

As Introduced

**129th General Assembly
Regular Session
2011-2012**

S. B. No. 124

Senator Bacon

Cosponsors: Senators Wagoner, Brown, Hughes

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A B I L L

To amend sections 2101.01, 2101.02, 2101.021,	1
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2131.11, 2133.04, 2133.05, 2133.06, 2133.08, 68
2133.09, 2335.34, 3101.02, 3101.03, 3101.10, 69
3101.13, 3101.14, 3313.85, and 5111.113; to enact 70
new sections 2113.17 and 2113.26; and to repeal 71
sections 2101.36, 2113.02, 2113.17, 2113.24, 72
2113.26, 2113.27, 2113.28, 2113.29, 2113.57, and 73
2113.63 of the Revised Code to make changes 74
relative to the Probate Code. 75

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

Section 1. That sections 2101.01, 2101.02, 2101.021, 2101.03, 76
2101.04, 2101.06, 2101.07, 2101.08, 2101.09, 2101.10, 2101.11, 77
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2131.08, 2131.11, 2133.04, 2133.05, 2133.06, 2133.08, 2133.09, 124
2335.34, 3101.02, 3101.03, 3101.10, 3101.13, 3101.14, 3313.85, and 125
5111.113 be amended and new sections 2113.17 and 2113.26 of the 126
Revised Code be enacted to read as follows: 127

Sec. 2101.01. (A) A probate division of the court of common 128
pleas shall be held at the county seat in each county in an office 129
furnished by the board of county commissioners, in which the 130
books, records, and papers pertaining to the probate division 131
shall be deposited and safely kept by the probate judge. The board 132
shall provide suitable ~~eases~~ equipment or other necessary items 133
for the safekeeping and preservation of the books, records, and 134
papers of the court and shall furnish any ~~blankbooks, blanks~~ 135
books, forms, and stationery, and any machines, equipment, and 136
materials for the keeping or examining of records, that the 137
probate judge requires in the discharge of official duties. The 138
board also shall authorize expenditures for accountants, financial 139
consultants, and other agents required for auditing or financial 140
consulting by the probate division whenever the probate judge 141
considers these services and expenditures necessary for the 142
efficient performance of the division's duties. The probate judge 143
shall employ and supervise all clerks, deputies, magistrates, and 144
other employees of the probate division. The probate judge shall 145
supervise all probate court investigators and assessors in the 146
performance of their duties as investigators and assessors and 147
shall employ, appoint, or designate all probate court 148
investigators and assessors in the manner described in divisions 149

(A)(2) and (3) of section 2101.11 of the Revised Code. 150

(B) As used in the Revised Code: 151

(1) Except as provided in division (B)(2) of this section, 152
"probate court" means the probate division of the court of common 153
pleas, and "probate judge" means the judge of the court of common 154
pleas who is judge of the probate division. 155

(2) With respect to Lorain county: 156

(a) From February 9, 2009, through September 28, 2009, 157
"probate court" means the domestic relations division of the court 158
of common pleas, and "probate judge" means each of the judges of 159
the court of common pleas who are judges of the domestic relations 160
division. 161

(b) The judge of the court of common pleas, division of 162
domestic relations, whose term begins on February 9, 2009, and 163
successors, shall be the probate judge beginning September 29, 164
2009, and shall be elected and designated as judge of the court of 165
common pleas, probate division. 166

(C) Except as otherwise provided in this division, all 167
pleadings, forms, journals, and other records filed or used in the 168
probate division shall be entitled "In the Court of Common Pleas, 169
Probate Division," but are not defective if entitled "In the 170
Probate Court." In Lorain county, from February 9, 2009, through 171
September 28, 2009, all pleadings, forms, journals, and other 172
records filed or used in probate matters shall be entitled "In the 173
Court of Common Pleas, Domestic Relations Division," but are not 174
defective if entitled "In the Probate Division" or "In the Probate 175
Court." 176

Sec. 2101.02. Every six years, in each county having a 177
separate judge of the probate division of the court of common 178
pleas, one probate judge shall be elected who is qualified as 179

required by section 2301.01 of the Revised Code. ~~He~~ The probate 180
judge shall hold office for six years, commencing on the ninth day 181
of February next following ~~his~~ the judge's election. 182

Sec. 2101.021. There shall be one additional probate judge 183
for the probate court of Cuyahoga County. 184

~~Such~~ The additional judge shall be elected at the general 185
election to be held in 1954 and every six years thereafter, for a 186
term of six years commencing on the first day of January next 187
following ~~his~~ the additional judge's election. 188

The judge elected pursuant to this section shall comply with 189
the qualifications provided for in section 2101.02 of the Revised 190
Code. 191

The probate judge who is senior in point of service shall be 192
the presiding judge and shall have the care and custody of the 193
files, papers, books and records belonging to the probate court of 194
Cuyahoga county and shall have all the other powers and duties of 195
the judge as provided in section 2101.11 of the Revised Code. 196

Sec. 2101.03. Before entering upon the discharge of ~~his~~ 197
official duties, the probate judge shall give a bond to the state 198
in a sum not less than five thousand dollars. ~~Such~~ The bond shall 199
have sufficient surety, shall be approved by the board of county 200
commissioners, or by the county auditor and county recorder in the 201
absence from the county of two of the members of the board, and 202
shall be conditioned that ~~such~~ the judge will faithfully pay over 203
all moneys received by ~~him~~ the judge in ~~his~~ the judge's official 204
capacity, enter and record the orders, judgments, and proceedings 205
of the court, and faithfully and impartially perform all the 206
duties of ~~his~~ the judge's office. ~~Such~~ The bond, with the oath of 207
office required by sections 3.22 and 3.23 of the Revised Code 208
indorsed ~~thereon~~ on it, shall be deposited with the county 209

treasurer and kept in ~~his~~ the treasurer's office. As the state of 210
business in ~~his~~ the probate judge's office renders it necessary, 211
the board may require the probate judge to give additional bond. 212

Sec. 2101.04. The ~~several~~ judge or judges of the probate 213
court shall make rules regulating the practice and conducting the 214
business of the court, ~~which they~~ and the judge or judges shall 215
submit those rules to the supreme court. In order to maintain 216
regularity and uniformity in the proceedings of all the probate 217
courts, the supreme court may alter and amend ~~such~~ the rules 218
submitted by the judge or judges of a probate court and make other 219
rules. 220

Sec. 2101.06. The probate judge, upon the motion of a party 221
or ~~his~~ the judge's own motion, may appoint a special master 222
commissioner in any matter pending before ~~such~~ the judge. ~~Such~~ The 223
commissioner shall be an attorney at law, and shall be sworn 224
faithfully to discharge ~~his~~ the commissioner's duties. When 225
requested by the probate judge, ~~such~~ the commissioner shall 226
execute a bond to the state in ~~such~~ the sum ~~as~~ that the court 227
directs, with surety approved by the court, and conditioned that 228
~~such~~ the commissioner ~~will~~ shall faithfully discharge ~~his~~ the 229
commissioner's duties and pay over all money received by ~~him~~ the 230
commissioner in that capacity. ~~Such~~ The bond shall be for the 231
benefit of anyone aggrieved and shall be filed in the probate 232
court. 233

~~Such~~ The commissioner shall take the testimony and report 234
~~such~~ the testimony to the court with ~~his~~ the commissioner's 235
conclusions on the law and the facts involved ~~therein, which.~~ The 236
report may be excepted to by the parties, and confirmed, modified, 237
or set aside by the court. 238

Sec. 2101.07. A special master commissioner of the probate 239

court may administer all oaths required in the discharge of ~~his~~ the commissioner's duties, may summon and enforce the attendance of witnesses, may compel the production of books and papers, and may grant adjournments the same as the court, and, when the court directs, ~~such~~ the commissioner shall require the witnesses severally to subscribe ~~their~~ the witnesses' testimony.

All process and orders issued by ~~such~~ the commissioner, shall be directed to the sheriff and, shall be served, and return thereof of the process and orders shall be made, as if issued by the probate judge.

The court shall allow ~~such~~ the commissioner ~~such~~ those fees as that are allowed to other officers for similar services, ~~which~~ and the court shall tax those fees ~~shall be taxed~~ with the costs.

Sec. 2101.08. The probate judge may appoint ~~a stenographic reporter~~ court reporters and fix ~~his~~ their compensation in the manner provided for the court of common pleas in sections 2301.18 to 2301.26, ~~inclusive~~, of the Revised Code.

Sec. 2101.09. When required by the probate judge, sheriffs, coroners, and constables shall attend ~~his~~ the judge's court and shall serve and return process directed and delivered to them by ~~such~~ the judge. No ~~such~~ officer of that type shall neglect or refuse to serve and return ~~such~~ any process as required by this section. If ~~such~~ an officer does neglect or refuse to serve and return ~~such~~ process as required by this section, the judge shall issue a summons specifying the cause for amercement, directed to the officer, ~~therein~~ named in the summons, commanding ~~him~~ the named officer to summon the officer guilty of ~~such~~ the misconduct to appear within two days after the service of summons and show cause why ~~he~~ the latter officer should not be amerced. In addition to a fine, as provided by section 2101.99 of the Revised Code,

that is to be paid into the county treasury, ~~such~~ the officer and 270
~~his~~ the officer's sureties shall be liable upon ~~his~~ the officer's 271
official bond for damages sustained by any person by reason of 272
~~such~~ the officer's misconduct. 273

Sec. 2101.10. No sheriff, coroner, or constable shall refuse 274
to pay moneys, collected by ~~him~~, that officer to the probate judge 275
or other person, when so directed by the judge. For refusal to pay 276
over moneys collected, ~~such~~ the officer shall be summoned as 277
provided in section 2101.09 of the Revised Code and amerced for 278
the use of the parties interested, in the amount required to be 279
collected by ~~such~~ the process, with ten per cent ~~thereon~~ on the 280
amount to be collected. The judge may enforce the collection of 281
~~such~~ the amercement by execution or other process, by imprisonment 282
as for contempt of court, or both. The delinquent officer and ~~his~~ 283
the officer's sureties shall also be liable on ~~his~~ the officer's 284
official bond for the amount of the amercement at the suit of the 285
person interested. 286

Sec. 2101.11. (A)(1) The probate judge shall have the care 287
and custody of the files, papers, books, and records belonging to 288
the probate court. The probate judge is authorized to perform the 289
duties of clerk of the judge's court. The probate judge may 290
appoint deputy clerks, ~~stenographers~~ court reporters, a bailiff, 291
and any other necessary employees, each of whom shall take an oath 292
of office before entering upon the duties of the employee's 293
appointment and, when so qualified, may perform the duties 294
appertaining to the office of clerk of the court. 295

(2)(a) The probate judge shall provide for one or more 296
probate court investigators to perform the duties that are 297
established for a probate court investigator by the Revised Code 298
or the probate judge. The probate judge may provide for an 299
investigator in any of the following manners, as the court 300

determines is appropriate: 301

(i) By appointing a person as a full-time or part-time 302
employee of the probate court to serve as investigator, or by 303
designating a current full-time or part-time employee of the 304
probate court to serve as investigator; 305

(ii) By contracting with a person to serve and be compensated 306
as investigator only when needed by the probate court, as 307
determined by the court, and by designating that person as a 308
probate court investigator during the times when the person is 309
performing the duties of an investigator for the court; 310

(iii) By entering into an agreement with another department 311
or agency of the county, including, but not limited to, the 312
sheriff's department or the county department of job and family 313
services, pursuant to which an employee of the other department or 314
agency will serve and perform the duties of investigator for the 315
court, upon request of the probate judge, and designating that 316
employee as a probate court investigator during the times when the 317
person is performing the duties of an investigator for the court. 318

(b) Each person appointed or otherwise designated as a 319
probate court investigator shall take an oath of office before 320
entering upon the duties of the person's appointment. When so 321
qualified, an investigator may perform the duties that are 322
established for a probate court investigator by the Revised Code 323
or the probate judge. 324

(c) Except as otherwise provided in this division, a probate 325
court investigator shall hold at least a bachelor's degree in 326
social work, psychology, education, special education, or a 327
related human services field. A probate judge may waive the 328
education requirement of this division for a person the judge 329
appoints or otherwise designates as a probate court investigator 330
if the judge determines that the person has experience in family 331

services work that is equivalent to the required education. 332

(d) Within one year after appointment or designation, a 333
probate court investigator shall attend an orientation course of 334
at least six hours, and each calendar year after the calendar year 335
of appointment or designation, a probate court investigator shall 336
satisfactorily complete at least six hours of continuing 337
education. 338

(e) For purposes of divisions (A)(4), (B), and (C) of this 339
section, a person designated as a probate court investigator under 340
division (A)(2)(a)(ii) or (iii) of this section shall be 341
considered an appointee of the probate court at any time that the 342
person is performing the duties established under the Revised Code 343
or by the probate judge for a probate court investigator. 344

(3)(a) The probate judge may provide for one or more persons 345
to perform the duties of an assessor under sections 3107.031, 346
3107.032, 3107.082, 3107.09, 3107.101, and 3107.12 of the Revised 347
Code or may enter into agreements with public children services 348
agencies, private child placing agencies, or private noncustodial 349
agencies under which the agency provides for one or more persons 350
to perform the duties of an assessor. A probate judge who provides 351
for an assessor shall do so in either of the following manners, as 352
the judge considers appropriate: 353

(i) By appointing a person as a full-time or part-time 354
employee of the probate court to serve as assessor, or by 355
designating a current full-time or part-time employee of the 356
probate court to serve as assessor; 357

(ii) By contracting with a person to serve and be compensated 358
as assessor only when needed by the probate court, as determined 359
by the court, and by designating that person as an assessor during 360
the times when the person is performing the duties of an assessor 361
for the court. 362

(b) Each person appointed or designated as a probate court assessor shall take an oath of office before entering on the duties of the person's appointment.

(c) A probate court assessor must meet the qualifications for an assessor established by section 3107.014 of the Revised Code.

(d) A probate court assessor shall perform additional duties, including duties of an investigator under division (A)(2) of this section, when the probate judge assigns additional duties to the assessor.

(e) For purposes of divisions (A)(4), (B), and (C) of this section, a person designated as a probate court assessor shall be considered an appointee of the probate court at any time that the person is performing assessor duties.

(4) Each appointee of the probate judge may administer oaths in all cases when necessary, in the discharge of official duties.

(B)(1)(a) Subject to the appropriation made by the board of county commissioners pursuant to this division, each appointee of a probate judge under division (A) of this section shall receive such compensation and expenses as the judge determines and shall serve during the pleasure of the judge. The compensation of each appointee shall be paid in semimonthly installments by the county treasurer from the county treasury, upon the warrants of the county auditor, certified to by the judge.

(b) Except as otherwise provided in the Revised Code, the total compensation paid to all appointees of the probate judge in any calendar year shall not exceed the total fees earned by the probate court during the preceding calendar year, unless the board of county commissioners approves otherwise.

(2) The probate judge annually shall submit a written request for an appropriation to the board of county commissioners that shall set forth estimated administrative expenses of the court,

including the salaries of appointees as determined by the judge 394
and any other costs, fees, and expenses, including, but not 395
limited to, those enumerated in section 5123.96 of the Revised 396
Code, that the judge considers reasonably necessary for the 397
operation of the court. The board shall conduct a public hearing 398
with respect to the written request submitted by the judge and 399
shall appropriate such sum of money each year as it determines, 400
after conducting the public hearing and considering the written 401
request of the judge, is reasonably necessary to meet all the 402
administrative expenses of the court, including the salaries of 403
appointees as determined by the judge and any other costs, fees, 404
and expenses, including, but not limited to, the costs, fees, and 405
expenses enumerated in section 5123.96 of the Revised Code. 406

If the judge considers the appropriation made by the board 407
pursuant to this division insufficient to meet all the 408
administrative expenses of the court, the judge shall commence an 409
action under Chapter 2731. of the Revised Code in the court of 410
appeals for the judicial district for a determination of the duty 411
of the board of county commissioners to appropriate the amount of 412
money in dispute. The court of appeals shall give priority to the 413
action filed by the probate judge over all cases pending on its 414
docket. The burden shall be on the probate judge to prove that the 415
appropriation requested is reasonably necessary to meet all 416
administrative expenses of the court. If, prior to the filing of 417
an action under Chapter 2731. of the Revised Code or during the 418
pendency of the action, the judge exercises the judge's contempt 419
power in order to obtain the sum of money in dispute, the judge 420
shall not order the imprisonment of any member of the board of 421
county commissioners notwithstanding sections 2705.02 to 2705.06 422
of the Revised Code. 423

(C) The probate judge may require any of the judge's 424
appointees to give bond in the sum of not less than one thousand 425

dollars, conditioned for the honest and faithful performance of 426
the appointee's duties. The sureties on the bonds shall be 427
approved in the manner provided in section 2101.03 of the Revised 428
Code. 429

The judge is personally liable for the default, malfeasance, 430
or nonfeasance of any such appointee, but, if a bond is required 431
of the appointee, the liability of the judge is limited to the 432
amount by which the loss resulting from the default, malfeasance, 433
or nonfeasance exceeds the amount of the bond. 434

All bonds required to be given in the probate court, on being 435
accepted and approved by the probate judge, shall be filed in the 436
judge's office. 437

Sec. 2101.13. When a probate judge, whether elected or 438
appointed, enters upon the discharge of ~~his~~ the judge's official 439
duties, ~~he~~ the judge shall make, in the books and other 440
record-keeping materials of ~~his~~ the judge's office, the proper 441
records, entries, and indexes omitted by ~~his~~ the judge's 442
predecessors in office. When made, the entries shall have the same 443
validity and effect as though they had been made at the proper 444
time and by the officer whose duty it was to make them, and the 445
judge shall sign all entries and records made by ~~him~~ the judge as 446
though the entries, proceedings, and records had been commenced, 447
prosecuted, determined, and made by or before ~~him~~ the judge. 448

Sec. 2101.15. In each case, examination, or proceeding, the 449
probate judge shall file an itemized account of fees received or 450
charged by ~~him~~ the judge. On the first day of January, in each 451
year, ~~he~~ the judge shall file with the county auditor an account, 452
certified by ~~such~~ the judge, of all fees received by ~~him~~ the judge 453
during the preceding year. No judge shall fail to perform the 454
duties imposed in this section. At the instance of any person, ~~an~~ 455

~~action shall be instituted and prosecuted by the prosecuting~~ 456
~~attorney shall institute and prosecute an action against any such~~ 457
~~the~~ defaulting judge. 458

Sec. 2101.16. (A) Except as provided in section 2101.164 of 459
the Revised Code, the fees enumerated in this division shall be 460
charged and collected, if possible, by the probate judge and shall 461
be in full for all services rendered in the respective 462
proceedings: 463

- (1) Account, in addition to advertising charges 464
 - \$ 12.00 465
 - Waivers and proof of notice of hearing on account, 466
 - per page, minimum one dollar
 - \$ 1.00 467
- (2) Account of distribution, in addition to advertising 468
- charges
- \$ 7.00 469
- (3) Adoption of child, petition for 470
- \$ 50.00 471
- (4) Alter or cancel contract for sale or purchase of real 472
- estate property, ~~petition~~ complaint to
- \$ 20.00 473
- (5) Application and order not otherwise provided for in 474
- this section or by rule adopted pursuant to division
- (E) of this section
- \$ 5.00 475
- (6) Appropriation suit, per day, hearing in 476
- \$ 20.00 477
- (7) Birth, application for registration of 478
- \$ 7.00 479
- (8) Birth record, application to correct 480
- \$ 5.00 481
- (9) Bond, application for new or additional 482

.....	\$ 5.00	483
(10) Bond, application for release of surety or reduction of		484
.....	\$ 5.00	485
(11) Bond, receipt for securities deposited in lieu of		486
.....	\$ 5.00	487
(12) Certified copy of journal entry, record, or proceeding, per page, minimum fee one dollar		488
.....	\$ 1.00	489
(13) Citation and issuing citation, application for		490
.....	\$ 5.00	491
(14) Change of name, petition for		492
.....	\$ 20.00	493
(15) Claim, application of administrator or executor for allowance of administrator's or executor's own		494
.....	\$ 10.00	495
(16) Claim, application to compromise or settle		496
.....	\$ 10.00	497
(17) Claim, authority to present		498
.....	\$ 10.00	499
(18) Commissioner, appointment of		500
.....	\$ 5.00	501
(19) Compensation for extraordinary services and attorney's fees for fiduciary, application for		502
.....	\$ 5.00	503
(20) Competency, application to procure adjudication of		504
.....	\$ 20.00	505
(21) Complete contract, application to		506
.....	\$ 10.00	507
(22) Concealment of assets, citation for		508
.....	\$ 10.00	509
(23) Construction of will, petition <u>complaint</u> for		510
.....	\$ 20.00	511

(24) Continue decedent's business, application to	512
..... \$ 10.00	513
Monthly reports of operation	514
..... \$ 5.00	515
(25) Declaratory judgment, petition <u>complaint</u> for	516
..... \$ 20.00	517
(26) Deposit of will	518
..... \$ 5.00	519
(27) Designation of heir	520
..... \$ 20.00	521
(28) Distribution in kind, application, assent, and order for	522
..... \$ 5.00	523
(29) Distribution under section 2109.36 of the Revised Code, application for an order of	524
..... \$ 7.00	525
(30) Docketing and indexing proceedings, including the filing and noting of all necessary documents, maximum fee, fifteen dollars	526
..... \$ 15.00	527
(31) Exceptions to any proceeding named in this section, contest of appointment or	528
..... \$ 10.00	529
(32) Election of surviving partner to purchase assets of partnership, proceedings relating to	530
..... \$ 10.00	531
(33) Election of surviving spouse under will	532
..... \$ 5.00	533
(34) Fiduciary, including an assignee or trustee of an insolvent debtor or any guardian or conservator accountable to the probate court, appointment of	534
..... \$ 35.00	535
(35) Foreign will, application to record	536

