingent need not be presented except as 1115
provided in sections 2117.37 to 2117.42 of the Revised Code, but, 1116
whether presented pursuant to those sections or this section, 1117
contingent claims may be presented in any of the manners described 1118
in division (A) of this section. 1119

(I) If a creditor presents a claim against an estate in 1120
accordance with division (A)(2) of this section, the probate court 1121
shall not close the administration of the estate until that claim 1122
is allowed or rejected. 1123

(J) The probate court shall not require an executor or 1124
administrator to make and return into the court a schedule of 1125
claims against the estate. 1126

~~(K) If the executor or administrator makes a distribution of 1127
the assets of the estate prior to the expiration of the time for 1128
the filing of claims as set forth in this section, he shall 1129
provide notice to each distributee as provided in section 2113.533 1130
of the Revised Code. 1131~~

Sec. 2117.51. (A) As used in this section, "nonprobate 1132

transfer" means a valid transfer effective at death by a 1133
transferor whose last domicile was in this state to the extent 1134
that the transferor immediately before death had power, acting 1135
alone or in conjunction with any other person, to prevent the 1136
transfer by revocation or withdrawal and instead to use the 1137
property for the benefit of the transferor or apply it to 1138
discharge claims against the transferor's probate estate. 1139

(B) Except as otherwise provided by a provision of the 1140
Revised Code, a transferee of a nonprobate transfer is subject to 1141
liability to the decedent's probate estate for allowed claims 1142
against the decedent's probate estate and statutory allowances to 1143
the decedent's spouse and children to the extent the decedent's 1144
probate estate is insufficient to satisfy those claims and 1145
allowances. 1146

(C) Nonprobate transferees are liable for the insufficiency 1147
described in division (B) of this section in the following order: 1148

(1) As provided in the decedent's will or any other governing 1149
instrument; 1150

(2) To the extent of the value of the nonprobate transfer 1151
received by the trustee of a trust serving as the principal 1152
nonprobate instrument in the decedent's estate plan as shown by 1153
its designation as devisee of the decedent's residuary estate or 1154
by other facts or circumstances; 1155

(3) Other nonprobate transferees. 1156

Each nonprobate transferee within a class is liable for that 1157
person's proportionate share of the insufficiency imposed on that 1158
person's class, but not to exceed the value of nonprobate 1159
transfers received by that person. 1160

(D) Unless otherwise provided by the trust instrument, 1161
interests of beneficiaries in all trusts incurring liability under 1162

this section shall abate as necessary to satisfy the liability, as 1163
if all the trust instruments were a single will, and interests 1164
were devised under it. 1165

(E) A provision made in one instrument may direct the 1166
apportionment of the liability among the nonprobate transferees 1167
taking under that or any other governing instrument. If a 1168
provision in one instrument conflicts with a provision in another, 1169
the later one prevails. 1170

(F) Upon due notice to a nonprobate transferee, the liability 1171
imposed by this section is enforceable in proceedings in this 1172
state, wherever the transferee is located. 1173

(G) A proceeding under this section may not be commenced 1174
unless the personal representative of the decedent's estate has 1175
received from the surviving spouse, a child to the extent that 1176
statutory allowances are affected, or a creditor, a written demand 1177
for the proceeding. If the personal representative declines or 1178
fails to commence a proceeding after a written demand, a person 1179
making the written demand may commence the proceeding in the name 1180
of the decedent's estate, at the expense of the person making the 1181
written demand and not of the estate. A personal representative 1182
who declines to commence a requested proceeding incurs no personal 1183
liability for declining. 1184

(H) A proceeding under this section shall be commenced within 1185
one year after the decedent's death, but a proceeding on behalf of 1186
a creditor whose claim was allowed after proceedings challenging 1187
disallowance of the claim may be commenced within sixty days after 1188
final allowance of the claim. 1189

(I) Unless a written notice asserting that a decedent's 1190
probate estate is insufficient to pay allowed claims and statutory 1191
allowances has been received from the decedent's personal 1192
representative, the following rules apply: 1193

(1) Payment or delivery of assets by a financial institution registrar or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered. 1194
1195
1196
1197
1198

(2) A trustee receiving a nonprobate transfer is released from liability under this section on any assets distributed to the trust's beneficiaries. Each beneficiary, to the extent of the distribution received, becomes liable for the amount of the trustee's liability attributable to that asset imposed by divisions (C) and (D) of this section. 1199
1200
1201
1202
1203
1204

Sec. 5905.11. Every guardian who has received or shall receive on account of ~~his~~ the guardian's ward any things of value from the veterans administration shall file with the probate court annually, on the anniversary date of the appointment, in addition to any other accounts required by the court, a full and accurate account of all things of value received by ~~him~~ the guardian, all earnings, interest, or profits derived from those things of value, all property acquired with those things of value, and all disbursements from those things of ~~vaule~~ value. The account shall show the balance of those things of value in ~~his~~ the guardian's hands at the date of the account and how it is invested. 1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215