.....	\$ 10.00	537
Record of foreign will, additional, per page		538
.....	\$ 1.00	539
(36) Forms when supplied by the probate court, not to exceed		540
.....	\$ 10.00	541
(37) Heirship, petition <u>complaint</u> to determine		542
.....	\$ 20.00	543
(38) Injunction proceedings		544
.....	\$ 20.00	545
(39) Improve real estate <u>property</u> , petition to		546
.....	\$ 20.00	547
(40) Inventory with appraisalment		548
.....	\$ 10.00	549
(41) Inventory without appraisalment		550
.....	\$ 7.00	551
(42) Investment or expenditure of funds, application for		552
.....	\$ 10.00	553
(43) Invest in real estate <u>property</u> , application to		554
.....	\$ 10.00	555
(44) Lease for oil, gas, coal, or other mineral, petition to		556
.....	\$ 20.00	557
(45) Lease or lease and improve real estate <u>property</u> , petition to		558
.....	\$ 20.00	559
(46) Marriage license		560
.....	\$ 10.00	561
Certified abstract of each marriage		562
.....	\$ 2.00	563
(47) Minor or incompetent person, etc., disposal of estate under twenty-five thousand dollars of		564
.....	\$ 10.00	565

(48) Mortgage or mortgage and repair or improve real estate <u>property</u> , petition <u>complaint</u> to	566
.....	\$ 20.00 567
(49) Newly discovered assets, report of	568
.....	\$ 7.00 569
(50) Nonresident executor or administrator to bar creditors' claims, proceedings by	570
.....	\$ 20.00 571
(51) Power of attorney or revocation of power, bonding company	572
.....	\$ 10.00 573
(52) Presumption of death, petition to establish	574
.....	\$ 20.00 575
(53) Probating will	576
.....	\$ 15.00 577
Proof of notice to beneficiaries	578
.....	\$ 5.00 579
(54) Purchase personal property, application of surviving spouse to	580
.....	\$ 10.00 581
(55) Purchase real estate <u>property</u> at appraised value, petition of surviving spouse to	582
.....	\$ 20.00 583
(56) Receipts in addition to advertising charges, application and order to record	584
.....	\$ 5.00 585
Record of those receipts, additional, per page	586
.....	\$ 1.00 587
(57) Record in excess of fifteen hundred words in any proceeding in the probate court, per page	588
.....	\$ 1.00 589
(58) Release of estate by mortgagee or other lienholder	590
.....	\$ 5.00 591

(59) Relieving an estate from administration under section 2113.03 of the Revised Code or granting an order for a summary release from administration under section 2113.031 of the Revised Code	592
..... \$ 60.00	593
(60) Removal of fiduciary, application for	594
..... \$ 10.00	595
(61) Requalification of executor or administrator	596
..... \$ 10.00	597
(62) Resignation of fiduciary	598
..... \$ 5.00	599
(63) Sale bill, public sale of personal property	600
..... \$ 10.00	601
(64) Sale of personal property and report, application for	602
..... \$ 10.00	603
(65) Sale of real estate <u>property</u> , petition for	604
..... \$ 25.00	605
(66) Terminate guardianship, petition to	606
..... \$ 10.00	607
(67) Transfer of real estate <u>property</u> , application, entry, and certificate for	608
..... \$ 7.00	609
(68) Unclaimed money, application to invest	610
..... \$ 7.00	611
(69) Vacate approval of account or order of distribution, motion to	612
..... \$ 10.00	613
(70) Writ of execution	614
..... \$ 5.00	615
(71) Writ of possession	616
..... \$ 5.00	617
(72) Wrongful death, application and settlement of claim for	618

.....	\$ 20.00	619
(73) Year's allowance, petition to review		620
.....	\$ 7.00	621
(74) Guardian's report, filing and review of		622
.....	\$ 5.00	623
(B)(1) In relation to an application for the appointment of a guardian or the review of a report of a guardian under section 2111.49 of the Revised Code, the probate court, pursuant to court order or in accordance with a court rule, may direct that the applicant or the estate pay any or all of the expenses of an investigation conducted pursuant to section 2111.041 or division (A)(2) of section 2111.49 of the Revised Code. If the investigation is conducted by a public employee or investigator who is paid by the county, the fees for the investigation shall be paid into the county treasury. If the court finds that an alleged incompetent or a ward is indigent, the court may waive the costs, fees, and expenses of an investigation.		624 625 626 627 628 629 630 631 632 633 634 635
(2) In relation to the appointment or functioning of a guardian for a minor or the guardianship of a minor, the probate court may direct that the applicant or the estate pay any or all of the expenses of an investigation conducted pursuant to section 2111.042 of the Revised Code. If the investigation is conducted by a public employee or investigator who is paid by the county, the fees for the investigation shall be paid into the county treasury. If the court finds that the guardian or applicant is indigent, the court may waive the costs, fees, and expenses of an investigation.		636 637 638 639 640 641 642 643 644
(C) Thirty dollars of the thirty-five-dollar fee collected pursuant to division (A)(34) of this section and twenty dollars of the sixty-dollar fee collected pursuant to division (A)(59) of this section shall be deposited by the county treasurer in the indigent guardianship fund created pursuant to section 2111.51 of the Revised Code.		645 646 647 648 649 650

(D) The fees of witnesses, jurors, sheriffs, coroners, and constables for services rendered in the probate court or by order of the probate judge shall be the same as provided for ~~like~~ similar services in the court of common pleas.

(E) The probate court, by rule, may require an advance deposit for costs, not to exceed one hundred twenty-five dollars, at the time application is made for an appointment as executor or administrator or at the time a will is presented for probate.

(F) The probate court, by rule, shall establish a reasonable fee, not to exceed fifty dollars, for the filing of a petition for the release of information regarding an adopted person's name by birth and the identity of the adopted person's biological parents and biological siblings pursuant to section 3107.41 of the Revised Code, all proceedings relative to the petition, the entry of an order relative to the petition, and all services required to be performed in connection with the petition. The probate court may use a reasonable portion of a fee charged under authority of this division to reimburse any agency, as defined in section 3107.39 of the Revised Code, for any services it renders in performing a task described in section 3107.41 of the Revised Code relative to or in connection with the petition for which the fee was charged.

(G)(1) Thirty dollars of the fifty-dollar fee collected pursuant to division (A)(3) of this section shall be deposited into the "putative father registry fund," which is hereby created in the state treasury. The department of job and family services shall use the money in the fund to fund the department's costs of performing its duties related to the putative father registry established under section 3107.062 of the Revised Code.

(2) If the department determines that money in the putative father registry fund is more than is needed for its duties related to the putative father registry, the department may use the surplus moneys in the fund as permitted in division (C) of section

2151.3529, division (B) of section 2151.3530, or section 5103.155 683
of the Revised Code. 684

Sec. 2101.162. (A)(1) The probate judge may determine that, 685
for the efficient operation of the probate court, additional funds 686
are required to computerize the court, make available computerized 687
legal research services, or to do both. Upon making a 688
determination that additional funds are required for either or 689
both of those purposes, the probate judge shall charge a fee not 690
to exceed three dollars or authorize and direct a deputy clerk of 691
~~his~~ the probate court to charge a fee not to exceed three dollars, 692
in addition to the fees specified in divisions (A)(1), (3), (4), 693
(6), (14) to (17), (20) to (25), (27), (30) to (32), (34), (35), 694
(37) to (48), (50) to (55), (59) to (61), (63) to (66), (69), and 695
(72) of section 2101.16 of the Revised Code, the fee adopted 696
pursuant to division (F) of that section, and the fee charged in 697
connection with the docketing and indexing of an appeal. 698

(2) All moneys collected under division (A)(1) of this 699
section shall be paid to the county treasurer. The treasurer shall 700
place the moneys from the fees in a separate fund to be disbursed, 701
upon an order of the probate judge, in an amount no greater than 702
the actual cost to the court of procuring and maintaining 703
computerization of the court, computerized legal research 704
services, or both. 705

(3) If the court determines that the funds in the fund 706
described in division (A)(2) of this section are more than 707
sufficient to satisfy the purpose for which the additional fee 708
described in division (A)(1) of this section was imposed, the 709
court may declare a surplus in the fund and expend those surplus 710
funds for other appropriate technological expenses of the court. 711

(B)(1) The probate judge may determine that, for the 712
efficient operation of ~~his~~ the probate court, additional funds are 713

required to computerize the office of the clerk of the court and, 714
upon that determination, may charge a fee, not to exceed ten 715
dollars, or authorize and direct a deputy clerk of the probate 716
court to charge a fee, not to exceed ten dollars, in addition to 717
the fees specified in divisions (A)(1), (3), (4), (6), (14) to 718
(17), (20) to (25), (27), (30) to (32), (34), (35), (37) to (48), 719
(50) to (55), (59) to (61), (63) to (66), (69), and (72) of 720
section 2101.16 of the Revised Code, the fee adopted pursuant to 721
division (F) of that section, and the fee charged in connection 722
with the docketing and indexing of an appeal. Subject to division 723
(B)(2) of this section, all moneys collected under this division 724
shall be paid to the county treasurer to be disbursed, upon an 725
order of the probate judge and subject to appropriation by the 726
board of county commissioners, in an amount no greater than the 727
actual cost to the probate court of procuring and maintaining 728
computer systems for the office of the clerk of the court. 729

(2) If the probate judge makes the determination described in 730
division (B)(1) of this section, the board of county commissioners 731
may issue one or more general obligation bonds for the purpose of 732
procuring and maintaining the computer systems for the office of 733
the clerk of the probate court. In addition to the purposes stated 734
in division (B)(1) of this section for which the moneys collected 735
under that division may be expended, the moneys additionally may 736
be expended to pay debt charges on and financing costs related to 737
any general obligation bonds issued pursuant to this division as 738
they become due. General obligation bonds issued pursuant to this 739
division are Chapter 133. securities. 740

Sec. 2101.19. (A) No probate judge or ~~his~~ probate judge's 741
deputy clerk shall sell or offer for sale for more than one dollar 742
any merchandise to be used in connection with any license, order, 743
or document issued by the probate court, or make any charge in 744
connection with the issuance of any license, order, or document 745

except that specifically provided by law. 746

(B) All moneys obtained from the sale of merchandise to be 747
used in connection with any license, order, or document issued by 748
a probate court shall be paid by the probate judge or the deputy 749
clerk of the court into the county treasury. The moneys shall be 750
credited to a fund to be known as the probate court conduct of 751
business fund. The moneys so credited shall be used solely for the 752
conduct of the business of the probate court. 753

(C) Upon receipt of an order of the probate judge for the 754
payment of moneys from the fund for the conduct of the business of 755
the court, the county auditor shall draw a warrant on the county 756
treasurer for the amount of money specified in the order, but not 757
exceeding the balance of the moneys in the fund, which warrant 758
shall be made payable to the probate judge or another person 759
designated in the order. 760

Sec. 2101.20. When the aggregate amount of fees and 761
allowances collected by the probate judge in any calendar year 762
exceeds by more than ten per cent the amount necessary to pay the 763
salaries of ~~said the~~ judge and the employees of the probate court, 764
including court constables, for the same calendar year, ~~such the~~ 765
judge may, by an order entered on ~~his the judge's~~ journal, provide 766
for a discount of all the fees and allowances ~~he the judge~~ is 767
required to charge and collect for the use of the county by fixing 768
a per cent of discount ~~which that~~ shall be applied to all the 769
earnings of ~~said the~~ office for the ensuing year and shall 770
constitute the legal fees of ~~said the~~ office for ~~said that~~ year. 771

Sec. 2101.22. The probate judge shall issue any process, 772
notices, commissions, rules, and orders that are necessary to 773
carry into effect the powers granted to ~~him the judge~~. 774

Sec. 2101.23. The probate judge may keep order in ~~his the~~ 775

judge's court and has authority throughout the state to compel 776
performance of any duty incumbent upon any fiduciary appointed by 777
or accounting to ~~him~~ the judge. The probate judge may punish any 778
contempt of ~~his~~ the judge's authority as ~~such~~ that contempt might 779
be punished in the court of common pleas. 780

If a person neglects or refuses to perform an order or 781
judgment of a probate court, other than for the payment of money, 782
~~he shall be~~ the person is guilty of a contempt of court, and the 783
judge shall issue a summons directing ~~such~~ the person to appear 784
before the court, within two days from the service ~~thereof~~, of the 785
summons and show cause why ~~he~~ the person should not be punished 786
for contempt. If it appears to the judge that ~~such~~ the person is 787
~~secreting himself~~ attempting to avoid the process of the court, or 788
is about to leave the county for that purpose, the judge may issue 789
an attachment instead of the summons, commanding the officer, to 790
whom it is directed, to bring ~~such~~ the person before ~~such~~ the 791
judge to answer for contempt. If no sufficient excuse is shown, 792
~~such~~ the person shall be punished for contempt. 793

Sec. 2101.24. (A)(1) Except as otherwise provided by law, the 794
probate court has exclusive jurisdiction: 795

(a) To take the proof of wills and to admit to record 796
authenticated copies of wills executed, proved, and allowed in the 797
courts of any other state, territory, or country. If the probate 798
judge is unavoidably absent, any judge of the court of common 799
pleas may take proof of wills and approve bonds to be given, but 800
the record of these acts shall be preserved in the usual records 801
of the probate court. 802

(b) To grant and revoke letters testamentary and of 803
administration; 804

(c) To direct and control the conduct and settle the accounts 805
of executors and administrators and order the distribution of 806

estates;	807
(d) To appoint the attorney general to serve as the administrator of an estate pursuant to section 2113.06 of the Revised Code;	808 809 810
(e) To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;	811 812 813
(f) To grant marriage licenses;	814
(g) To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;	815 816 817 818 819
(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;	820 821 822
(i) To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;	823 824 825 826
(j) To authorize the completion of real estate <u>property</u> contracts on petition of executors and administrators;	827 828
(k) To construe wills;	829
(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;	830 831 832
(m) To direct and control the conduct of fiduciaries and settle their accounts;	833 834
(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;	835 836

(o) To terminate a testamentary trust in any case in which a court of equity may do so;	837 838
(p) To hear and determine actions to contest the validity of wills;	839 840
(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;	841 842 843
(r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;	844 845 846 847 848
(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	849 850
(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	851 852
(u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;	853 854 855
(v) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;	856 857 858
(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;	859 860 861
(x) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised	862 863 864 865 866

Code, in accordance with that division; 867

(y) To hear and determine applications that pertain to the 868
withholding or withdrawal of nutrition and hydration from certain 869
patients allegedly in a permanently unconscious state pursuant to 870
section 2133.09 of the Revised Code, in accordance with that 871
section; 872

(z) To hear and determine applications of attending 873
physicians in accordance with division (B) of section 2133.15 of 874
the Revised Code; 875

(aa) To hear and determine actions relative to the use or 876
continuation of comfort care in connection with certain principals 877
under durable powers of attorney for health care, declarants under 878
declarations, or patients in accordance with division (E) of 879
either section 1337.16 or 2133.12 of the Revised Code; 880

(bb) To hear and determine applications for an order 881
relieving an estate from administration under section 2113.03 of 882
the Revised Code; 883

(cc) To hear and determine applications for an order granting 884
a summary release from administration under section 2113.031 of 885
the Revised Code; 886

(dd) To hear and determine actions relating to the exercise 887
of the right of disposition, in accordance with section 2108.90 of 888
the Revised Code; 889

(ee) To hear and determine actions relating to the 890
disinterment and reinterment of human remains under section 517.23 891
of the Revised Code. 892

(2) In addition to the exclusive jurisdiction conferred upon 893
the probate court by division (A)(1) of this section, the probate 894
court shall have exclusive jurisdiction over a particular subject 895
matter if both of the following apply: 896

(a) Another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court.	897 898
(b) No section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.	899 900 901
(B)(1) The probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine actions as follows:	902 903 904 905
(a) If jurisdiction relative to a particular subject matter is stated to be concurrent in a section of the Revised Code or has been construed by judicial decision to be concurrent, any action that involves that subject matter;	906 907 908 909
(b) Any action that involves an inter vivos trust; a trust created pursuant to section 5815.28 of the Revised Code; a charitable trust or foundation; subject to divisions (A)(1)(u) and (z) of this section, a power of attorney, including, but not limited to, a durable power of attorney; the medical treatment of a competent adult; or a writ of habeas corpus.	910 911 912 913 914 915
(2) Any action that involves a concurrent jurisdiction subject matter and that is before the probate court may be transferred by the probate court, on its order, to the general division of the court of common pleas.	916 917 918 919
(C) The probate court has plenary power at law and in equity to dispose fully of any matter that is properly before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code.	920 921 922 923
(D) The jurisdiction acquired by a probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law.	924 925 926

Sec. 2101.27. (A) A probate judge has jurisdiction and 927
authority to solemnize marriages within the county and may charge 928
a fee for providing the service in accordance with division (B) of 929
this section. The fee charged is subject to disposition in 930
accordance with division (C) of this section. 931

(B)(1) If a probate judge intends to charge a fee for 932
solemnizing any marriage in accordance with division (A) of this 933
section, prior to doing so, the probate judge, by rule, shall 934
establish a reasonable fee for providing the service. 935

(2) Division (B)(1) of this section does not do either of the 936
following: 937

(a) Require a probate judge who, by rule, has established a 938
reasonable fee for solemnizing marriages to charge that fee for 939
every marriage that ~~he~~ the probate judge solemnizes; 940

(b) Affect specific fees to which the probate judge is 941
entitled under section 2101.16 or any other section of the Revised 942
Code for issuing marriage licenses, recording returns of 943
solemnized marriages, providing certified abstracts of marriages, 944
or performing any other task related to a marriage other than its 945
solemnization. 946

(C) If, in accordance with division (B) of this section, a 947
reasonable fee is charged by a probate judge for solemnizing any 948
marriage, the probate judge shall not retain any portion of that 949
fee and instead shall pay the entire fee into the county treasury. 950
The county treasurer shall credit the fee to the general fund of 951
the county. 952

Sec. 2101.30. Whenever a jury is required in the probate 953
court, the probate judge shall ~~forthwith~~ notify the commissioners 954
of jurors, who shall cause to be drawn from the jury wheel, or to 955
be drawn by use of the automation data processing equipment and 956

procedures described in section 2313.07 of the Revised Code, the 957
names of sixteen persons as ~~jurymen~~ jurypersons. Additional names 958
may be drawn if required. The clerk of the court of common pleas 959
or one of ~~his~~ the clerk's deputies shall make a list of ~~such~~ those 960
names in the order drawn and certify ~~it~~ the list to the probate 961
court, and ~~such~~ the court shall issue a venire commanding the 962
persons whose names were drawn to appear on the day and at the 963
hour set for trial. The probate court shall deliver the venire to 964
the sheriff, who shall serve it within five days ~~thereafter~~ of 965
delivery and make prompt return of ~~such~~ the service. 966

Sec. 2101.34. If the judges of the court of common pleas are 967
absent from the county or are under a disability, the probate 968
judge of the county may enter judgments by confession in cases 969
pending in the court of common pleas of ~~his~~ the judge's county. 970

Sec. 2101.37. When the probate judge of any county is absent, 971
or is unable to attend court, or the volume of work in ~~his~~ the 972
judge's office necessitates it, ~~he~~ the judge may call upon a judge 973
of the court of common pleas having jurisdiction in ~~said~~ that 974
county to act in ~~his~~ the probate judge's place, or in conjunction 975
with ~~him~~ the probate judge, or ~~he~~ the probate judge may call upon 976
the chief justice of the supreme court, who shall designate a 977
judge of the court of common pleas or a probate judge to act in 978
the place of ~~such~~ the absent or incapacitated probate judge, or in 979
conjunction with ~~him~~ the absent or incapacitated probate judge. If 980
the probate judge of any county dies or resigns during ~~his~~ the 981
judge's term of office, a judge of the court of common pleas of 982
~~said~~ that county shall act in the place of ~~said~~ the probate judge 983
until ~~his~~ a successor is appointed and qualified. When a judge of 984
the court of common pleas or a probate judge so designated resides 985
outside the county in which ~~he~~ the designated judge is called upon 986
to act, ~~he~~ the designated judge shall receive ~~such~~ the 987

compensation ~~as~~ that is provided for judges of the court of common 988
pleas designated by the chief justice to hold court outside their 989
respective counties. The record of ~~such~~ the cases shall be made 990
and preserved in the proper records of the probate court by the 991
deputy clerk ~~thereof~~ of the probate court. 992

Sec. 2101.38. Letters testamentary, of administration, or of 993
guardianship shall not be issued to a person after ~~his~~ the 994
person's election to the office of probate judge and before the 995
expiration of ~~his~~ the person's term. If a probate judge is 996
interested, ~~as~~ heir, legatee, devisee, or other manner in an 997
estate ~~which~~ that would otherwise be settled in the probate court 998
of the county where ~~he~~ the judge resides, ~~such~~ the estate, and all 999
of the accounts of guardians in which the judge is interested, 1000
shall be settled by the court of common pleas of the county. In 1001
~~such~~ those matters and cases in which the judge is interested, the 1002
judge shall certify the original papers ~~shall be by him forthwith~~ 1003
~~eertified~~ to the court of common pleas. In other matters and 1004
proceedings in a probate court in which the judge ~~thereof~~ of the 1005
probate court is interested or in which ~~he~~ the judge is required 1006
to be a witness to a will, ~~such~~ the judge shall, upon the motion 1007
of a party interested in the proceedings, ~~or~~ upon ~~his~~ the judge's 1008
own motion, certify the matters and proceedings to the court of 1009
common pleas and ~~forthwith~~ file with the clerk of the court of 1010
common pleas all original papers connected ~~therewith~~ with those 1011
matters and proceedings. 1012

When a matter or proceeding is so certified, a judge of the 1013
court of common pleas, ~~at chambers, by a judge thereof, or in open~~ 1014
~~court~~ shall hear and determine ~~it~~ the matter or proceeding in 1015
chambers or in open court as though ~~such~~ the court had original 1016
jurisdiction of the subject matter. Upon final decision of the 1017
questions involved in ~~such~~ the matter or proceedings, the final 1018
settlement of the estate in which the judge is interested as 1019

executor, administrator, or guardian, or when ~~his~~ the judge's 1020
interest ~~therein~~ in the estate ceases, the clerk shall deliver the 1021
original papers to the probate court ~~from which they came~~ in which 1022
the original papers were filed and make and file ~~therein~~ in that 1023
court an authenticated transcript of the orders, judgments, and 1024
proceedings of the court of common pleas. ~~Thereupon the~~ The 1025
probate judge shall record ~~such~~ the orders, judgments, and 1026
proceedings in the proper records. 1027

Sec. 2101.41. No probate judge shall practice law, be 1028
associated with another as partner in the practice of law in a 1029
court or tribunal of this state, prepare a complaint or answer, 1030
make out an account required for the settlement of an estate 1031
committed to the care or management of another, or appear as 1032
attorney before a court or judicial tribunal. Whoever violates 1033
this section shall forfeit ~~his~~ the office of probate judge. 1034

The deputy clerk of a probate court may engage in the 1035
practice of law if ~~his~~ the deputy's practice is not related in any 1036
way to probate law or practice. The deputy may engage in the 1037
practice of law only with the continued consent and approval of 1038
all of the judges of the probate court. 1039

A ~~referee~~ magistrate appointed solely to conduct hearings 1040
under Chapters 5122. and 5123. of the Revised Code may engage in 1041
the practice of law, including probate law, except that ~~he~~ the 1042
magistrate shall not practice law under ~~these~~ those chapters other 1043
than as a ~~referee~~ magistrate and shall not knowingly accept any 1044
business arising out of or otherwise connected with a proceeding 1045
in which ~~he~~ the magistrate served as a ~~referee~~ magistrate under 1046
~~these~~ those chapters. 1047

The prosecuting attorney shall file ~~his~~ the prosecuting 1048
attorney's information against a judge or deputy clerk who 1049
practices law in violation of this section in the court of common 1050

pleas, and proceed as upon indictment. 1051

This section does not prevent a probate judge or deputy clerk 1052
from finishing business commenced by ~~him~~ the judge or deputy clerk 1053
prior to ~~his~~ the judge's or clerk's election or appointment, 1054
provided it is not connected with ~~his~~ the official ~~duty~~ duties of 1055
the judge or clerk. 1056

Sec. 2101.43. Whenever ten per cent of the number of electors 1057
voting for governor at the most recent election in any county 1058
having less than sixty thousand population, as determined by the 1059
most recent federal census, petition a judge of the court of 1060
common pleas of ~~such~~ the county, not less than ninety days before 1061
any general election for county officers, for the submission to 1062
the electors of ~~such~~ the county the question of combining the 1063
probate court with the court of common pleas, ~~such~~ the judge shall 1064
place upon the journal of ~~said~~ the court an order requiring the 1065
sheriff to make proclamation that at the next general election 1066
there will be submitted to the electors the question of combining 1067
the probate court with the court of common pleas. The clerk of the 1068
court of common pleas shall, ~~thereupon,~~ make and deliver a 1069
certified copy of ~~such~~ the order to the sheriff, and the sheriff 1070
shall include notice of the submission of ~~such~~ the question in the 1071
sheriff's proclamation of election for the next general election. 1072

1073
Each elector joining in a petition for the submission of ~~said~~ 1074
the question of combining the probate court with the court of 1075
common pleas shall sign ~~such~~ the petition in the elector's own 1076
handwriting, unless the elector cannot write and the elector's 1077
signature is made by mark, and shall ~~add thereto~~ include in the 1078
petition the township, precinct, or ward of which the elector is a 1079
resident. ~~Such~~ The petition may consist of as many parts as are 1080
convenient. One of the signers to each separate paper shall swear 1081

before ~~some~~ an officer who is qualified to administer the oath 1082
that the petition is bona fide to the best of the signer's 1083
knowledge and belief. ~~Such~~ The oath shall be a part of or attached 1084
to ~~such~~ the paper. The judge upon receipt of ~~such~~ the petition 1085
shall deposit it with the clerk of the court of common pleas. 1086

No signature shall be taken from or added to ~~such~~ the 1087
petition after it has been filed with the judge. When deposited 1088
~~such~~ the petition shall be preserved and open to public 1089
inspection, and, if it is in conformity with this section, it 1090
shall be valid, unless an objection ~~thereto~~ to the petition is 1091
made in writing by an elector of the county within five days after 1092
the filing ~~thereof~~ of the petition. ~~Such~~ The objections, or any 1093
other questions arising in the course of the submission of the 1094
question of combining ~~said courts~~ the probate court with the court 1095
of common pleas, shall be considered and determined by the judge, 1096
and the judge's decision shall be final. 1097

Sec. 2103.01. ~~In~~ As used in sections 2103.01 to 2103.09, 1098
~~inclusive~~, of the Revised Code, unless the context shows that 1099
another sense ~~was~~ is intended, "property" includes ~~lands,~~ 1100
~~tenements, hereditaments~~ real property, and money, ~~chattels,~~ 1101
choses in action, ~~and~~ evidences of debt, and other personal 1102
property. 1103

Sec. 2105.051. When a person dies, property that ~~he~~ the 1104
person gave during ~~his~~ the person's lifetime to an heir shall be 1105
treated as an advancement against the heir's share of the estate 1106
only if declared in a contemporaneous writing by the decedent, or 1107
acknowledged in writing by the heir to be an advancement. For this 1108
purpose, property advanced is valued as of the time the heir came 1109
into possession or enjoyment of the property, or as of the time of 1110
death of the decedent, whichever occurs first. If the heir does 1111
not survive the decedent, the property shall not be taken into 1112

account in computing the intestate share to be received by the 1113
heir's issue, unless the declaration or acknowledgment provides 1114
otherwise. 1115

Sec. 2105.06. When a person dies intestate having title or 1116
right to any personal property, or to any real ~~estate~~ property or 1117
inheritance, in this state, the personal property shall be 1118
distributed, and the real ~~estate~~ property or inheritance shall 1119
descend and pass in parcenary, except as otherwise provided by 1120
law, in the following course: 1121

(A) If there is no surviving spouse, to the children of the 1122
intestate or their lineal descendants, per stirpes; 1123

(B) If there is a spouse and one or more children of the 1124
decedent or their lineal descendants surviving, and all of the 1125
decedent's children who survive or have lineal descendants 1126
surviving also are children of the surviving spouse, then the 1127
whole to the surviving spouse; 1128

(C) If there is a spouse and one child of the decedent or the 1129
child's lineal descendants surviving and the surviving spouse is 1130
not the natural or adoptive parent of the decedent's child, the 1131
first twenty thousand dollars plus one-half of the balance of the 1132
intestate estate to the spouse and the remainder to the child or 1133
the child's lineal descendants, per stirpes; 1134

(D) If there is a spouse and more than one child or their 1135
lineal descendants surviving, the first sixty thousand dollars if 1136
the spouse is the natural or adoptive parent of one, but not all, 1137
of the children, or the first twenty thousand dollars if the 1138
spouse is the natural or adoptive parent of none of the children, 1139
plus one-third of the balance of the intestate estate to the 1140
spouse and the remainder to the children equally, or to the lineal 1141
descendants of any deceased child, per stirpes; 1142

(E) If there are no children or their lineal descendants, 1143
then the whole to the surviving spouse; 1144

(F) If there is no spouse and no children or their lineal 1145
descendants, to the parents of the intestate equally, or to the 1146
surviving parent; 1147

(G) If there is no spouse, no children or their lineal 1148
descendants, and no parent surviving, to the brothers and sisters, 1149
whether of the whole or of the half blood of the intestate, or 1150
their lineal descendants, per stirpes; 1151

(H) If there are no brothers or sisters or their lineal 1152
descendants, one-half to the paternal grandparents of the 1153
intestate equally, or to the survivor of them, and one-half to the 1154
maternal grandparents of the intestate equally, or to the survivor 1155
of them; 1156

(I) If there is no paternal grandparent or no maternal 1157
grandparent, one-half to the lineal descendants of the deceased 1158
grandparents, per stirpes; if there are no such lineal 1159
descendants, then to the surviving grandparents or their lineal 1160
descendants, per stirpes; if there are no surviving grandparents 1161
or their lineal descendants, then to the next of kin of the 1162
intestate, provided there shall be no representation among ~~such~~ 1163
the next of kin; 1164

(J) If there are no next of kin, to stepchildren or their 1165
lineal descendants, per stirpes; 1166

(K) If there are no stepchildren or their lineal descendants, 1167
escheat to the state. 1168

Sec. 2105.09. (A) The county auditor, unless ~~he~~ the auditor 1169
acts pursuant to division (C) of this section, shall take 1170
possession of real property escheated to the state that is located 1171
in ~~his~~ the auditor's county and outside the incorporated area of a 1172

city. The auditor shall take possession in the name of the state 1173
and sell the property at public auction, at the county seat of the 1174
county, to the highest bidder, after having given thirty days' 1175
notice of the intended sale in a newspaper published within the 1176
county. 1177

On the application of the auditor, the court of common pleas 1178
shall appoint three disinterested freeholders of the county to 1179
appraise the real property. The freeholders shall be governed by 1180
the same rule as appraisers in sheriffs' or administrators' sales. 1181
The auditor shall sell the property at not less than two thirds of 1182
its appraised value and may sell it for cash, or for one-third 1183
cash and the balance in equal annual payments, the deferred 1184
payments to be amply secured. Upon payment of the whole 1185
consideration, the auditor shall execute a deed to the purchaser, 1186
in the name and on behalf of the state. The proceeds of the sale 1187
shall be paid by the auditor to the county treasurer. 1188

If there is a regularly organized agricultural society within 1189
the county, the treasurer shall pay the greater of six hundred 1190
dollars or five per cent of the proceeds, in any case, to the 1191
society. The excess of the proceeds, or the whole ~~thereof~~ proceeds 1192
if there is no regularly organized agricultural society within the 1193
county, shall be distributed as follows: 1194

(1) Twenty-five per cent shall be paid equally to the 1195
townships of the county; 1196

(2) Seventy per cent shall be paid into the state treasury to 1197
the credit of the agro Ohio fund created under section 901.04 of 1198
the Revised Code; 1199

(3) Five per cent shall be credited to the county general 1200
fund for ~~such~~ any lawful purposes ~~as that~~ the board of county 1201
commissioners provides. 1202

(B) The legislative authority of a city within which are 1203

lands escheated to the state, unless it acts pursuant to division 1204
(C) of this section, shall take possession of the lands for the 1205
city, and the title to the lands shall vest in the city. The city 1206
shall use the premises primarily for health, welfare, or 1207
recreational purposes, or may lease them at ~~such~~ the prices and 1208
for ~~such~~ the purposes ~~as~~ that it considers proper. With the 1209
approval of the tax commissioner, the city may sell the lands or 1210
any undivided interest in the lands, in the same manner as is 1211
provided in the sale of land not needed for any municipal 1212
purposes; provided, that the net proceeds from the rent or sale of 1213
the premises shall be devoted to health, welfare, or recreational 1214
purposes. 1215

(C) As an alternative to the procedure prescribed in 1216
divisions (A) and (B) of this section, the county auditor, or if 1217
the real property is located within the incorporated area of a 1218
city, the legislative authority of that city by an affirmative 1219
vote of at least a majority of its members, may request the 1220
probate court to direct the administrator or executor of the 1221
estate that contains the escheated property to commence an action 1222
in the probate court for authority to sell the real property in 1223
the manner provided in Chapter 2127. of the Revised Code. The 1224
proceeds from the sale of real property that is located outside 1225
the incorporated area of a city shall be distributed by the court 1226
in the same manner as the proceeds are distributed under division 1227
(A) of this section. The proceeds from the sale of real property 1228
that is located within the incorporated area of a city shall be 1229
distributed by the court in the same manner as the proceeds are 1230
distributed under division (B) of this section. 1231

Sec. 2105.10. (A) As used in this section: 1232

(1) "Abandoned" means that a parent of a minor failed without 1233
justifiable cause to communicate with the minor, care for ~~him~~ the 1234

minor, and provide for ~~his~~ the minor's maintenance or support as 1235
required by law or judicial decree for a period of at least one 1236
year immediately prior to the date of the death of the minor. 1237

(2) "Minor" means a person who is less than eighteen years of 1238
age. 1239

(B) Subject to divisions (C), (D), and (E) of this section, a 1240
parent who has abandoned ~~his~~ the parent's minor child who 1241
subsequently dies intestate as a minor shall not inherit the real 1242
or personal property of the deceased child pursuant to section 1243
2105.06 of the Revised Code. If a parent is prohibited by this 1244
division from inheriting from ~~his~~ the parent's deceased child, the 1245
real or personal property of the deceased child shall be 1246
distributed, or shall descend and pass in parcenary, pursuant to 1247
section 2105.06 of the Revised Code as if the parent had 1248
predeceased the deceased child. 1249

(C) Subject to divisions (D) and (E) of this section, a 1250
parent who is alleged to have abandoned a child who died as an 1251
intestate minor shall be considered as a next of kin or an heir at 1252
law of the deceased child only for the following purposes: 1253

(1) To receive any notice required to be given to the heirs 1254
at law of a decedent in connection with an application for release 1255
of an estate from administration under section 2113.03 of the 1256
Revised Code; 1257

(2) To be named as a next of kin in an application for the 1258
appointment of a person as the administrator of the estate of the 1259
deceased child, if the parent is known to the person filing the 1260
application pursuant to section 2113.07 of the Revised Code, and 1261
to receive a citation issued by the probate court pursuant to that 1262
section. 1263

(D)(1) The prohibition against inheritance set forth in 1264
division (B) of this section shall be enforceable only in 1265

accordance with a probate court adjudication rendered pursuant to 1266
this division. 1267

(2) If the administrator of the estate of an intestate minor 1268
has actual knowledge, or reasonable cause to believe, that the 1269
minor was abandoned by a parent, the administrator shall file a 1270
petition pursuant to section 2123.02 of the Revised Code to obtain 1271
an adjudication that the parent abandoned the child and that, 1272
because of the prohibition against inheritance set forth in 1273
division (B) of this section, the parent shall not be considered 1274
to be an heir at law of, and shall not be entitled to inherit the 1275
real and personal property of, the deceased child pursuant to 1276
section 2105.06 of the Revised Code. That parent shall be named as 1277
a defendant in the petition and, whether or not that parent is a 1278
resident of this state, shall be served with a summons and a copy 1279
of the petition in accordance with the Rules of Civil Procedure. 1280
In the heirship determination proceeding, the administrator has 1281
the burden of proving, by a preponderance of the evidence, that 1282
the parent abandoned the child. If, after the hearing, the probate 1283
court finds that the administrator has sustained that burden of 1284
proof, the probate court shall include in its adjudication 1285
described in section 2123.05 of the Revised Code its findings that 1286
the parent abandoned the child and, because of the prohibition 1287
against inheritance set forth in division (B) of this section, the 1288
parent shall not be considered to be an heir at law of, and shall 1289
not be entitled to inherit the real and personal property of, the 1290
deceased child pursuant to section 2105.06 of the Revised Code. If 1291
the probate court so finds, then, upon the entry of its 1292
adjudication on its journal, the administrator may make a final 1293
distribution of the estate of the deceased child in accordance 1294
with division (B) of this section. 1295

(3) An heirship determination proceeding resulting from the 1296
filing of a petition pursuant to this division shall be conducted 1297

in accordance with Chapter 2123. of the Revised Code, except to 1298
the extent that a provision of this section conflicts with a 1299
provision of that chapter, in which case the provision of this 1300
section shall control. 1301

(E) If the administrator of the estate of an intestate minor 1302
has not commenced an heirship determination proceeding as 1303
described in division (D) of this section within four months from 1304
the date that ~~he~~ the administrator receives ~~his~~ the 1305
administrator's letters of administration, then ~~such a~~ that 1306
proceeding may not be commenced subsequently, no parent of the 1307
deceased child shall be prohibited from inheriting the real or 1308
personal property of the deceased child pursuant to division (B) 1309
of this section, and the probate of the estate of the deceased 1310
child in accordance with section 2105.06 and other relevant 1311
sections of the Revised Code shall be forever binding. 1312

Sec. 2105.11. When a person dies intestate leaving children 1313
and none of the children of ~~such~~ the intestate have died leaving 1314
children or their lineal descendants, ~~such~~ the estate shall 1315
descend to the children of ~~such~~ the intestate, living at the time 1316
of ~~his~~ the intestate's death, in equal proportions. 1317

Sec. 2105.13. If some of the children of an intestate are 1318
living and others are dead, the estate shall descend to the 1319
children who are living and to the lineal descendants of ~~such~~ the 1320
children ~~as~~ who are dead, so that each child who is living will 1321
inherit the share to which ~~he~~ the child who is living would have 1322
been entitled if all the children of the intestate were living, 1323
and the lineal descendants of the deceased child will inherit 1324
equal parts of that portion of the estate to which ~~such~~ the 1325
deceased child would be entitled if ~~he~~ the deceased child were 1326
living. 1327

This section shall apply in all cases in which the 1328
descendants of the intestate, not more remote than lineal 1329
descendants of grandparents, entitled to share in the estate, are 1330
of unequal degree of consanguinity to the intestate, so that those 1331
who are of the nearest degree of consanguinity will take the share 1332
to which they would have been entitled, had all the descendants in 1333
the same degree of consanguinity with them who died leaving issue, 1334
been living. 1335

Sec. 2105.14. Descendants of an intestate begotten before ~~his~~ 1336
the intestate's death, but born ~~thereafter~~ after the intestate's 1337
death, in all cases will inherit as if born in the lifetime of the 1338
intestate and surviving ~~him~~ the intestate; but in no other case 1339
can a person inherit unless living at the time of the death of the 1340
intestate. 1341

Sec. 2105.15. A person of sound mind and memory may appear 1342
before the probate judge of ~~his~~ the person's county and in the 1343
presence of ~~such~~ the judge and two disinterested persons of ~~such~~ 1344
that person's acquaintance, file a written declaration declaring 1345
that, as ~~his~~ the person's free and voluntary act, ~~he~~ the person 1346
did designate and appoint another, stating the name and place of 1347
residence of ~~such~~ the other person specifically, to stand toward 1348
~~him~~ the person in the relation of an heir at law in the event of 1349
~~his~~ the person's death. ~~Such~~ The declaration ~~must~~ shall be 1350
attested by the two disinterested persons and subscribed by the 1351
declarant. If satisfied that ~~such~~ the declarant is of sound mind 1352
and memory and free from restraint, the judge ~~thereupon~~ shall 1353
enter that fact upon ~~his~~ the judge's journal and make a complete 1354
record of ~~such~~ the proceedings. ~~Thenceforward~~ From then on the 1355
person designated will stand in the same relation, for all 1356
purposes, to ~~such~~ the declarant as ~~he~~ the person designated could 1357
if a child born in lawful wedlock. The rules of inheritance will 1358

be the same between ~~him~~ the person designated and the relations by 1359
blood of the declarant, as if so born. A certified copy of ~~such~~ 1360
the record will be prima-facie evidence of the fact stated ~~therein~~ 1361
in the record, and conclusive evidence, unless impeached for 1362
actual fraud or undue influence. After a lapse of one year from 1363
the date of ~~such~~ the designation, ~~such~~ the declarant may have ~~such~~ 1364
the designation vacated or changed by filing in ~~said~~ that probate 1365
court an application to vacate or change ~~such~~ the designation of 1366
heir; provided, that there is compliance with the procedure, 1367
conditions, and prerequisites required in the making of the 1368
original declaration. 1369

Sec. 2105.16. No person who is capable of inheriting shall be 1370
deprived of the inheritance by reason of any of ~~his~~ the person's 1371
ancestors having been aliens. Aliens may hold, possess, and enjoy 1372
~~lands, tenements, and hereditaments~~ real property within this 1373
state, either by descent, devise, gift, or purchase, as fully as 1374
any citizen of the United States or of this state may do. 1375