The guardian, at the time of filing any account, shall exhibit all securities or investments held by ~~him~~ the guardian to an officer of the depository in which the securities or investments are held for safekeeping, to an authorized representative of the corporation that is surety on ~~his~~ the guardian's bond, to the judge or clerk of a court of record in this state, or, upon request of the guardian or other interested party, to any other reputable person designated by the probate court, who shall certify in writing that ~~he~~ the judge, clerk, or 1216
1217
1218
1219
1220
1221
1222
1223
1224

other person has examined the securities or investments and 1225
identified them with those described in the account and shall note 1226
any omissions or discrepancies. If the depository is the guardian, 1227
the certifying officer shall not be the officer verifying the 1228
account. The guardian may exhibit the securities or investments to 1229
the court, which shall indorse on the account and copy of the 1230
account a certificate that the securities or investments shown in 1231
the account as held by the guardian were each in fact exhibited to 1232
~~him~~ the court and that those exhibited to ~~him~~ the court were the 1233
same as those shown in the account, and shall note any omission or 1234
discrepancy. The certificate and the certificate of an official of 1235
the bank in which are deposited any funds for which the guardian 1236
is accountable showing the amount on deposit shall be prepared and 1237
signed in duplicate, and one of each shall be filed by the 1238
guardian with ~~his~~ the guardian's account. 1239

At the time of filing any account in the court, a certified 1240
copy of the account and a signed duplicate of each certificate 1241
filed with the court shall be sent by the guardian to the office 1242
of the veterans administration having jurisdiction over the area 1243
in which the court is located. A signed duplicate or certified 1244
copy of any pleading pertaining to an account, or to any matter 1245
other than an account, that is filed in the guardianship 1246
proceedings or in any proceeding for the purpose of removing the 1247
disability of minority or mental incapacity, shall be furnished by 1248
the person filing the pleading to the proper office of the 1249
veterans administration. Unless hearing is waived in writing by 1250
the attorney of the veterans administration and by all other 1251
persons entitled to notice, the court shall fix a time and place 1252
for the hearing on the account in the manner provided by section 1253
2109.32 of the Revised Code for publishing fiduciary accounts, 1254
unless a different available date is stipulated in writing. Unless 1255
waived in writing, written notice of the time and place of hearing 1256
shall be given to the veterans administration office concerned not 1257

less than fifteen days prior to the date fixed for the hearing. 1258
The notice may be given by mail in which event it shall be 1259
deposited in the mails not less than fifteen days prior to that 1260
date. The court or its clerk shall furnish to that veterans 1261
administration office a copy of each order entered in any 1262
guardianship proceeding in which the administrator is an 1263
interested party. 1264

If the guardian is accountable for property derived from 1265
sources other than the veterans administration, ~~he~~ the guardian 1266
shall be accountable under section ~~2109.30~~ 2109.302 of the Revised 1267
Code, and, as to the other property, the guardian shall be 1268
entitled to the compensation provided by section 2109.23 of the 1269
Revised Code. The account for other property shall be combined 1270
with the account filed in accordance with this section unless 1271
otherwise ordered by the court. 1272

Section 2. That existing sections 2106.01, 2106.02, 2106.13, 1273
2107.19, 2107.76, 2109.07, 2109.09, 2109.11, 2109.12, 2109.18, 1274
2109.24, 2109.30, 2109.31, 2109.32, 2113.28, 2113.53, 2113.64, 1275
2115.09, and 5905.11, all existing versions of section 2117.06 1276
that were in effect prior to, on, or after January 27, 1997, the 1277
effective date of Am. Sub. H.B. 350 of the 121st General Assembly, 1278
and section 2113.533 of the Revised Code are hereby repealed. 1279

Section 3. The General Assembly hereby encourages the Supreme 1280
Court to amend Rule 59(B) of the Ohio Rules of Superintendence to 1281
require fiduciaries appointed to administer testate estates to 1282
file a Certificate of Service of Notice of Probate of Will within 1283
two months of the fiduciary's appointment. 1284

Section 4. The version of section 2117.06 of the Revised Code 1285
that is presented in this act is the version of that section that 1286
was in effect immediately prior to the effective date of Am. Sub. 1287

H.B. 350 of the 121st General Assembly. That version of section	1288
2117.06 of the Revised Code is used in this act in order to repeal	1289
the amendments made to that section by Am. Sub. H.B. 350 of the	1290
121st General Assembly, to revive the version of that section in	1291
effect immediately prior to January 27, 1997, the effective date	1292
of that act, and to clarify the existing language of that section.	1293