Sec. 2105.19. (A) Except as provided in division (C) of this 1376
section, no person who is convicted of, pleads guilty to, or is 1377
found not guilty by reason of insanity of a violation of or 1378
complicity in the violation of section 2903.01, 2903.02, or 1379
2903.03 of the Revised Code or of an existing or former law of any 1380
other state, the United States, or a foreign nation, substantially 1381
equivalent to a violation of or complicity in the violation of any 1382
of these sections, no person who is indicted for a violation of or 1383
complicity in the violation of any of those sections or laws and 1384
subsequently is adjudicated incompetent to stand trial on that 1385
charge, and no juvenile who is found to be a delinquent child by 1386
reason of committing an act that, if committed by an adult, would 1387
be a violation of or complicity in the violation of any of those 1388
sections or laws, shall in any way benefit by the death. All 1389

property of the decedent, and all money, insurance proceeds, or 1390
other property or benefits payable or distributable in respect of 1391
the decedent's death, shall pass or be paid or distributed as if 1392
the person who caused the death of the decedent had predeceased 1393
the decedent. 1394

(B) A person prohibited by division (A) of this section from 1395
benefiting by the death of another is a constructive trustee for 1396
the benefit of those entitled to any property or benefit that the 1397
person has obtained, or over which ~~he~~ the person has exerted 1398
control, because of the decedent's death. A person who purchases 1399
any such property or benefit from the constructive trustee, for 1400
value, in good faith, and without notice of the constructive 1401
trustee's disability under division (A) of this section, acquires 1402
good title, but the constructive trustee is accountable to the 1403
beneficiaries for the proceeds or value of the property or 1404
benefit. 1405

(C) A person who is prohibited from benefiting from a death 1406
pursuant to division (A) of this section either because ~~he~~ the 1407
person was adjudicated incompetent to stand trial or was found not 1408
guilty by reason of insanity, or ~~his~~ the person's guardian 1409
appointed pursuant to Chapter 2111. of the Revised Code or other 1410
legal representative, may file a complaint to declare ~~his~~ the 1411
person's right to benefit from the death in the probate court in 1412
which the decedent's estate is being administered or ~~which~~ that 1413
released the estate from administration. The complaint shall be 1414
filed no later than sixty days after the person is adjudicated 1415
incompetent to stand trial or found not guilty by reason of 1416
insanity. The court shall notify each person who is a devisee or 1417
legatee under the decedent's will, or if there is no will, each 1418
person who is an heir of the decedent pursuant to section 2105.06 1419
of the Revised Code that ~~such~~ a complaint of that nature has been 1420
filed within ten days after the filing of ~~such a~~ the complaint. 1421

The person who files the ~~motion~~ complaint, and each person who is 1422
required to be notified of the filing of the ~~motion~~ complaint 1423
under this division, is entitled to a jury trial in the action. To 1424
assert the right, the person desiring a jury trial shall demand a 1425
jury in the manner prescribed in the Civil Rules. 1426

A person who files a complaint pursuant to this division 1427
shall be restored to ~~his~~ the person's right to benefit from the 1428
death unless the court determines, by a preponderance of the 1429
evidence, that the person would have been convicted of a violation 1430
of, or complicity in the violation of, section 2903.01, 2903.02, 1431
or 2903.03 of the Revised Code, or of a law of another state, the 1432
United States, or a foreign nation that is substantially similar 1433
to any of those sections, if ~~he~~ the person had been brought to 1434
trial in the case in which ~~he~~ the person was adjudicated 1435
incompetent or if ~~he~~ the person were not insane at the time of the 1436
commission of the offense. 1437

Sec. 2106.01. (A) After the initial appointment of an 1438
administrator or executor of the estate, the probate court shall 1439
issue a citation to the surviving spouse, if any is living at the 1440
time of the issuance of the citation, to elect whether to exercise 1441
the surviving spouse's rights under Chapter 2106. of the Revised 1442
Code, including, after the probate of a will, the right to elect 1443
to take under the will or under section 2105.06 of the Revised 1444
Code. 1445

A surviving spouse may waive the service of the citation 1446
required under this division by filing in the probate court a 1447
written waiver of the citation. The waiver shall include an 1448
acknowledgment of receipt of the description of the general rights 1449
of the surviving spouse required by division (B) of section 1450
2106.02 of the Revised Code. 1451

(B) If the surviving spouse elects to take under section 1452

2105.06 of the Revised Code and if the value of the property that 1453
the surviving spouse is entitled to receive is equal to or greater 1454
than the value of the decedent's interest in the mansion house as 1455
determined under section 2106.10 of the Revised Code, the 1456
surviving spouse also is entitled to make an election pursuant to 1457
division (A) of section 2106.10 of the Revised Code. 1458

(C) If the surviving spouse elects to take under section 1459
2105.06 of the Revised Code, the surviving spouse shall take not 1460
to exceed one-half of the net estate, unless two or more of the 1461
decedent's children or their lineal descendants survive, in which 1462
case the surviving spouse shall take not to exceed one-third of 1463
the net estate. 1464

For purposes of this division, the net estate shall be 1465
determined before payment of federal estate tax, estate taxes 1466
under Chapter 5731. of the Revised Code, or any other tax that is 1467
subject to apportionment under section 2113.86 or 2113.861 of the 1468
Revised Code. 1469

(D) Unless the will expressly provides that in case of an 1470
election under division (A) of this section there shall be no 1471
acceleration of remainder or other interests bequeathed or devised 1472
by the will, the balance of the net estate shall be disposed of as 1473
though the surviving spouse had predeceased the testator. If there 1474
is a disposition by a will to an inter vivos trust that was 1475
created by the testator, if under the terms of the trust the 1476
surviving spouse is entitled to any interest in the trust or is 1477
granted any power or nomination with respect to the trust, and if 1478
the surviving spouse makes an election to take under section 1479
2105.06 of the Revised Code, then, unless the trust instrument 1480
provides otherwise, the surviving spouse is ~~deemed~~ considered for 1481
purposes of the trust to have predeceased the testator, and there 1482
shall be an acceleration of remainder or other interests in all 1483
property bequeathed or devised to the trust by the will, in all 1484

property held by the trustee at the time of the death of the 1485
decedent, and in all property that comes into the ~~hands~~ possession 1486
or under the control of the trustee by reason of the death of the 1487
decedent. 1488

(E) The election of a surviving spouse to take under a will 1489
or under section 2105.06 of the Revised Code may be made at any 1490
time after the death of the decedent, but the surviving spouse 1491
shall not make the election later than five months from the date 1492
of the initial appointment of an administrator or executor of the 1493
estate. On a motion filed before the expiration of the five-month 1494
period, and for good cause shown, the court may allow further time 1495
for the making of the election. If no action is taken by the 1496
surviving spouse before the expiration of the five-month period, 1497
it is conclusively presumed that the surviving spouse elects to 1498
take under the will. The election shall be entered on the journal 1499
of the court. 1500

When proceedings for advice or to contest the validity of a 1501
will are begun within the time allowed by this division for making 1502
the election, the election may be made within three months after 1503
the final disposition of the proceedings, if the will is not set 1504
aside. 1505

(F) When a surviving spouse succeeds to the entire estate of 1506
the testator, having been named the sole devisee and legatee, it 1507
shall be presumed that the spouse elects to take under the will of 1508
the testator, unless the surviving spouse manifests a contrary 1509
intention. 1510

Sec. 2106.08. If, because of a legal disability, a surviving 1511
spouse is unable to make an election as provided by section 1512
2106.01 of the Revised Code, as soon as the facts come to the 1513
knowledge of the probate court, the probate court shall appoint 1514
some suitable person to ascertain the value of the provision made 1515

for the surviving spouse by the testator, the value of the rights 1516
of the surviving spouse in the estate of the testator under 1517
Chapter 2105. of the Revised Code, and the adequate support needs 1518
of the surviving spouse after taking into consideration the other 1519
available resources and the age, probable life expectancy, 1520
physical and mental condition, and present and reasonably 1521
anticipated future needs of the surviving spouse. The appointment 1522
by the court shall be made at any time within the times described 1523
in division (E) of section 2106.01 of the Revised Code for making 1524
an election under that section. 1525

When the person so appointed returns the report of ~~his~~ the 1526
person's investigation, the court may elect for the surviving 1527
spouse to take under section 2105.06 of the Revised Code only if 1528
it finds, after taking into consideration the other available 1529
resources and the age, probable life expectancy, physical and 1530
mental condition, and present and reasonably anticipated future 1531
needs of the surviving spouse, that the election to take under 1532
section 2105.06 of the Revised Code is necessary to provide 1533
adequate support for the surviving spouse during ~~his~~ the surviving 1534
spouse's life expectancy. 1535

After making its determination under this section, the court 1536
shall record upon its journal the election made for the surviving 1537
spouse. The election, when so entered, shall have the same effect 1538
as an election made by one not under legal disability. 1539

Sec. 2106.11. Subject to the right of the surviving spouse to 1540
elect to receive the decedent's interest in the mansion house 1541
pursuant to section 2106.10 of the Revised Code, the specific 1542
monetary share payable to a surviving spouse under division (B), 1543
(C), or (D) of section 2105.06 of the Revised Code shall be paid 1544
out of the tangible and intangible personal property in the 1545
intestate estate to the extent that the personal property is 1546

available for distribution. The personal property distributed to 1547
the surviving spouse, other than cash, shall be valued at the 1548
appraised value. 1549

Before tangible and intangible personal property is 1550
transferred to the surviving spouse in payment or part payment of 1551
the specific monetary share, the administrator or executor shall 1552
file an application that includes an inventory of the personal 1553
property intended to be distributed in kind to the surviving 1554
spouse, together with a statement of the appraised value of each 1555
item of personal property included. The court shall examine the 1556
application and make a finding of the amount of personal property 1557
to be distributed to the surviving spouse, and shall order that 1558
the personal property be distributed to the surviving spouse. The 1559
court concurrently shall make a finding of the amount of money 1560
that remains due and payable to the surviving spouse in 1561
satisfaction of the specific monetary share to which the surviving 1562
spouse is entitled under division (B), (C), or (D) of section 1563
2105.06 of the Revised Code. Any amount that remains due and 1564
payable shall be a charge on the title to any real property in the 1565
estate but the charge does not bear interest. This charge may be 1566
conveyed or released in the same manner as any other interest in 1567
real ~~estate~~ property and may be enforced by foreclosure or any 1568
other appropriate remedy. 1569

Sec. 2107.01. ~~In~~ As used in Chapters 2101. to 2131. of the 1570
Revised Code, ~~"will":~~ 1571

(A) "Will" includes codicils to wills admitted to probate, 1572
lost, spoliated, or destroyed wills, and instruments admitted to 1573
probate under section 2107.081 of the Revised Code, but "will" 1574
does not include inter vivos trusts or other instruments that have 1575
not been admitted to probate. 1576

(B) "Testator" means any person who makes a will. 1577

Sec. 2107.02. A person ~~of the age of~~ who is eighteen years, 1578
of age or ~~ever~~ older, of sound mind and memory, and not under 1579
restraint may make a will. 1580

Sec. 2107.03. Except oral wills, every ~~last will and~~ 1581
~~testament~~ shall be in writing, but may be handwritten or 1582
typewritten. The will shall be signed at the end by the testator 1583
~~making it~~ or by some other person in the testator's conscious 1584
presence and at the testator's express direction, ~~and.~~ The will 1585
shall be attested and subscribed in the conscious presence of the 1586
testator, by two or more competent witnesses, who saw the testator 1587
subscribe, or heard the testator acknowledge the testator's 1588
signature. 1589

For purposes of this section, "conscious presence" means 1590
within the range of any of the testator's senses, excluding the 1591
sense of sight or sound that is sensed by telephonic, electronic, 1592
or other distant communication. 1593

Sec. 2107.04. No agreement to make a will or to make a devise 1594
or bequest by will shall be enforceable unless it is in writing. 1595
~~Such~~ The agreement ~~must~~ shall be signed by the maker or by some 1596
other person at ~~such~~ the maker's express direction. If signed by a 1597
person other than ~~such~~ the maker, the instrument ~~must~~ shall be 1598
subscribed by two or more competent witnesses who heard ~~such~~ the 1599
maker acknowledge that it was signed at ~~his~~ the maker's direction. 1600
1601

Sec. 2107.05. An existing document, book, record, or 1602
memorandum may be incorporated in a will by reference, if referred 1603
to as being in existence at the time the will is executed. ~~Such~~ 1604
That document, book, record, or memorandum shall be deposited in 1605

the probate court when the will is probated or within thirty days 1606
~~thereafter~~ after the will is probated, unless the court grants an 1607
extension of time for good cause shown. A copy may be substituted 1608
for the original document, book, record, or memorandum if ~~such~~ the 1609
copy is certified to be correct by a person authorized to take 1610
acknowledgments ~~on deeds~~. 1611

Sec. 2107.07. A will may be deposited by the ~~maker~~ testator, 1612
or by some person for the ~~maker~~ testator, in the office of the 1613
judge of the probate court in the county in which the testator 1614
lives. ~~Such~~ That will shall be safely kept until delivered or 1615
disposed of as provided by section 2107.08 of the Revised Code. 1616
The judge, on being paid the fee of ~~one dollar~~ five dollars, shall 1617
receive, keep, and give a certificate of deposit for ~~such~~ the 1618
will. 1619

Every will ~~which~~ that is ~~to be~~ so deposited shall be enclosed 1620
in a sealed ~~wrapper~~, ~~which~~ envelope ~~that~~ shall be indorsed with 1621
the name of the testator. The judge shall indorse ~~thereon~~ on the 1622
envelope the date of delivery and the person by whom ~~such~~ the will 1623
was delivered. The ~~wrapper~~ envelope may be indorsed with the name 1624
of a person to whom it is to be delivered after the death of the 1625
testator. ~~Such~~ The will shall not be opened or read until 1626
delivered to a person entitled to receive it, until the ~~maker~~ 1627
~~petitions~~ testator files a complaint in the probate court for a 1628
declaratory judgment of the validity of the will pursuant to 1629
section 2107.081 of the Revised Code, or until otherwise disposed 1630
of as provided in section 2107.08 of the Revised Code. 1631

Sec. 2107.08. During the lifetime of a testator, the 1632
testator's will, deposited according to section 2107.07 of the 1633
Revised Code, shall be delivered only to ~~him~~ the testator, to some 1634
person authorized by ~~him~~ the testator by a written order, or to a 1635
probate court for a determination of its validity when the 1636

testator so requests. After the testator's death, the will shall 1637
be delivered to the person named in the indorsement on the ~~wrapper~~ 1638
envelope of the will, if there is a person named who demands it. 1639
If the testator has ~~petitioned~~ filed a complaint in the probate 1640
court for a judgment declaring the validity of the will pursuant 1641
to section 2107.081 of the Revised Code and the court has rendered 1642
the judgment, the probate judge with possession shall deliver the 1643
will to the proper probate court as determined under section 1644
2107.11 of the Revised Code, upon the death of the testator, for 1645
probate. 1646

If no person named in the indorsement demands the will and it 1647
is not one that has been declared valid pursuant to section 1648
2107.084 of the Revised Code, it shall be publicly opened in the 1649
probate court within ~~two months~~ one month after notice of the 1650
testator's death and retained in the office of the probate judge 1651
until offered for probate. If the jurisdiction belongs to any 1652
other probate court, the will shall be delivered to the person 1653
entitled to its custody, to be presented for probate in the other 1654
court. If the probate judge who opens the will has jurisdiction of 1655
it, ~~he~~ the probate judge immediately shall give notice of its 1656
existence to the executor named in the will or, if any, to the 1657
persons holding a power to nominate an executor as described in 1658
section 2107.65 of the Revised Code, or, if it is the case, to the 1659
executor named in the will and to the persons holding a power to 1660
nominate a coexecutor as described in that section. If no executor 1661
is named and no persons hold a power to nominate an executor as 1662
described in that section, the probate judge shall give notice to 1663
other persons immediately interested. 1664

Sec. 2107.081. (A) A person who executes a will allegedly in 1665
conformity with the laws of this state may ~~petition~~ file a 1666
complaint in the probate court of the county in which ~~he~~ the 1667
person is domiciled, if ~~he~~ the person is domiciled in this state, 1668

or in the probate court of the county in which any of ~~his~~ the 1669
person's real property is located, if ~~he~~ the person is not 1670
domiciled in this state, for a judgment declaring the validity of 1671
the will. 1672

The ~~petition~~ complaint may be filed in the form determined by 1673
the probate court of the county in which it is filed. 1674

The ~~petition~~ complaint shall name as parties defendant all 1675
persons named in the will as beneficiaries, and all of the persons 1676
who would be entitled to inherit from the testator under Chapter 1677
2105. of the Revised Code had the testator died intestate on the 1678
date the ~~petition~~ complaint was filed. 1679

For the purposes of this section, "domicile" shall be 1680
determined at the time of filing the ~~petition~~ complaint with the 1681
probate court. 1682

(B) The failure of a testator to file a ~~petition~~ complaint 1683
for a judgment declaring the validity of a will ~~he~~ the testator 1684
has executed shall not be construed as evidence or an admission 1685
that the will was not properly executed pursuant to section 1686
2107.03 of the Revised Code or any prior law of this state in 1687
effect at the time of execution or as evidence or an admission 1688
that the testator did not have the requisite testamentary capacity 1689
~~and freedom from undue influence under section 2107.02 of the~~ 1690
~~Revised Code~~ or was under any restraint. 1691

Sec. 2107.082. Service of process in an action authorized by 1692
section 2107.081 of the Revised Code shall be made on every party 1693
defendant named in ~~that action~~ the complaint filed under that 1694
section by the following methods: 1695

(A) By certified mail, or any other valid personal service 1696
permitted by the Rules of Civil Procedure, if the party is an 1697
inhabitant of this state or is found within this state; 1698

(B) By certified mail, with a copy of the summons and 1699
~~petition~~ complaint, to the party at ~~his~~ the party's last known 1700
address or any other valid personal service permitted by the Rules 1701
of Civil Procedure, if the party is not an inhabitant of this 1702
state or is not found within this state; 1703

(C) By publication, according to Civil Rule 4.4, in a 1704
newspaper of general circulation published in the county where the 1705
~~petition~~ complaint was filed, for three consecutive weeks, if the 1706
address of the party is unknown, if all methods of personal 1707
service permitted under division (B) of this section were 1708
attempted without success, or if the interest of the party under 1709
the will or in the estate of the testator should the will be 1710
declared invalid is unascertainable at that time. 1711

Sec. 2107.083. When a ~~petition~~ complaint is filed pursuant to 1712
section 2107.081 of the Revised Code, the probate court shall 1713
conduct a hearing on the validity of the will. The hearing shall 1714
be adversary in nature and shall be conducted pursuant to section 1715
2721.10 of the Revised Code, except as otherwise provided in 1716
sections 2107.081 to 2107.085 of the Revised Code. 1717

Sec. 2107.084. (A) The probate court shall declare the will 1718
valid if, after conducting a proper hearing pursuant to section 1719
2107.083 of the Revised Code, it finds that the will was properly 1720
executed pursuant to section 2107.03 of the Revised Code or under 1721
any prior law of this state that was in effect at the time of 1722
execution and that the testator had the requisite testamentary 1723
capacity and ~~freedom from undue influence pursuant to section~~ 1724
~~2107.02 of the Revised Code~~ was not under any restraint. 1725

Any ~~such~~ judgment under this section declaring a will valid 1726
is binding in this state as to the validity of the will on all 1727
facts found, unless provided otherwise in this section, section 1728

2107.33 of the Revised Code, or division (B) of section 2107.71 of 1729
the Revised Code, and, if the will remains valid, shall give the 1730
will full legal effect as the instrument of disposition of the 1731
testator's estate, unless the will has been modified or revoked 1732
according to law. 1733

(B) Any declaration of validity issued as a judgment pursuant 1734
to this section shall be sealed in an envelope along with the will 1735
to which it pertains, and filed by the probate judge or ~~his~~ 1736
~~designated officer~~ the probate judge's designee in the offices of 1737
that probate court. The filed will shall be available during the 1738
testator's lifetime only to the testator. If the testator removes 1739
a filed will from the possession of the probate judge, the 1740
declaration of validity rendered under division (A) of this 1741
section no longer has any effect. 1742

(C) A testator may revoke or modify a will declared valid and 1743
filed with a probate court pursuant to this section by ~~petitioning~~ 1744
filing a complaint in the probate court in possession of the will 1745
and asking that the will be revoked or modified. The ~~petition~~ 1746
complaint shall include a document executed pursuant to sections 1747
2107.02 and 2107.03 of the Revised Code, and shall name as parties 1748
defendant those persons who were parties defendant in any previous 1749
action declaring the will valid, those persons who are named in 1750
any modification as beneficiaries, and those persons who would be 1751
entitled because of the revocation or modification, to inherit 1752
from the testator under Chapter 2105. of the Revised Code had the 1753
testator died intestate on the date the ~~petition~~ complaint was 1754
filed. Service of the ~~petition~~ complaint and process shall be made 1755
on these parties by the methods authorized in section 2107.082 of 1756
the Revised Code. 1757

Unless waived by all parties, the court shall conduct a 1758
hearing on the validity of the revocation or modification 1759
requested under this division in the same manner as it would on 1760

any initial ~~petition~~ complaint for a judgment declaring a will to 1761
be valid under this section. If the court finds that the 1762
revocation or modification is valid, ~~as defined~~ under the 1763
procedure described in division (A) of this section, the 1764
revocation or modification shall take full effect and be binding, 1765
and shall revoke the will or modify it to the extent of the valid 1766
modification. The revocation or modification, the judgment 1767
declaring it valid, and the will itself shall be sealed in an 1768
envelope and filed with the probate court, and shall be available 1769
during the testator's lifetime only to the testator. 1770

(D) A ~~testator may also modify a will by any later will or~~ 1771
that has been declared valid under division (A) of this section 1772
and is in the possession of the probate judge may be modified by 1773
~~codicil executed according to the laws of this state or any other~~ 1774
~~state and if the codicil is declared valid by the same procedure~~ 1775
as the will. A testator may revoke a will by any method permitted 1776
under section 2107.33 of the Revised Code. 1777

(E) A declaration of validity of a will, ~~or of a codicil to a~~ 1778
will previously declared valid, or of a revocation or modification 1779
of a will previously determined to be valid, that is given under 1780
division (A) or (C) of this section, whichever is applicable, is 1781
not subject to collateral attack, except by a person and in the 1782
manner specified in division (B) of section 2107.71 of the Revised 1783
Code, but is appealable subject to the terms of Chapter 2721. of 1784
the Revised Code. 1785

Sec. 2107.085. The finding of facts by a probate court in a 1786
proceeding brought under sections 2107.081 to 2107.085 of the 1787
Revised Code is not admissible as evidence in any proceeding other 1788
than one brought to determine the validity of a will. 1789

The determination or judgment rendered in a proceeding under 1790
~~these~~ those sections is not binding upon the parties to ~~such a~~ 1791

that proceeding in any action not brought to determine the 1792
validity of a will. 1793

The failure of a testator to file a ~~petition~~ complaint for a 1794
judgment declaring the validity of a will ~~he~~ the testator has 1795
executed is not admissible as evidence in any proceeding to 1796
determine the validity of that will or any other will executed by 1797
the testator. 1798

Sec. 2107.09. (A) If real ~~or personal estate~~ property is 1799
devised or personal property is bequeathed by a ~~last~~ will, the 1800
executor, or any interested person, may cause ~~such~~ the will to be 1801
brought before the probate court of the county in which the 1802
decedent was domiciled. By ~~citation, attachment, or warrant or, if~~ 1803
~~circumstances require it, by warrant or attachment in the first~~ 1804
~~instance~~ judicial order, ~~such~~ the court may compel the person 1805
having the custody or control of ~~such~~ the will to produce it 1806
before the court for the purpose of being proved. 1807

If the person having the custody or control of the will 1808
intentionally conceals or withholds it or neglects or refuses to 1809
produce it for probate without reasonable cause, ~~he~~ the person may 1810
be committed to the county jail and kept in ~~close~~ custody until ~~he~~ 1811
~~produces~~ the will is produced. ~~This~~ The person also shall be 1812
liable to any party aggrieved for the damages sustained by ~~such~~ 1813
that neglect or refusal. 1814

Any ~~citation, attachment, or warrant~~ judicial order issued 1815
pursuant to this section may be issued into any county in the 1816
state and shall be served and returned by the officer to whom it 1817
is delivered. 1818

The officer to whom ~~such~~ the process is delivered shall be 1819
liable for neglect in its service or return in ~~like~~ the same 1820
manner as sheriffs are liable for neglect in not serving or 1821
returning a capias issued upon an indictment. 1822

(B) In the case of a will that has been declared valid 1823
pursuant to section 2107.084 of the Revised Code, the probate 1824
judge who made the declaration or who has possession of the will 1825
shall cause the will and the judgment declaring validity to be 1826
brought before the proper probate court as determined by section 1827
2107.11 of the Revised Code at a time after the death of the 1828
testator. If the death of the testator is brought to the attention 1829
of the probate judge by an interested party, the judge shall cause 1830
the will to be brought before the proper probate court at that 1831
time. 1832

Sec. 2107.10. (A) No property or right, testate or intestate, 1833
shall pass to a beneficiary named in a will who knows of the 1834
existence of the will for ~~three years~~ one year after the death of 1835
the testator and has the power to control it, and, without 1836
reasonable cause, intentionally conceals or withholds it or 1837
neglects or refuses within ~~the three years~~ that one year to cause 1838
it to be offered for or admitted to probate. The ~~estate~~ property 1839
~~devised or bequeathed~~ to such devisee that beneficiary shall 1840
descend to the heirs of the testator, not including any heir who 1841
has concealed or withheld the will. 1842

(B) No property or right, testate or intestate, passes to a 1843
beneficiary named in a will when the will was declared valid and 1844
filed with a probate judge pursuant to section 2107.084 of the 1845
Revised Code, the declaration and filing took place in a county 1846
different from the county in which the will of the testator would 1847
be probated under section 2107.11 of the Revised Code, and the 1848
named beneficiary knew of the declaration and filing and of the 1849
death of the testator and did not notify the probate judge with 1850
whom the will was filed. This division does not preclude a named 1851
beneficiary from acquiring property or rights from the estate of 1852
the testator for failing to notify a probate judge if ~~it is his~~ 1853
~~reasonable belief~~ the named beneficiary reasonably believes that 1854

the judge has previously been notified of the testator's death. 1855

Sec. 2107.11. (A) A will shall be admitted to probate: 1856

~~(A)(1)~~ In the county in this state in which the testator was 1857
domiciled ~~if~~, at the time of ~~his~~ the testator's death, ~~he was~~ 1858
~~domiciled in this state;~~ 1859

~~(B)(2)~~ In any county of this state where any real property or 1860
personal property of ~~such~~ the testator is located if, at the time 1861
of ~~his~~ the testator's death, ~~he~~ the testator was not domiciled in 1862
this state, and provided that ~~such~~ the will has not previously 1863
been admitted to probate in this state or in the state of ~~such~~ the 1864
testator's domicile; 1865

~~(C)(3)~~ In the county of this state in which a probate court 1866
rendered a judgment declaring that the will was valid and ~~where~~ in 1867
which the will was filed with the probate court. 1868

(B) For the purpose of division (A)(2) of this section, 1869
intangible personal property is located in the place where the 1870
instrument evidencing a debt, obligation, stock, or chose in 1871
action is located or if there is no ~~such~~ instrument of that nature 1872
where the debtor resides. 1873

Sec. 2107.15. If a devise or bequest is made to a person who 1874
is one of only two witnesses to a will, the devise or bequest is 1875
void. The witness shall then be competent to testify to the 1876
execution of the will, as if the devise or bequest had not been 1877
made. If the witness would have been entitled to a share of the 1878
testator's estate in case the will was not established, ~~he~~ the 1879
witness takes so much of that share that does not exceed the 1880
bequest or devise to ~~him~~ the witness. The devisees and legatees 1881
shall contribute for that purpose as for an absent or afterborn 1882
child under section 2107.34 of the Revised Code. 1883

Sec. 2107.17. When a witness to a will, or other witness 1884
competent to testify at a probate or declaratory judgment 1885
proceeding, resides out of its jurisdiction, or resides within it 1886
but is infirm and unable to attend court, the probate court may 1887
issue a commission with the will annexed directed to any suitable 1888
person. In lieu of the original will, the probate court, in its 1889
discretion, may annex to the commission a photocopy of the will or 1890
a copy of the will made by photostatic or any similar process. The 1891
person to whom the commission is directed shall take the 1892
deposition or authorize the taking of the deposition of the 1893
witness as provided by the Rules of Civil Procedure. The 1894
testimony, certified and returned, shall be admissible and have 1895
the same effect in the proceedings as if taken in open court. 1896

Sec. 2107.18. The probate court shall admit a will to probate 1897
if it appears from the face of the will, or if the probate court 1898
requires, in its discretion, the testimony of the witnesses to a 1899
will and it appears from that testimony, that the execution of the 1900
will complies with the law in force at the time of the execution 1901
of the will in the jurisdiction in which it was executed, ~~or~~ with 1902
the law in force in this state at the time of the death of the 1903
testator, or with the law in force in the jurisdiction in which 1904
the testator was domiciled at the time of ~~his~~ the testator's 1905
death. 1906

The probate court shall admit a will to probate when there 1907
has been a prior judgment by a probate court declaring that the 1908
will is valid, rendered pursuant to section 2107.084 of the 1909
Revised Code, if the will has not been removed from the possession 1910
of the probate judge and has not been modified or revoked under 1911
division (C) or (D) of section 2107.084 of the Revised Code. 1912

Sec. 2107.20. When admitted to probate every will shall be 1913

filed in the office of the probate judge and recorded, together 1914
with any testimony or prior judgment of a probate court declaring 1915
the will valid, by ~~him~~ the judge or the clerk of the probate court 1916
in a book to be kept for that purpose. 1917

A copy of ~~such the~~ recorded will, with a copy of the order of 1918
probate annexed ~~thereto~~ to the copy of the recorded will, 1919
certified by the judge under seal of ~~his~~ the judge's court, shall 1920
be as effectual in all cases as the original would be, if 1921
established by proof. 1922

Sec. 2107.21. If real ~~estate~~ property devised by will is 1923
situated in any county other than that in which the will is 1924
proved, declared valid, or admitted to probate, an authenticated 1925
copy of the will and the order of probate or the judgment 1926
declaring validity shall be admitted to the record in the office 1927
of the probate judge of each county in which ~~such the~~ real ~~estate~~ 1928
property is situated upon the order of ~~such that~~ judge. The 1929
authenticated copy shall have the same validity ~~therein~~ in the 1930
county in which the real property is situated as if probate had 1931
been had in ~~such that~~ county. 1932

Sec. 2107.22. (A)(1)(a) When a will has been admitted to 1933
probate by a probate court and another will of later date is 1934
presented to the same court for probate, notice of the will of 1935
later date shall be given to those persons required to be notified 1936
under section 2107.19 of the Revised Code, and to the fiduciaries 1937
and beneficiaries under the will of earlier date. The probate 1938
court may admit the will of later date to probate the same as if 1939
no earlier will had been so admitted if it appears from the face 1940
of the will of later date, or if an interested person makes a 1941
demand as described in division (A)(1)(b) of this section and it 1942
appears from the testimony of the witnesses to the will given in 1943
accordance with that division, that the execution of the will 1944

complies with the law in force at the time of the execution of the will in the jurisdiction in which it was executed, ~~or~~ with the law in force in this state at the time of the death of the testator, or with the law in force in the jurisdiction in which the testator was domiciled at the time of ~~his~~ the testator's death.

(b) Upon the demand of a person interested in having a will of later date admitted to probate, the probate court shall cause at least two of the witnesses to the will of later date, and any other witnesses that the interested person desires to have appear, to come before the probate court and provide testimony. If the interested person so requests, the probate court shall issue a subpoena to compel the presence of any such witness before the probate court to provide testimony.

Witnesses before the probate court pursuant to this division shall be examined, and may be cross-examined, in open court, and their testimony shall be reduced to writing and then filed in the records of the probate court pertaining to the testator's estate.

(2) When an authenticated copy of a will has been admitted to record by a probate court, and an authenticated copy of a will of later date that was executed and proved as required by law, is presented to the same court for record, it shall be admitted to record in the same manner as if no authenticated copy of the will of earlier date had been so admitted.

(3) If a probate court admits a will of later date to probate, or an authenticated copy of a will of later date to record, its order shall operate as a revocation of the order admitting the will of earlier date to probate, or shall operate as a revocation of the order admitting the authenticated copy of the will of earlier date to record. The probate court shall enter on the record of the earlier will a marginal note "later will admitted to probate ..." (giving the date admitted).

(B) When a will that has been declared valid pursuant to 1976
section 2107.084 of the Revised Code has been admitted to probate 1977
by a probate court, and an authenticated copy of another will of 1978
later date that was executed and proved as required by law is 1979
presented to the same court for record, the will of later date 1980
shall be admitted the same as if no other will had been admitted 1981
and the proceedings shall continue as provided in this section. 1982

Sec. 2107.29. When the record of a will is destroyed, a copy 1983
of ~~such the~~ will or a copy of ~~such the~~ will and its probate may be 1984
recorded by the probate court if it appears to the court's 1985
satisfaction that ~~such the~~ record has been destroyed and if it 1986
appears, by reason of a certificate signed and sealed by the 1987
probate judge, ~~or by the clerk of the court of common pleas,~~ that 1988
~~such the~~ copy is a true copy of the original will or a true copy 1989
of the original will and its probate. 1990

Sec. 2107.32. Every probate judge who admits a will or copy 1991
of a will to record under sections 2107.29 to 2107.31, ~~inclusive,~~ 1992
of the Revised Code, shall immediately ~~thereafter shall~~ after 1993
admitting the will or copy to record give notice for three 1994
consecutive weeks in two weekly newspapers of ~~his~~ the probate 1995
judge's county if two are published ~~therein in the county,~~ or if 1996
not, in one newspaper of general circulation in the county, 1997
stating the name of the person the record of whose will has been 1998
destroyed and the day when ~~such the~~ record was supplied under 1999
those sections. All persons interested in the record, at any time 2000
within five years from the making of ~~such the~~ record, may come 2001
into the probate court and contest the question whether the record 2002
~~thus that was~~ supplied is the same as the destroyed record 2003
~~destroyed.~~ 2004

Sec. 2107.34. If, after making a ~~last will and testament,~~ a 2005

testator has a child born alive, ~~or~~ adopts a child, or designates 2006
an heir in the manner provided by section 2105.15 of the Revised 2007
Code, or if a child or designated heir who is absent and reported 2008
to be dead proves to be alive, and no provision has been made in 2009
~~such the~~ will or by settlement for ~~such the~~ pretermitted child or 2010
heir, or for ~~the that child's or heir's~~ issue ~~thereof~~, the will 2011
shall not be revoked; ~~but unless~~. Unless it appears by ~~such the~~ 2012
will that it was the intention of the testator to disinherit ~~such~~ 2013
~~the~~ pretermitted child or heir, the devises and legacies granted 2014
by ~~such the~~ will, except those to a surviving spouse, shall be 2015
abated proportionately, or in ~~such any~~ other manner ~~as that~~ is 2016
necessary to give effect to the intention of the testator as shown 2017
by the will, so that ~~such the~~ pretermitted child or heir will 2018
receive a share equal to that which ~~such the~~ person would have 2019
been entitled to receive out of the estate if ~~such the~~ testator 2020
had died intestate with no surviving spouse, owning only that 2021
portion of the testator's estate not devised or bequeathed to or 2022
for the use and benefit of a surviving spouse. If ~~such the~~ 2023
pretermitted child or heir dies prior to the death of the 2024
testator, the issue of ~~such the~~ deceased child or heir shall 2025
receive the share the parent would have received if living. 2026

If ~~such the~~ pretermitted child or heir supposed to be dead at 2027
the time of executing the will has lineal descendants, provision 2028
for whom is made by the testator, the other legatees and devisees 2029
need not contribute, but ~~such the~~ pretermitted child or heir shall 2030
take the provision made for the pretermitted child's or heir's 2031
lineal descendants or ~~such that~~ part of it as, in the opinion of 2032
the probate judge, may be equitable. In settling the claim of a 2033
pretermitted child or heir, any portion of the testator's estate 2034
received by a party interested, by way of advancement, is a 2035
portion of the estate and shall be charged to the party who has 2036
received it. 2037

Though measured by Chapter 2105. of the Revised Code, the 2038
share taken by a pretermitted child or heir shall be considered as 2039
a testate succession. This section does not prejudice the right of 2040
any fiduciary to act under any power given by the will, nor shall 2041
the title of innocent purchasers for value of any of the property 2042
of the testator's estate be affected by any right given by this 2043
section to a pretermitted child or heir. 2044

Sec. 2107.35. An encumbrance upon real or personal ~~estate~~ 2045
property for the purpose of securing the payment of money or the 2046
performance of a covenant shall not revoke a ~~will~~ previously 2047
executed ~~and will~~ relating to ~~such estate~~ that property. 2048

Sec. 2107.36. An act of a testator ~~which that~~ alters but does 2049
not wholly divest ~~such the~~ testator's interest in property 2050
previously devised or bequeathed by ~~him~~ the testator does not 2051
revoke the devise or bequest of ~~such the~~ property, ~~but such~~. The 2052
devise or bequest shall pass to the devisee or legatee the actual 2053
interest of the testator, ~~which that~~ would otherwise descend to 2054
~~his~~ the testator's heirs or pass to ~~his~~ the testator's next of 2055
kin, unless, ~~in~~ the instrument by which ~~such the~~ alteration is 2056
made, declares the testator's intention ~~is declared~~ that it shall 2057
operate as a revocation of ~~such the~~ previous devise or bequest. 2058

If the instrument by which ~~such the~~ alteration is made is 2059
wholly inconsistent with the previous devise or bequest, ~~such the~~ 2060
instrument ~~will~~ shall operate as a revocation ~~thereof~~ of the 2061
devise or bequest, unless ~~such the~~ instrument depends on a 2062
condition or contingency, and ~~such the~~ condition is not performed 2063
or ~~such the~~ contingency does not happen. 2064

Sec. 2107.38. If a testator executes a second will, the 2065
destruction, cancellation, or revocation of the second will shall 2066
not revive the first will unless the terms of ~~such the~~ revocation 2067

show that it was ~~such the~~ testator's intention to revive and give 2068
effect to ~~his the testator's~~ first will or unless, after ~~such the~~ 2069
destruction, cancellation, or revocation of the second will, ~~such~~ 2070
the testator republishes ~~his the testator's~~ first will. 2071

Sec. 2107.46. Any fiduciary may ~~maintain file~~ an action in 2072
the probate court against creditors, legatees, distributees, or 2073
other parties, and ask the direction or judgment of the court in 2074
any matter respecting the trust, estate, or property to be 2075
administered, and the rights of the parties in interest. 2076

If any fiduciary fails for thirty days to ~~bring such~~ file an 2077
action under this section after a written request from a party in 2078
interest, the party making the request may ~~institute file~~ the ~~suit~~ 2079
action. 2080

Sec. 2107.47. (A) The title, estate, or interest of a bona 2081
fide purchaser, lessee, or encumbrancer, for value, in ~~land~~ real 2082
property situated in this state, that is derived from an heir of a 2083
decedent and acquired without knowledge of a will of the decedent 2084
that effectively disposes of it to another person, shall not be 2085
defeated by the production of a will of the decedent, unless, in 2086
the case of a resident decedent, the will is offered for probate 2087
within three months after the death of the decedent, or unless, in 2088
the case of a nonresident decedent, the will is offered for record 2089
in this state within three months after the death of the decedent. 2090

(B) The title, estate, or interest of a bona fide purchaser, 2091
lessee, or encumbrancer, for value, in ~~land~~ real property situated 2092
in this state, that is derived from a beneficiary under a will of 2093
a decedent and acquired without knowledge of a later will of the 2094
decedent that effectively disposes of it to another person, shall 2095
not be defeated by the production of a later will of the decedent, 2096
unless, in the case of a resident decedent, the later will is 2097

offered for probate within three months after the death of the 2098
decedent, or unless, in the case of a nonresident decedent, the 2099
later will is offered for record in this state within three months 2100
after the death of the decedent. 2101

Sec. 2107.49. When ~~lands, tenements, or hereditaments~~ 2102
interests in real property are given by deed or will to a person 2103
for ~~his~~ the person's life, and after ~~his~~ the person's death to ~~his~~ 2104
the person's heirs in fee, the conveyance shall vest an estate for 2105
life only in ~~such~~ the first taker and a remainder in fee simple in 2106
~~his~~ the heirs of the first taker. If the remainder is given to the 2107
heirs of the body of the life tenant, the conveyance shall vest an 2108
estate for life only in ~~such~~ the first taker and a remainder in 2109
fee simple in the heirs of ~~his~~ the body of the life tenant. The 2110
rule in Shelley's case is abolished by this section and shall not 2111
be given effect. 2112

Sec. 2107.50. Any estate, right, or interest in any property 2113
of which a decedent ~~was possessed~~ had an interest at ~~his decease~~ 2114
the time of the decedent's death shall pass under ~~his~~ the 2115
decedent's will unless ~~such~~ the will manifests a different 2116
intention. 2117

Sec. 2107.501. (A) A specific devisee or legatee has the 2118
right ~~of~~ to the remaining specifically devised or bequeathed 2119
property, and the following: 2120

(1) Any balance on the purchase price, together with any 2121
security interest owing from a purchaser to the testator at death 2122
by reason of sale of the property; 2123

(2) Any amount of condemnation award unpaid at death for the 2124
taking of the property; 2125

(3) Any proceeds unpaid at death on fire or casualty 2126

insurance on the property; 2127

(4) Property owned by the testator at death as a result of 2128
foreclosure, or obtained in lieu of foreclosure, of the security 2129
for a specifically devised or bequeathed obligation. 2130

(B) If specifically devised or bequeathed property is sold by 2131
a guardian, by an agent acting within the authority of a power of 2132
attorney, or by an agent acting within the authority of a durable 2133
power of attorney, or if a condemnation award or insurance 2134
proceeds are paid to a guardian, to an agent acting within the 2135
authority of a power of attorney, or to an agent acting within the 2136
authority of a durable power of attorney as a result of 2137
condemnation, fire, or casualty to the property, the specific 2138
devisee or legatee has the right to a general pecuniary devise or 2139
bequest equal to the net proceeds of sale, the condemnation award, 2140
or the insurance proceeds, and ~~such a~~ that devise or bequest shall 2141
be treated as property subject to section 2107.54 of the Revised 2142
Code. This section does not apply if subsequent to the sale, 2143
condemnation, fire, or casualty, it is adjudicated that the 2144
disability of the testator has ceased and the testator survives 2145
the adjudication by one year. The right of the specific devisee or 2146
legatee is reduced by any right ~~the specific devisee or legatee~~ 2147
has acquired under division (A) of this section. 2148

Sec. 2107.51. Every devise of ~~lands, tenements, or~~ 2149
~~hereditaments~~ an interest in real property in a will shall convey 2150
all the estate of the devisor ~~therein in the property~~, unless it 2151
clearly appears by the will that the devisor intended to convey a 2152
less estate. 2153

Sec. 2107.52. (A) As used in this section, "relative" means 2154
an individual who is related to a testator by consanguinity and an 2155
heir at law designated pursuant to section 2105.15 of the Revised 2156

Code. 2157

(B) Unless a contrary intention is manifested in the will, if 2158
a devise of real property or a bequest of personal property is 2159
made to a relative of a testator and the relative was dead at the 2160
time the will was made or dies after that time, leaving issue 2161
surviving the testator, those issue shall take by representation 2162
the devised or bequeathed property as the devisee or legatee would 2163
have done if ~~he~~ the devisee or legatee had survived the testator. 2164
If the testator devised or bequeathed a residuary estate or the 2165
entire estate after debts, other general or specific devises and 2166
bequests, or an interest less than a fee or absolute ownership to 2167
that devisee or legatee and relatives of the testator and if that 2168
devisee or legatee leaves no issue, the estate devised or 2169
bequeathed shall vest in the other devisees or legatees surviving 2170
the testator in ~~such~~ the proportions as that the testamentary 2171
share of each devisee or legatee in the devised or bequeathed 2172
property bears to the total of the shares of all of the surviving 2173
devisees or legatees, unless a different disposition is made or 2174
required by the will. 2175

Sec. 2107.53. When part of the real ~~estate~~ property of a 2176
testator descends to ~~his~~ the testator's heirs because it was not 2177
disposed of by ~~his~~ the testator's will, and ~~his~~ the testator's 2178
personal ~~estate~~ property is insufficient to pay ~~his~~ the testator's 2179
debts, the undevised real ~~estate~~ property shall be chargeable 2180
first with the debts, as far as it will go, in exoneration of the 2181
real ~~estate~~ property that is devised, unless it appears from the 2182
will that a different arrangement of assets was made for the 2183
payment of ~~such~~ the testator's debts, in which case ~~such~~ the 2184
assets shall be applied for that purpose in conformity with the 2185
will. 2186

Sec. 2107.54. (A) When real or personal property, devised or 2187

bequeathed, is taken from the devisee or legatee for the payment 2188
of a debt of the testator, the other devisees and legatees shall 2189
contribute their respective proportions of the loss to the person 2190
from whom ~~such~~ the payment was taken so that the loss will fall 2191
equally on all the devisees and legatees according to the value of 2192
the property received by each of them. 2193

If, by making a specific devise or bequest, the testator has 2194
exempted a devisee or legatee from liability to contribute to the 2195
payment of debts, or if the will makes a different provision for 2196
the payment of debts than the one prescribed in this section, the 2197
estate shall be applied in conformity with the will. 2198

(B) A devisee or legatee shall not be prejudiced by the fact 2199
that the holder of a claim secured by lien on the property devised 2200
or bequeathed failed to present ~~such~~ the claim to the executor or 2201
administrator for allowance within the time allowed by sections 2202
2117.06 and 2117.07 of the Revised Code, and the devisee or 2203
legatee shall be restored by right of contribution, exoneration, 2204
or subrogation, to the position ~~he~~ the devisee or legatee would 2205
have occupied if ~~such~~ the claim had been presented and allowed for 2206
~~such~~ the sum ~~as~~ that is justly owing on it. 2207

(C) A devisee of real ~~estate~~ property that is subject to a 2208
mortgage lien that exists on the date of the testator's death, who 2209
does not have a right of exoneration that extends to that lien 2210
because of the operation of division (B) of section 2113.52 of the 2211
Revised Code, has a duty to contribute under this section to 2212
devisees and legatees who are burdened if the claim secured by the 2213
lien is presented and allowed pursuant to Chapter 2117. of the 2214
Revised Code. 2215

(D) This section does not affect the liability of the whole 2216
estate of the testator for the payment of ~~his~~ the testator's 2217
debts. This section applies only to the marshaling of the assets 2218
as between those who hold or claim under the will. 2219

Sec. 2107.55. When a part of the estate of a testator 2220
descends to a child born or adopted, or to an heir designated, 2221
after the execution of the will, or to a child absent and reported 2222
to be dead at the time of execution of the will but later found to 2223
be alive, or to a witness to a will who is a devisee or legatee, 2224
~~such~~ the estate and the advancement made to ~~such~~ the child, heir, 2225
or witness for all the purposes mentioned in section 2107.54 of 2226
the Revised Code shall be considered as if it had been devised to 2227
~~such~~ that child, heir, or witness and ~~he~~ the child, heir, or 2228
witness shall be bound to contribute with the devisees and 2229
legatees, as provided by ~~such~~ that section, and may claim 2230
contribution from them accordingly. 2231

Sec. 2107.56. When any of the persons liable to contribute 2232
toward the discharge of a testator's debt according to sections 2233
2107.54 and 2107.55 of the Revised Code, is insolvent, the others 2234
shall be severally liable to each other for the loss occasioned by 2235
~~such~~ the insolvency, each being liable in proportion to the value 2236
of the property received by ~~him~~ the person from the estate of the 2237
deceased. If any one of the persons liable dies without paying ~~his~~ 2238
the person's proportion of ~~such~~ the debt, ~~his~~ the executors and 2239
administrators of the person's estate shall be liable ~~therefor~~ for 2240
that proportion to the extent to which ~~he~~ the person would have 2241
been liable if living. 2242

Sec. 2107.58. When a sale of ~~lands~~ real property aliened or 2243
unaliened by a devisee or heir is ordered for the payment of the 2244
debts of an estate, sections 2107.53 to 2107.57, ~~inclusive,~~ of the 2245
Revised Code do not prevent the probate court from making ~~such~~ an 2246
order and decree for the sale of any portion of the aliened or 2247
unaliened ~~land as~~ real property that is equitable ~~between~~ among 2248
the ~~several~~ parties, and making an order of contribution and 2249

further order and decree to settle and adjust the various rights 2250
and liabilities of the parties. 2251

Sec. 2107.59. When a ~~last will and testament~~ is admitted to 2252
probate, or a will made out of this state is admitted to record as 2253
provided by sections 2129.05 to 2129.07 of the Revised Code, and 2254
~~lands, tenements, or hereditaments~~ interests in real property are 2255
given or devised by ~~such~~ the will to the executors named in the 2256
will, or nominated pursuant to a power as described in section 2257
2107.65 of the Revised Code, to be sold or conveyed, or ~~such~~ 2258
~~estate~~ the interests in real property thereby ~~is~~ are ordered to be 2259
sold by ~~such~~ the executors and one or more of the executors dies, 2260
refuses to act, or neglects to take upon ~~himself~~ self the 2261
execution of the will, then all sales and conveyances of ~~such~~ 2262
~~estate~~ the interests in real property by the executors who took 2263
upon themselves in this state the execution of the will, or the 2264
survivor of them, shall be as valid as if the remaining executors 2265
had joined in the sale and conveyance. But if none of ~~such~~ the 2266
executors take upon themselves the execution of the will, or if 2267
all the executors who take out letters testamentary die, resign, 2268
or are removed before the sale and conveyance of ~~such~~ ~~estate~~ the 2269
interests in real property, or die, resign, or are removed after 2270
the sale and before the conveyance is made, the sale or 2271
conveyance, or both, shall be made by the administrator with the 2272
will annexed or, if any, by a successor executor or successor 2273
coexecutor nominated pursuant to a power as described in section 2274
2107.65 of the Revised Code. 2275

Sec. 2107.60. An oral will, made in the last sickness, shall 2276
be valid in respect to personal ~~estate~~ property if reduced to 2277
writing and subscribed by two competent disinterested witnesses 2278
within ten days after the speaking of the testamentary words. ~~Such~~ 2279
The witnesses ~~must~~ shall prove that the testator was of sound mind 2280

and memory, not under restraint, and that ~~he~~ the testator called 2281
upon some person present at the time the testamentary words were 2282
spoken to bear testimony to ~~such~~ the disposition as ~~his~~ the 2283
testator's will. 2284

No oral will shall be admitted to record unless it is offered 2285
for probate within ~~six~~ three months after the death of the 2286
testator. 2287

Sec. 2107.61. Unless it has been admitted to probate or 2288
record, as provided in sections 2107.01 to 2107.62, ~~inclusive, and~~ 2289
or 2129.05 to 2129.07, ~~inclusive,~~ of the Revised Code, no will is 2290
effectual to ~~pass~~ transfer real or personal estate property. 2291

Sec. 2107.65. A testator may confer in ~~his~~ the testator's 2292
will, upon one or more persons, the power to nominate, in writing, 2293
an executor, coexecutor, successor executor, or successor 2294
coexecutor, and also may provide in ~~his~~ the will that the person 2295
or persons so nominated may serve without bond. If a will confers 2296
~~such a~~ that power, the holders of it have the authority to 2297
nominate themselves as executor, coexecutor, successor executor, 2298
or successor coexecutor unless the will provides to the contrary. 2299

Sec. 2107.71. (A) A person interested in a will or codicil 2300
admitted to probate in the probate court, ~~which will or codicil~~ 2301
that has not been declared valid by judgment of a probate court 2302
pursuant to section 2107.084 of the Revised Code, ~~or which will or~~ 2303
~~codicil~~ that has been declared valid by judgment of a probate 2304
court pursuant to section 2107.084 of the Revised Code, ~~but which~~ 2305
has been removed from the possession of the probate judge, may 2306
contest its validity by filing a civil action complaint in the 2307
probate court in the county in which ~~such~~ the will or codicil was 2308
admitted to probate. 2309

(B) Except as otherwise provided in this division, no person 2310

may contest the validity of any will or codicil as to facts 2311
decided if it was submitted to a probate court by ~~its maker~~ the 2312
testator during ~~his~~ the testator's lifetime and declared valid by 2313
judgment of the probate court and filed with the judge of the 2314
probate court pursuant to section 2107.084 of the Revised Code and 2315
if the will was not removed from the possession of the probate 2316
judge. A person may contest the validity of ~~such a~~ that will, 2317
modification, or codicil as to ~~such~~ those facts if the person is 2318
one who should have been named a party defendant in the action in 2319
which the will, modification, or codicil was declared valid, 2320
pursuant to section 2107.081 or 2107.084 of the Revised Code, and 2321
if the person was not named a defendant and properly served in 2322
~~such that~~ action. Upon the filing of ~~an action~~ a complaint 2323
contesting the validity of a will or codicil that is authorized by 2324
this division, the court shall proceed with the action in the same 2325
manner as if the will, modification, or codicil had not been 2326
previously declared valid under sections 2107.081 to 2107.085 of 2327
the Revised Code. 2328

(C) No person may introduce, as evidence in an action 2329
authorized by this section contesting the validity of a will, the 2330
fact that the testator of the will did not file a ~~petition~~ 2331
complaint for a judgment declaring its validity under section 2332
2107.081 of the Revised Code. 2333

Sec. 2107.73. Persons who are necessary parties to a will 2334
contest action are as follows: 2335

(A) Any person designated in a will to receive a testamentary 2336
disposition of real or personal property; 2337

(B) Heirs who would take property pursuant to section 2105.06 2338
of the Revised Code had the testator died intestate; 2339

(C) The executor or the administrator with the will annexed; 2340

(D) The attorney general as provided by section 109.25 of the Revised Code; 2341
2342

(E) Other interested parties. 2343

Sec. 2107.75. When the jury or the court finds that the writing produced is not the ~~last will and testament~~ or codicil of the testator, the trial court shall allow as part of the costs of administration ~~such the~~ amounts to the fiduciary and to the attorneys defending ~~such the~~ purported ~~last~~ will or purported codicil ~~as that~~ the trial court finds to be reasonable compensation for the services rendered in ~~such the will~~ contest action. The court shall order ~~such the~~ amounts allowed to be paid out of the estate of the decedent. 2344
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Sec. 2108.51. Any licensed physician or surgeon who, in good faith and acting in reliance upon an instrument of consent for an autopsy or post-mortem examination executed under section 2108.50 of the Revised Code and without actual knowledge of revocation of ~~such that~~ consent, performs an autopsy or post-mortem examination is not liable in a civil or criminal action brought against ~~him~~ the licensed physician or surgeon for ~~such that~~ act. 2353
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Sec. 2109.02. Every fiduciary, before entering upon the execution of a trust, shall receive letters of appointment from a probate court having jurisdiction of the subject matter of the trust. 2360
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The duties of a fiduciary shall be those required by law, and such additional duties as the court orders. Letters of appointment shall not issue until a fiduciary has executed a written acceptance of the fiduciary's duties, acknowledging that the fiduciary is subject to removal for failure to perform the fiduciary's duties, and that the fiduciary is subject to possible penalties for conversion of property the fiduciary ~~holds~~ held as a 2364
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fiduciary. The written acceptance may be filed with the 2371
application for appointment. 2372

No act or transaction by a fiduciary is valid prior to the 2373
issuance of letters of appointment to the fiduciary. This section 2374
does not prevent an executor named in a will, an executor 2375
nominated pursuant to a power as described in section 2107.65 of 2376
the Revised Code, or a person with the right of disposition under 2377
section 2108.70 or 2108.81 of the Revised Code from paying funeral 2378
expenses, or prevent necessary acts for the preservation of the 2379
trust estate prior to the issuance of ~~such~~ those letters. 2380

Sec. 2109.021. After letters of appointment are issued to a 2381
fiduciary, the court shall accept filings by mail in matters of 2382
estates, guardianships, or trusts, unless the court in writing 2383
notifies the fiduciary or attorney of record that a personal 2384
appearance is necessary, or a personal appearance is otherwise 2385
required by law. ~~An~~ The court shall reject an improper or 2386
incomplete filing ~~shall be rejected,~~ and ~~that court~~ shall return 2387
it to the sender, ~~and impose a cost of two dollars and fifty cents~~ 2388
~~per improper or incomplete filing, chargeable against the estate.~~ 2389

Sec. 2109.03. At the time of the appointment of a fiduciary, 2390
~~such~~ the fiduciary shall file in the probate court the name of the 2391
attorney, if any, who will represent ~~him~~ the fiduciary in matters 2392
relating to the trust. After the name of an attorney has been 2393
filed, notices sent to ~~such~~ that fiduciary in ~~his~~ the fiduciary's 2394
official capacity shall also be sent by the court to ~~such~~ that 2395
attorney who may sign waiver of service of any or all of ~~such~~ the 2396
notices upon ~~him~~ the attorney. If the fiduciary is absent from the 2397
state, ~~such~~ the attorney shall be the agent of the fiduciary upon 2398
whom summonses, citations, and notices may be served. Any summons, 2399
citation, or notice may be served upon the fiduciary by delivering 2400
duplicate copies ~~thereof~~ of the summons, citation, or notice to 2401

the attorney designated by ~~him~~ the fiduciary. No probate judge 2402
shall permit any person to practice law in the probate court for 2403
compensation, unless ~~he~~ the person has been admitted to the 2404
practice of law within the state. This section does not prevent 2405
any person from representing ~~his~~ the person's own interest in any 2406
estate, matter, action, or proceeding. 2407

Sec. 2109.04. (A)(1) Unless otherwise provided by law, order, 2408
or local rule, every fiduciary, prior to the issuance of the 2409
fiduciary's letters as provided by section 2109.02 of the Revised 2410
Code, shall file in the probate court in which the letters are to 2411
be issued a bond with a penal sum in ~~such an amount as may be that~~ 2412
is fixed by the court, but in no event less than double the 2413
probable value of the personal estate property and of the annual 2414
real estate property rentals ~~which that~~ will come into ~~such~~ 2415
~~person's hands~~ the possession or under the control of the person 2416
as a fiduciary. The bond of a fiduciary shall be in a form 2417
approved by the court and signed by two or more personal sureties 2418
or by one or more corporate sureties approved by the court. It 2419
shall be conditioned that the fiduciary faithfully and honestly 2420
will discharge the duties devolving upon the person as fiduciary, 2421
and shall be conditioned further as may be provided by law. 2422

(2) Except as otherwise provided in this division, if the 2423
instrument creating the trust dispenses with the giving of a bond, 2424
the court shall appoint a fiduciary without bond, unless the court 2425
is of the opinion that the interest of the trust demands it. If 2426
the court is of that opinion, it may require bond to be given in 2427
any amount it fixes. If a parent nominates a guardian for the 2428
parent's child in a will and provides in the will that the 2429
guardian may serve without giving bond, the court may appoint the 2430
guardian without bond or require the guardian to give bond in 2431
accordance with division (A)(1) of this section. 2432

(3) A guardian of the person only does not have to give bond 2433
unless, for good cause shown, the court considers a bond to be 2434
necessary. When a bond is required of a guardian of the person 2435
only, it shall be determined and filed in accordance with division 2436
(A)(1) of this section. This division does not apply to a guardian 2437
of the person only nominated in a parent's will if the will 2438
provides that the guardian may serve without giving bond. 2439

(4) When the probable value of the personal estate property 2440
and of the annual real estate property rentals that will come into 2441
the ~~guardian's hands~~ possession or under the control of the 2442
guardian as a fiduciary is less than ten thousand dollars, the 2443
court may waive or reduce a bond required by division (A)(1) of 2444
this section. 2445

(B) When an executive director who is responsible for the 2446
administration of children services in the county is appointed as 2447
trustee of the estate of a ward pursuant to section 5153.18 of the 2448
Revised Code and has furnished bond under section 5153.13 of the 2449
Revised Code, or when an agency under contract with the department 2450
of developmental disabilities for the provision of protective 2451
service under sections 5123.55 to 5123.59 of the Revised Code is 2452
appointed as trustee of the estate of a ward under ~~such~~ sections 2453
5123.55 to 5123.59 of the Revised Code and any employees of the 2454
agency having custody or control of funds or property of ~~such a~~ 2455
that ward have furnished bond under section 5123.59 of the Revised 2456
Code, the court may dispense with the giving of a bond. 2457

(C) When letters are granted without bond, at any later 2458
period on its own motion or upon the application of any party 2459
interested, the court may require bond to be given in ~~such an~~ 2460
amount ~~as may be~~ that is fixed by the court. On failure to give 2461
~~such~~ that bond, the defaulting fiduciary shall be removed. 2462

No instrument authorizing a fiduciary whom it names to serve 2463
without bond shall be construed to relieve a successor fiduciary 2464

from the necessity of giving bond, unless the instrument clearly 2465
evidences ~~such~~ that intention. 2466

The court ~~by which~~ that appoints a fiduciary ~~is appointed~~ may 2467
reduce the amount of the bond of ~~such~~ the fiduciary at any time 2468
for good cause shown. 2469

When two or more persons are appointed as joint fiduciaries, 2470
the court may take a separate bond from each or a joint bond from 2471
all. 2472

Sec. 2109.05. When ~~deemed~~ considered necessary by the probate 2473
court and not otherwise directed in the will, a bond, as provided 2474
by sections 2109.01 to 2109.58, ~~inclusive~~, of the Revised Code, 2475
shall be required in all trusts created by will and not fully 2476
discharged, on the petition of an interested person and after 2477
notice to the trustee. 2478

If ~~such a~~ the trustee fails to give bond within the time 2479
ordered by the court, ~~he shall be removed~~ the court shall remove
the trustee from ~~his~~ the trust, or the trustee shall be considered 2481
to have declined it. ~~Another person may be appointed in his stead~~
~~upon giving the required bond.~~ 2482
2483

Sec. 2109.06. The probate court ~~by which~~ that appoints a 2484
fiduciary ~~is appointed~~ may, on its own motion or on the 2485
application of any interested party, and after notice to the 2486
fiduciary, require a new bond or sureties or an additional bond or 2487
sureties, whenever, in the opinion of ~~such~~ the court, the 2488
interests of the trust demand it. 2489

Immediately upon the filing of the inventory by a fiduciary, 2490
the court shall determine whether the amount of the bond of ~~such~~
the fiduciary is sufficient and shall require new or additional 2492
bond if in the opinion of the court the interests of the trust 2493
demand it. 2494

When a new bond is required as provided in this section, the 2495
sureties in the prior bond shall nevertheless be liable for all 2496
breaches of the conditions set forth in ~~such~~ the bond ~~which~~ that 2497
are committed before the new bond is approved by the court. 2498

~~A~~ The court shall remove a fiduciary who fails within the 2499
time fixed by the court to furnish new or additional bond or 2500
sureties ~~shall be removed,~~ and ~~some other person appointed in his~~ 2501
~~stead, as the circumstances of the case require~~ the court shall 2502
appoint a successor fiduciary. 2503

Sec. 2109.07. (A) The bond required of an administrator by 2504
section 2109.04 of the Revised Code shall not be required in 2505
either of the following cases: 2506

(1) It shall not be required of a surviving spouse to 2507
administer the deceased spouse's estate if the surviving spouse is 2508
entitled to the entire net proceeds of the estate. 2509

(2) It shall not be required of an administrator to 2510
administer an estate if there is no will, if the administrator is 2511
the next of kin, and if the administrator is entitled to the 2512
entire net proceeds of the estate. 2513

(B) The bond otherwise required by section 2109.04 of the 2514
Revised Code of an administrator shall be conditioned as follows: 2515

(1) To file with the probate court within the time required 2516
by section 2115.02 of the Revised Code an inventory of all 2517
tangible and intangible personal property of the deceased that is 2518
to be administered and that comes to the administrator's 2519
possession or knowledge and an inventory of the deceased's 2520
interest in real ~~estate~~ property located in this state; 2521

(2) To administer and distribute according to law all 2522
tangible and intangible personal property of the deceased, the 2523
proceeds of any action for wrongful death or of any settlement, 2524

with or without suit, of a wrongful death claim, and the proceeds 2525
of all real estate property in which the deceased had an interest, 2526
that is located in this state, and that is sold, when the property 2527
or proceeds have come to the possession of the administrator or to 2528
the possession of a person for the administrator; 2529

(3) To render a just and true account of the administrator's 2530
administration at the times required by section 2109.301 of the 2531
Revised Code; 2532

(4) To deliver the letters of administration into court if a 2533
will of the deceased is proved and allowed. 2534

Sec. 2109.09. (A) Unless the testator has specified otherwise 2535
in the will, the bond required of an executor by section 2109.04 2536
of the Revised Code shall not be required of the executor to 2537
administer an estate in accordance with the will of the testator 2538
if the executor is the next of kin and if the executor is entitled 2539
to the entire net proceeds of the estate. 2540

(B) The bond otherwise required of an executor by section 2541
2109.04 of the Revised Code shall be conditioned as follows: 2542

(1) To file with the probate court within the time required 2543
by section 2115.02 of the Revised Code an inventory of all the 2544
tangible and intangible personal property of the testator that is 2545
to be administered and that comes to the executor's possession or 2546
knowledge and an inventory of the testator's interest in real 2547
estate property located in this state; 2548

(2) To administer and distribute according to law and the 2549
will of the testator all the testator's tangible and intangible 2550
personal property, the proceeds of any action for wrongful death 2551
or of any settlement, with or without suit, of a wrongful death 2552
claim, and the proceeds of all real estate property in which the 2553
testator had an interest, that is located in this state, and that 2554

is sold, when the property or proceeds have come to the possession 2555
of the executor or to the possession of another person for the 2556
executor; 2557

(3) To render a just and true account of the executor's 2558
administration at the times required by section 2109.301 of the 2559
Revised Code. 2560

Sec. 2109.10. If an executor or administrator is sole 2561
residuary legatee or distributee and if division (A) of section 2562
2109.07 or division (A) of section 2109.09 of the Revised Code 2563
does not apply, instead of giving the bond prescribed by section 2564
2109.04 of the Revised Code, the executor or administrator may 2565
give a bond to the satisfaction of the probate court conditioned 2566
as follows: 2567

(A) To pay the costs of administration and all the debts and 2568
legacies of the decedent to the extent of the assets of the 2569
estate; 2570

(B) If there is a will, to pay over the testator's estate to 2571
the person entitled to the testator's estate if the will is set 2572
aside; 2573

(C) If there is no will offered at the opening of the estate, 2574
to pay over the testator's estate to the person entitled to the 2575
testator's estate if a will is probated after the administrator's 2576
initial appointment. 2577

The giving of ~~such~~ that bond shall not discharge the lien on 2578
the decedent's real ~~estate~~ property for the payment of the 2579
decedent's debts, except that part ~~which~~ that has been lawfully 2580
sold by the executor or administrator. 2581

Sec. 2109.11. The bond required by section 2109.04 of the 2582
Revised Code of a testamentary trustee shall be conditioned as 2583
follows: 2584

(A) To make and return to the probate court within the time 2585
required by section 2109.58 of the Revised Code a true inventory 2586
of all moneys, ~~chattels~~, rights, credits, other personal property, 2587
and real ~~estate~~ property belonging to the trust that come to the 2588
trustee's possession or knowledge; 2589

(B) To administer and distribute according to law and the 2590
will of the testator all moneys, ~~chattels~~, rights, credits, other 2591
personal property and real ~~estate~~ property belonging to the trust 2592
that come to the possession of the trustee or to the possession of 2593
any other person for the trustee; 2594

(C) To render a just and true account of the trustee's 2595
administration at the times required by section 2109.303 of the 2596
Revised Code. 2597

Sec. 2109.12. Any bond required by or pursuant to section 2598
2109.04 of the Revised Code of a guardian shall be conditioned as 2599
follows: 2600

(A) If applicable, to make and return to the probate court 2601
within the time required by section 2111.14 of the Revised Code a 2602
true inventory of all moneys, ~~chattels~~, rights, credits, other 2603
personal property, and real ~~estate~~ property belonging to the ward 2604
that come to the guardian's possession or knowledge; 2605

(B) To administer and distribute according to law all moneys, 2606
~~chattels~~, rights, credits, other personal property, and real 2607
~~estate~~ property belonging to the ward that come to the possession 2608
of the guardian or to the possession of any other person for the 2609
guardian; 2610

(C) To render a just and true account of the guardian's 2611
administration at any times required by or pursuant to section 2612
2109.302 of the Revised Code. 2613

Sec. 2109.14. If the estate held by a fiduciary consists in 2614

whole or in part of works of nature or of art ~~which~~ that are 2615
suitable for preservation and exhibition in a museum or other 2616
similar institution, the probate court may authorize and direct 2617
that any or all of ~~such~~ those works be deposited with a 2618
corporation conducting ~~such a~~ the museum or other similar 2619
institution; provided that no such deposit shall be authorized or 2620
directed except with a corporation having a net worth of at least 2621
ten times the value of the works to be deposited. ~~Such~~ The deposit 2622
shall be made in the name of the fiduciary, and the property 2623
deposited shall not be withdrawn from the custody of ~~such~~ the 2624
depository or otherwise deposited except upon the special order of 2625
the court. The probate judge may impose ~~such~~ any conditions 2626
relative to insurance and the care and protection of the property 2627
deposited ~~as~~ that the court thinks best for the interests of the 2628
estate and the beneficiaries ~~thereof~~ of the estate. After ~~such~~ the 2629
deposit has been made, a receipt for ~~said~~ that property executed 2630
by ~~said~~ that corporation shall be filed with the court, ~~which~~ and 2631
the receipt shall acknowledge that ~~said~~ the property is held by 2632
~~said~~ that corporation subject to the order of the court. When ~~such~~ 2633
the receipt is filed, the court may fix or reduce the amount of 2634
the bond so that the amount of the penalty ~~thereof~~ of the bond is 2635
determined with respect to the value of the remainder only of the 2636
estate or fund, without including the value of the property 2637
deposited. Neither the fiduciary nor ~~his~~ the fiduciary's sureties 2638
shall be liable for any loss to the trust estate resulting from a 2639
deposit authorized and directed by the court pursuant to this 2640
section, provided ~~such~~ the fiduciary has acted in good faith. 2641

Sec. 2109.17. If the bond of a fiduciary is executed by 2642
personal sureties, one or more of ~~such~~ the sureties shall be a 2643
resident of the county in which ~~such~~ the fiduciary applies for 2644
appointment. The sureties shall own real property worth double the 2645
sum to be secured, over and above all encumbrances, and shall have 2646

property in this state liable to execution equal to the sum to be 2647
secured. ~~When~~ If two or more sureties are offered on the same 2648
bond, they must have in the aggregate the qualifications 2649
prescribed in this section. ~~Such~~ The sureties shall qualify under 2650
oath and may be required to exhibit to the probate court 2651
satisfactory evidence of the ownership of ~~such~~ the real property. 2652

No corporate surety shall be acceptable on a fiduciary's bond 2653
in ~~such~~ the probate court unless ~~such~~ the surety is acceptable to 2654
the United States government on surety bonds in like the same 2655
amount, as shown by the regulations issued by the secretary of the 2656
treasury of the United States, or in any other manner, to the 2657
satisfaction of the court. ~~Such~~ The surety shall also be qualified 2658
to do business in this state. 2659

A surety on the bond of a fiduciary shall not be held liable 2660
for any debt of ~~such~~ the fiduciary to the estate represented by 2661
~~him~~ the fiduciary existing at the time ~~such~~ the fiduciary was 2662
appointed; but ~~such~~ the surety shall be liable to the extent that 2663
~~such~~ the debt has been made uncollectible by wrongful act of ~~such~~ 2664
the fiduciary after appointment. 2665

Sec. 2109.19. If a fiduciary wastes or unfaithfully 2666
administers an estate, on the application of a surety on the 2667
fiduciary's bond the probate court granting letters of appointment 2668
to ~~such~~ the fiduciary may order ~~him~~ the fiduciary to render an 2669
account and to execute to ~~such~~ the surety a bond of indemnity with 2670
sureties approved by the court. Upon neglect or refusal to execute 2671
~~such~~ the bond within the time ordered, the court may remove ~~such~~ 2672
the fiduciary, revoke ~~his~~ the fiduciary's letters of appointment, 2673
and appoint another fiduciary in ~~his~~ the fiduciary's place. 2674

Sec. 2109.20. Instead of the sureties required on ~~his~~ a 2675
guardian's bond by section 2109.04 of the Revised Code, a guardian 2676

of the person and estate or of the estate only of any ward may 2677
execute to the ward a mortgage upon unencumbered real ~~estate~~ 2678
property. The guardian first shall furnish to the probate court a 2679
title guarantee or a mortgagee's title insurance policy for the 2680
benefit of the guardianship, with respect to the real ~~estate~~ 2681
property, and it shall be shown to the court's satisfaction that, 2682
exclusive of improvements on the real ~~estate~~ property, the real 2683
~~estate~~ property is of a value sufficient to secure the bond. The 2684
mortgage shall be recorded in the county in which the property is 2685
situated and filed with the court. 2686

Sec. 2109.21. (A) An administrator, special administrator, 2687
administrator de bonis non, or administrator with the will annexed 2688
shall be a resident of this state and shall be removed on proof 2689
that the administrator is no longer a resident of this state. 2690

(B)(1) To qualify for appointment as executor or trustee, an 2691
executor or a trustee named in a will or nominated in accordance 2692
with any power of nomination conferred in a will, may be a 2693
resident of this state or, as provided in this division, a 2694
nonresident of this state. To qualify for appointment, a 2695
nonresident executor or trustee named in, or nominated pursuant 2696
to, a will shall be an individual who is related to the ~~maker of~~ 2697
~~the will~~ testator by consanguinity or affinity, or a person who 2698
resides in a state that has statutes or rules that authorize the 2699
appointment of a nonresident person who is not related to the 2700
~~maker of a will~~ testator by consanguinity or affinity, as an 2701
executor or trustee when named in, or nominated pursuant to, a 2702
will. No such executor or trustee shall be refused appointment or 2703
removed solely because the executor or trustee is not a resident 2704
of this state. 2705

The court may require that a nonresident executor or trustee 2706
named in, or nominated pursuant to, a will assure that all of the 2707

assets of the decedent that are in the county at the time of the 2708
death of the decedent will remain in the county until distribution 2709
or until the court determines that the assets may be removed from 2710
the county. 2711

(2) In accordance with this division and section 2129.08 of 2712
the Revised Code, the court shall appoint as an ancillary 2713
administrator a person who is named in the will of a nonresident 2714
decedent, or who is nominated in accordance with any power of 2715
nomination conferred in the will of a nonresident decedent, as a 2716
general executor of the decedent's estate or as executor of the 2717
portion of the decedent's estate located in this state, whether or 2718
not the person so named or nominated is a resident of this state. 2719

To qualify for appointment as an ancillary administrator, a 2720
person who is not a resident of this state and who is named or 2721
nominated as described in this division, shall be an individual 2722
who is related to the ~~maker of the will~~ testator by consanguinity 2723
or affinity, or a person who resides in a state that has statutes 2724
or rules that authorize the appointment of a nonresident of that 2725
state who is not related to the ~~maker of a will~~ testator by 2726
consanguinity or affinity, as an ancillary administrator when the 2727
nonresident is named in a will or nominated in accordance with any 2728
power of nomination conferred in a will. If a person who is not a 2729
resident of this state and who is named or nominated as described 2730
in this division so qualifies for appointment as an ancillary 2731
administrator and if the provisions of section 2129.08 of the 2732
Revised Code are satisfied, the court shall not refuse to appoint 2733
the person, and shall not remove the person, as ancillary 2734
administrator solely because the person is not a resident of this 2735
state. 2736

The court may require that an ancillary administrator who is 2737
not a resident of this state and who is named or nominated as 2738
described in this division, assure that all of the assets of the 2739

decedent that are in the county at the time of the death of the 2740
decedent will remain in the county until distribution or until the 2741
court determines that the assets may be removed from the county. 2742

(C)(1) A guardian shall be a resident of this state, except 2743
that the court may appoint a nonresident of this state as a 2744
guardian if any of the following applies: 2745

(a) The nonresident is named in a will by a parent of a 2746
minor. 2747

(b) The nonresident is selected by a minor over the age of 2748
fourteen years as provided by section 2111.12 of the Revised Code. 2749

(c) The nonresident is nominated in or pursuant to a durable 2750
power of attorney as described in division (D) of section 1337.09 2751
of the Revised Code or a writing as described in division (A) of 2752
section 2111.121 of the Revised Code. 2753

(2) A guardian, other than a guardian named in a will by a 2754
parent of a minor, selected by a minor over the age of fourteen 2755
years, or nominated in or pursuant to a durable power of attorney 2756
or writing described in division (C)(1)(c) of this section, may be 2757
removed on proof that the guardian is no longer a resident of this 2758
state. 2759

(D) Any fiduciary, whose residence qualifications are not 2760
defined in this section, shall be a resident of this state, and 2761
shall be removed on proof that the fiduciary is no longer a 2762
resident of this state. 2763

(E) Any fiduciary, in order to assist in the carrying out of 2764
the fiduciary's fiduciary duties, may employ agents who are not 2765
residents of the county or of this state. 2766

(F) Every fiduciary shall sign and file with the court a 2767
statement of permanent address and shall notify the court of any 2768
change of address. A court may remove a fiduciary if the fiduciary 2769

fails to comply with this division. 2770

Sec. 2109.22. The marriage of any person does not disqualify 2771
~~him~~ the person from acting as fiduciary, whether the marriage 2772
occurs before or after ~~his~~ the person's appointment and 2773
qualification, and all of ~~his~~ the person's acts in ~~such~~ that 2774
capacity shall have the same validity as though ~~he~~ the person were 2775
unmarried. 2776

Sec. 2109.24. The probate court at any time may accept the 2777
resignation of any fiduciary upon the fiduciary's proper 2778
accounting, if the fiduciary was appointed by, is under the 2779
control of, or is accountable to the court. The fiduciary may 2780
resign by filing a written statement with the court after giving 2781
at least fifteen days notice to the persons known to be interested 2782
in the estate. Upon notice or a motion of the fiduciary to resign, 2783
the court may set the matter for a hearing and may notify all 2784
interested persons. No fiduciary shall resign without an order of 2785
the court. 2786

If a fiduciary fails to make and file an inventory as 2787
required by sections 2109.58, 2111.14, and 2115.02 of the Revised 2788
Code or to render a just and true account of the fiduciary's 2789
administration at the times required by section 2109.301, 2790
2109.302, or 2109.303 of the Revised Code, and if the failure 2791
continues for thirty days after the fiduciary has been notified by 2792
the court of the expiration of the relevant time, the fiduciary 2793
~~forthwith~~ may be removed by the court and shall receive no 2794
allowance for the fiduciary's services unless the court enters 2795
upon its journal its findings that the delay was necessary and 2796
reasonable. 2797

The court may remove any fiduciary, after giving the 2798
fiduciary not less than ten days' notice, for habitual 2799

drunkenness, neglect of duty, incompetency, or fraudulent conduct, 2800
because the interest of the property, testamentary trust, or 2801
estate that the fiduciary is responsible for administering demands 2802
it, or for any other cause authorized by law. 2803

The court may remove a testamentary trustee upon the written 2804
application of more than one-half of the persons having an 2805
interest in the estate controlled by the testamentary trustee, but 2806
the testamentary trustee is not to be considered as a person 2807
having an interest in the estate under the proceedings; except 2808
that no testamentary trustee appointed under a will shall be 2809
removed upon ~~such~~ the written application unless for a good cause. 2810

Upon the resignation or removal of the fiduciary, the court 2811
shall revoke all letters of authority for the fiduciary. 2812

Sec. 2109.25. (A) Whenever it appears to the satisfaction of 2813
the probate court that a fiduciary is unable to perform ~~his~~ the 2814
fiduciary's duties because ~~he~~ the fiduciary is engaged or is about 2815
to engage in military service as defined by this section, the 2816
court may remove ~~such~~ the fiduciary and appoint a substitute or 2817
authorize the remaining fiduciaries to execute the trust. ~~Such~~ 2818
That action may be taken on the court's own motion or on the 2819
application of any party in interest, including the fiduciary or 2820
cofiduciary, either without notice or upon notice to ~~such~~ those 2821
persons and in ~~such~~ the manner ~~as~~ that the court shall direct. 2822

If any of the duties of ~~such~~ that office remain unexecuted 2823
when a fiduciary who has resigned or been removed on account of 2824
~~his~~ the fiduciary's military service ceases to be in ~~such~~ that 2825
military service, ~~he~~ the fiduciary shall be reappointed as 2826
fiduciary upon ~~his~~ the fiduciary's application to the court and 2827
upon ~~such~~ any notice ~~as~~ that the court may direct, provided ~~he~~ the 2828
fiduciary is at the time a suitable and competent person and has 2829
the qualifications as to residence required by section 2109.21 of 2830

the Revised Code. If ~~such~~ the person is reappointed, the court 2831
shall remove the substitute fiduciary and revoke ~~his~~ the 2832
substitute fiduciary's letters of appointment, and shall make such 2833
further order or decree as justice requires. 2834

~~"Military service,"~~ as (B) As used in this section, "military 2835
service" means any service, work, or occupation ~~which~~ that in the 2836
opinion of the court is directly or indirectly in furtherance of 2837
any military effort of the United States. ~~Such definition~~ 2838
"Military service" includes internment in an enemy country, 2839
residence in any foreign country, or residence in any possession 2840
or dependency of the United States, if by reason ~~thereof~~ of the 2841
internment or residence the fiduciary is unable to return to this 2842
state. 2843

Sec. 2109.26. If a sole fiduciary dies, is dissolved, 2844
declines to accept, resigns, is removed, or becomes incapacitated 2845
prior to the termination of the trust, the probate court shall 2846
require a final account of all dealings of ~~such~~ the trust to be 2847
filed ~~forthwith~~ by ~~such~~ the fiduciary if a living person and able 2848
to act. If ~~such~~ the fiduciary is a living person but unable to 2849
act, ~~such~~ the final account shall be filed by ~~his~~ the fiduciary's 2850
guardian, or, if there is no guardian, by some other suitable 2851
person in ~~his~~ the fiduciary's behalf, appointed or approved by the 2852
court. If ~~such~~ the fiduciary is a deceased person, ~~such~~ the final 2853
account shall be filed by ~~his~~ the fiduciary's executor or 2854
administrator. If no estate is commenced for a deceased fiduciary, 2855
the deceased fiduciary's successor shall file the final account. 2856
If ~~such~~ the fiduciary is a dissolved corporation, ~~such~~ the final 2857
account shall be filed by ~~such~~ those persons ~~as~~ that are charged 2858
by law with winding up the affairs of ~~such~~ the dissolved 2859
corporation. ~~Thereupon the~~ The court shall cause ~~such~~ the 2860
proceedings to be had as are provided by sections 2109.30 to 2861
2109.36, ~~inclusive,~~ of the Revised Code. 2862

Whenever such a vacancy occurs and ~~such that~~ contingency is 2863
not otherwise provided for by law or by the instrument creating 2864
the trust, or whenever ~~such the~~ instrument names no fiduciary, the 2865
court shall, on its own motion or on the application of any person 2866
beneficially interested, issue letters of appointment as fiduciary 2867
to ~~some a~~ competent person or persons who shall qualify according 2868
to law and execute the trust to its proper termination. ~~Such The~~ 2869
vacancy and the appointment of a successor fiduciary shall not 2870
affect the liability of the former fiduciary or ~~his the former~~ 2871
fiduciary's sureties ~~which that~~ was previously incurred. 2872

Sec. 2109.302. (A) Every guardian or conservator shall render 2873
an account of the administration of the ward's estate at least 2874
once in each two years. The guardian or conservator shall render 2875
an account at any time other than a time otherwise mentioned in 2876
this section upon the order of the probate court issued for good 2877
cause shown either at its own instance or upon the motion of any 2878
person interested in the estate. Except as provided in division 2879
(B) of this section, every guardian or conservator shall render a 2880
final account within thirty days after completing the 2881
administration of the ward's estate or within any other period of 2882
time that the court may order. 2883

Every account shall include an itemized statement of all 2884
receipts of the guardian or conservator during the accounting 2885
period and of all disbursements and distributions made by the 2886
guardian or conservator during the accounting period. The itemized 2887
disbursements and distributions shall be verified by vouchers or 2888
proof, except in the case of an account rendered by a corporate 2889
fiduciary subject to section 1111.28 of the Revised Code. In 2890
addition, the account shall include an itemized statement of all 2891
funds, assets, and investments of the estate known to or in the 2892
possession of the guardian or conservator at the end of the 2893
accounting period and shall show any changes in investments since 2894

the last previous account. 2895

Every account shall be upon the signature of the guardian or 2896
conservator. When two or more guardians or conservators render an 2897
account, the court may allow the account upon the signature of one 2898
of the guardians or conservators. 2899

Upon the filing of every account, the guardian or 2900
conservator, except a corporate fiduciary subject to section 2901
1111.28 of the Revised Code, shall exhibit to the court for its 2902
examination both of the following: the securities shown in the 2903
account as being in the ~~hands~~ possession or under the control of 2904
the guardian or conservator, or the certificate of the person in 2905
possession of the securities, if held as collateral or pursuant to 2906
section 2109.13 or 2131.21 of the Revised Code; and a passbook or 2907
certified bank statement showing as to each depository the fund 2908
deposited to the credit of the ward's estate. The court may 2909
designate a deputy clerk, an agent of a corporate surety on the 2910
bond of the guardian or conservator, or another suitable person 2911
whom the court appoints as commissioner to make the examination 2912
and to report the person's findings to the court. ~~When~~ If 2913
securities are located outside the county, the court may appoint a 2914
commissioner or request another probate court to make the 2915
examination and to report its findings to the court. The court may 2916
examine the guardian or conservator under oath concerning the 2917
account. 2918

~~When~~ If a guardian or conservator is authorized by law to 2919
distribute the assets of the estate, in whole or in part, the 2920
guardian or conservator may do so and include a report of the 2921
distribution in the guardian's or conservator's succeeding 2922
account. 2923

(B)(1) The court may waive, by order, an account that 2924
division (A) of this section requires of a guardian of the estate 2925
or of a guardian of the person and estate, other than an account 2926

made pursuant to court order, if any of the following 2927
circumstances apply: 2928

(a) The assets of the estate consist entirely of real 2929
property. 2930

(b) The assets of the estate consist entirely of personal 2931
property, that property is held by a bank, savings and loan 2932
association, or trust company in accordance with section 2109.13 2933
of the Revised Code, and the court has authorized expenditures of 2934
not more than ten thousand dollars annually for the support, 2935
maintenance, or, if applicable, education of the ward. 2936

(c) The assets of the estate consist entirely of real 2937
property and of personal property that is held by a bank, savings 2938
and loan association, or trust company in accordance with section 2939
2109.13 of the Revised Code, and the court has authorized 2940
expenditures of not more than ten thousand dollars annually for 2941
the support, maintenance, or, if applicable, education of the 2942
ward. 2943

(2) The order of a court entered pursuant to division (B)(1) 2944
of this section is prima-facie evidence that a guardian of the 2945
estate or a guardian of the person and estate has authority to 2946
make expenditures as described in divisions (B)(1)(b) and (c) of 2947
this section. 2948

(3) Notwithstanding the requirements for accounts by other 2949
guardians under this section, a guardian of the person is not 2950
required to render an account except upon an order of the court 2951
that the court issues for good cause shown either at its own 2952
instance or upon the motion of any person interested in the 2953
estate. 2954

Sec. 2109.303. (A) Except as provided in division (B) of this 2955
section, every testamentary trustee shall, and every other 2956

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

Every account shall include an itemized statement of all receipts of the testamentary trustee or other fiduciary during the accounting period and of all disbursements and distributions made by the testamentary trustee or other fiduciary during the accounting period. The itemized disbursements and distributions shall be verified by vouchers or proof, except in the case of an account rendered by a corporate fiduciary subject to section 1111.28 of the Revised Code. In addition, the account shall include an itemized statement of all funds, assets, and investments of the estate or trust known to or in the possession of the testamentary trustee or other 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.

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

account upon the signature of one of them. 2989

Upon the filing of every account, the testamentary trustee or 2990
other fiduciary, except a corporate fiduciary subject to section 2991
1111.28 of the Revised Code, shall exhibit to the court for its 2992
examination both of the following: the securities shown in the 2993
account as being in the ~~hands~~ possession or under the control of 2994
the testamentary trustee or other fiduciary, or the certificate of 2995
the person in possession of the securities, if held as collateral 2996
or pursuant to section 2109.13 or 2131.21 of the Revised Code; and 2997
a passbook or certified bank statement showing as to each 2998
depository the fund deposited to the credit of the estate or 2999
trust. The court may designate a deputy clerk, an agent of a 3000
corporate surety on the bond of the testamentary trustee or other 3001
fiduciary, or another suitable person whom the court appoints as 3002
commissioner to make the examination and to report the person's 3003
findings to the court. ~~When~~ If securities are located outside the 3004
county, the court may appoint a commissioner or request another 3005
probate court to make the examination and to report its findings 3006
to the court. The court may examine the testamentary trustee or 3007
other fiduciary under oath concerning the account. 3008

~~When~~ If a testamentary trustee or other fiduciary is 3009
authorized by law or by the instrument governing distribution to 3010
distribute the assets of the estate or trust, in whole or in part, 3011
the testamentary trustee or other fiduciary may do so and include 3012
a report of the distribution in the testamentary trustee's or 3013
fiduciary's succeeding account. 3014

(B) If the assets of a testamentary charitable trust are held 3015
and managed by a testamentary trustee or other fiduciary who is an 3016
individual or by a corporate fiduciary and if the trust merges 3017
into a qualified community foundation, then, after the 3018
testamentary trustee or other fiduciary files with the court a 3019
final and distributive account pertaining to the trust and 3020

activities up to the effective date of the merger, the 3021
testamentary trustee or other fiduciary and any successors of the 3022
testamentary trustee or other fiduciary shall not be required to 3023
render any accounting to the court pertaining to the merged trust 3024
and activities that follow the effective date of the merger. 3025

(C) As used in this section: 3026

(1) "Charitable trust" has the same meaning as in section 3027
109.23 of the Revised Code. 3028

(2) "Qualified community foundation" means any foundation 3029
that is exempt from federal income taxation under sections 3030
170(b)(1)(A)(vi) and 501(c)(3) of the "Internal Revenue Code of 3031
1986," 100 Stat. 2085, 26 U.S.C. 170(b)(1)(A)(vi) and 501 (c)(3), 3032
as amended; that is further described in section 1.170A-9(10) and 3033
(11) of Title 26 of the Code of Federal Regulations, 26 C.F.R. 3034
1.170A-9(10) and (11), as amended; and that publishes at least 3035
annually and circulates widely within its community an audited 3036
report of its fund balances, activities, and donors. 3037

(3) "Testamentary charitable trust" means any charitable 3038
trust that is created by a will. 3039

(4) "Other fiduciary" means a fiduciary other than an 3040
executor, administrator, guardian, conservator, or testamentary 3041
trustee. 3042

Sec. 2109.32. (A) Every fiduciary's account required by 3043
section 2109.301, 2109.302, or 2109.303 of the Revised Code shall 3044
be set for hearing before the probate court. The hearing on the 3045
account shall be set not earlier than thirty days after the filing 3046
of the account. 3047

At the hearing upon an account required by section 2109.302 3048
or 2109.303 of the Revised Code and, if ordered by the court, upon 3049
an account required by section 2109.301 of the Revised Code, the 3050

court shall inquire into, consider, and determine all matters 3051
relative to the account and the manner in which the fiduciary has 3052
executed the fiduciary's trust, including the investment of trust 3053
funds, and may order the account approved and settled or make any 3054
other order ~~as~~ that the court considers proper. If, at the hearing 3055
upon an account, the court finds that the fiduciary has fully and 3056
lawfully administered the estate or trust and has distributed the 3057
assets of the estate or trust in accordance with the law or the 3058
instrument governing distribution, as shown in the account, the 3059
court shall order the account approved and settled and may order 3060
the fiduciary discharged. Upon approval of a final and 3061
distributive account required by division (B)(1) of section 3062
2109.301 of the Revised Code, the court may order the surety bond 3063
for the fiduciary terminated. Unless otherwise ordered by the 3064
court, the fiduciary shall be discharged without further order 3065
twelve months following the approval of the final and distributive 3066
account. 3067

(B)(1) An administrator or executor filing an account 3068
pursuant to section 2109.301 of the Revised Code shall provide at 3069
the time of filing the account a copy of the account to each heir 3070
of an intestate estate or to each beneficiary of a testate estate. 3071
An administrator or executor is not required to provide a copy of 3072
the account to any of the following: 3073

(a) An heir or a beneficiary whose residence is unknown; 3074

(b) A beneficiary of a specific bequest or devise who has 3075
received ~~his or her~~ the beneficiary's distribution and for which a 3076
receipt has been filed or exhibited with the court. 3077

(2) An administrator or executor filing an account pursuant 3078
to section 2109.301 of the Revised Code shall file with the 3079
probate court a certificate of service of account prior to or 3080
simultaneously with the filing of the account. 3081

(3) The probate court shall not approve the final account of 3082
any executor or administrator until the following events have 3083
occurred: 3084

(a) Three months have passed since the death of the decedent. 3085

(b) The surviving spouse has filed an election to take under 3086
or against the will, or the time for making the election has 3087
expired. 3088

(4) If an administrator or executor learns of the existence 3089
of newly discovered assets after the filing of the final account 3090
or otherwise comes into possession of assets belonging to the 3091
estate after the filing of the final account, the executor or 3092
administrator shall file a supplemental final account with respect 3093
to the disposition of the assets and shall provide a copy of the 3094
supplemental final account to each heir of an intestate estate or 3095
to each beneficiary of a testate estate, as provided in division 3096
(B)(1) of this section and subject to the exceptions specified in 3097
divisions (B)(1)(a) and (b) of this section. 3098

(C) The rights of any person with a pecuniary interest in the 3099
estate are not barred by approval of an account pursuant to 3100
divisions (A) and (B) of this section. These rights may be barred 3101
following a hearing on the account pursuant to section 2109.33 of 3102
the Revised Code. 3103

Sec. 2109.33. A fiduciary may serve notice of the hearing 3104
upon ~~his~~ the fiduciary's account to be conducted under section 3105
2109.32 of the Revised Code, or may cause the notice to be served, 3106
upon any person who is interested in the estate or trust, 3107
including creditors as the court may direct. The probate court, 3108
after notice to the fiduciary upon the motion of any interested 3109
person for good cause shown or at its own instance, may order that 3110
a notice of the hearing is to be served upon persons the court 3111
designates. 3112

The notice shall be made by mail in addition to service by 3113
publication, shall set forth the time and place of the hearing, 3114
and shall specify the account to be considered and acted upon by 3115
the court at the hearing and the period of time covered by the 3116
account. It shall contain a statement to the effect that the 3117
person notified is required to examine the account, to inquire 3118
into the contents of the account and into all matters that may 3119
come before the court at the hearing on the account, and to file 3120
any exceptions that the person may have to the account at least 3121
five days prior to the hearing on the account, and that upon ~~his~~ 3122
the person's failure to file exceptions, the account may be 3123
approved without further notice. If the person to be notified was 3124
not a party to the proceeding in which any prior account was 3125
settled, the notice, for the purpose of barring any rights 3126
possessed by that person, may include and specify the prior 3127
accounts and the periods of time covered by them. In that event, 3128
the notice shall inform the person notified that the approval of 3129
the account filed most recently will terminate any rights 3130
possessed by ~~him~~ the person to vacate the order settling each 3131
prior account so specified, except as provided in section 2109.35 3132
of the Revised Code, and shall further inform the person that, 3133
under penalty of losing those rights, ~~he forthwith~~ the person 3134
shall examine each prior account so specified, shall inquire into 3135
its contents, and, if ~~he deems~~ the person considers it necessary 3136
to protect ~~his~~ the person's rights, shall take the action with 3137
respect to ~~his~~ the person's rights that is permitted by law. 3138

The notice of the hearing upon an account shall be served at 3139
least fifteen days prior to the hearing on the account. Any 3140
competent person may waive service of notice and consent to the 3141
approval of any account by the court. Waivers of service and 3142
consents to approval shall be recorded with the account. 3143

Any person interested in an estate or trust may file 3144

exceptions to an account or to matters pertaining to the execution 3145
of the trust. All exceptions shall be specific and written. 3146
Exceptions shall be filed and a copy of them furnished to the 3147
fiduciary by the exceptor, not less than five days prior to the 3148
hearing on the account. The court for cause may allow further time 3149
to file exceptions. If exceptions are filed to an account, the 3150
court may allow further time for serving notice of the hearing 3151
upon any person who may be affected by an order disposing of the 3152
exceptions and who has not already been served with notice of the 3153
hearing in accordance with this section. 3154

A probate court, by local rule, may require that notice of 3155
the hearing on a final account be given to all heirs in an 3156
intestate estate and to all residuary beneficiaries in a testate 3157
estate. 3158

Any notice that is required or permitted by this section or 3159
by any local rule adopted under authority of this section shall be 3160
served, and any waiver of the right to receive any notice of those 3161
types may be waived, in accordance with the Rules of Civil 3162
Procedure. 3163

Sec. 2109.34. If an interest in an estate or trust is or may 3164
be possessed by persons who will compose a certain class upon the 3165
happening of any future event, the unborn members of ~~such that~~ 3166
class shall be ~~deemed~~ considered to be represented in any hearing 3167
upon a fiduciary's account required by section 2109.32 of the 3168
Revised Code, if any living member of the class is made a party to 3169
~~such that~~ proceeding or if a trustee for the proceeding is 3170
appointed by the probate court. The unborn members of ~~such the~~ 3171
class need not be served by publication. An order made in ~~such the~~ 3172
proceeding shall be binding upon all members of ~~such the~~ class, 3173
except that ~~such the~~ order may be vacated for fraud as provided in 3174
section 2109.35 of the Revised Code. 3175

If the beneficiaries, both present and future, of a charitable trust are not represented by a trustee or an existing corporation or other organization, they shall be represented in any ~~such~~ proceeding under this section by the attorney general if ~~he~~ the attorney general is made a party ~~thereto~~ to the proceeding. Any order made in the proceeding shall be binding upon ~~such~~ those beneficiaries, except for fraud.

Sec. 2109.35. The order of the probate court upon the settlement of a fiduciary's account shall have the effect of a judgment and may be vacated only as follows:

(A) The order may be vacated for fraud, upon motion of any person affected by the order or upon the court's own order, if the motion is filed or order is made within one year after discovery of the existence of the fraud. Any person who is subject to any legal disability may file the motion at any time within one year after the removal of the legal disability or within one year after ~~he~~ the person discovers the existence of the fraud, whichever is later, or ~~his~~ the person's guardian or a successor guardian may do so during the period of the legal disability. If the death of any person occurs during the period within which ~~he~~ the person could have filed the motion, ~~his~~ the person's administrator or executor may file it within one year after the person's death.

(B) The order may be vacated for good cause shown, other than fraud, upon motion of any person affected by the order who was not a party to the proceeding in which the order was made and who had no knowledge of the proceeding in time to appear in it; provided that, if the account settled by the order is included and specified in the notice to that person of the proceeding in which a subsequent account is settled, the right of that person to vacate the order shall terminate upon the settlement of the subsequent account. A person affected by an order settling an

account shall be ~~deemed~~ considered to have been a party to the 3207
proceeding in which the order was made if that person was served 3208
with notice of the hearing on the account in accordance with 3209
section 2109.33 of the Revised Code, waived that notice, consented 3210
to the approval of the account, filed exceptions to the account, 3211
or is bound by section 2109.34 of the Revised Code; but no person 3212
in being who is under legal disability at the time of that 3213
proceeding shall be ~~deemed~~ considered to have been a party to that 3214
proceeding unless ~~he~~ the person was represented in it as provided 3215
in section 2111.23 of the Revised Code. Neither the fiduciary nor 3216
~~his~~ the fiduciary's surety shall incur any liability as a result 3217
of the vacation of an order settling an account in accordance with 3218
this division, if the motion to vacate the order is filed more 3219
than three years following the settlement of the fiduciary's 3220
account showing complete distribution of assets; but the 3221
three-year period shall not affect the liability of any heir, 3222
devisee, or distributee either before or after the expiration of 3223
that period. 3224

(C) The order may be vacated for good cause shown upon motion 3225
of the fiduciary, if the motion is filed prior to the settlement 3226
of the account showing that the fiduciary has fully discharged his 3227
trust. 3228

A motion to vacate an order settling an account shall set 3229
forth the items of the account with respect to which complaint is 3230
made and the reasons for complaining of those items. The person 3231
filing a motion to vacate an order settling an account or another 3232
person the court may designate shall cause notice of the hearing 3233
on the motion to be served upon all interested parties who may be 3234
adversely affected by an order of the court granting the motion. 3235

An order settling an account shall not be vacated unless the 3236
court determines that there is good cause for doing so, and the 3237
burden of proving good cause shall be upon the complaining party. 3238

The vacation of an order settling an account, made after notice given in the manner provided in section 2109.33 of the Revised Code, shall not affect the rights of a purchaser for value in good faith, a lessee for value in good faith, or an encumbrancer for value in good faith; provided that, if the fiduciary has effected any such sale, lease, or encumbrance, any person prejudiced by it may proceed, after vacation of the order, against any distributee benefiting from the sale, lease, or encumbrance to the extent of the amount received by that distributee on distribution of the estate or trust, or if any heir, devisee, or distributee has effected any such sale, lease, or encumbrance, any person prejudiced by it may proceed, after the vacation of the order, against that heir, devisee, or distributee, to the extent of the value at the time of alienation of the property alienated by ~~him~~ the person, with legal interest.

Sec. 2109.36. An application for an order of distribution of the assets of an estate or trust held by a fiduciary may be set for hearing before the probate court at ~~such the time as that~~ such the time as that the court shall designate. The fiduciary may serve notice of the hearing upon ~~such the~~ such the application, or cause ~~such the~~ such the notice to be served, upon any person who may be affected by an order disposing ~~thereof of the application~~; or the court, upon motion of any interested person for good cause shown or at its own instance, may order ~~such the~~ such the notice to be served upon ~~any such that~~ any such that person. ~~Such~~ The notice shall set forth the time and place of the hearing and shall be accompanied by a statement of the proposed distribution. At the hearing upon the application the court shall inquire into, consider, and determine all matters relative ~~thereto to the~~ to the ~~application~~, and make ~~such an order as that~~ such an order as that the court ~~deems~~ considers proper. If the court makes an order of distribution, the fiduciary shall comply ~~therewith with the order~~ with the order and shall account to the court for ~~his~~ the fiduciary's distribution, verified by

vouchers or proof. An order of distribution shall have the effect 3271
of a judgment. ~~Such~~ The order may be reviewed upon appeal and may 3272
be vacated as provided in section 2109.35 of the Revised Code. 3273

Sec. 2109.361. (A) As used in this section, "third-party 3274
distribution" means the distribution by a fiduciary of an estate 3275
or trust of the assets of that estate or trust when both of the 3276
following apply: 3277

(1) The fiduciary makes the distribution to either of the 3278
following persons: 3279

(a) The transferee of a beneficiary; 3280

(b) Any person pursuant to an agreement, request, or 3281
instruction of a beneficiary or pursuant to a legal claim against 3282
a beneficiary. 3283

(2) The distribution is the subject of an agreement between a 3284
beneficiary and any person that requires the fiduciary or 3285
beneficiary to pay a percentage of an inheritance or a dollar 3286
amount to any person other than the beneficiary. 3287

(B) Prior to making a third-party distribution, the affected 3288
beneficiary or the affected beneficiary's guardian or other legal 3289
representative of the beneficiary may file an application for the 3290
approval of a third-party distribution with the probate court. An 3291
application filed pursuant to this division shall identify the 3292
person to whom the third-party distribution is to be made, 3293
disclose the basis for making the third-party distribution, and 3294
include a copy of any written agreement between the affected 3295
beneficiary and the person to whom the third-party distribution is 3296
to be made. 3297

(C) The probate court shall hold a hearing on an application 3298
filed under division (B) of this section. The applicant shall 3299
serve notice of the hearing on all interested parties at least 3300

fifteen days prior to the hearing in accordance with Civil Rule 3301
73. An interested party may waive notice of the hearing in 3302
accordance with Civil Rule 73. 3303

(D) The probate court may approve the third-party 3304
distribution in whole or in part, as the court determines is just 3305
and equitable. To the extent that the application is approved, the 3306
court shall determine whether the third-party distribution is 3307
properly charged solely against the beneficiary's share of the 3308
estate or trust or whether some or all of the third-party 3309
distribution is properly charged against the residue of the 3310
affected estate or trust. The court may consider any relevant 3311
factors in evaluating the application, including, but not limited 3312
to, any of the following: 3313

(1) The amount or percentage of the affected beneficiary's 3314
share that would be the subject of the proposed third-party 3315
distribution measured against the reasonable value of any ~~goods~~ 3316
assets or services the person to whom the third-party distribution 3317
would be made provided to the beneficiary or to the estate or 3318
trust; 3319

(2) Whether the agreement, request, or instructions of the 3320
affected beneficiary were procured by duress, fraud, 3321
misrepresentation, undue influence, or other unfair means; 3322

(3) Whether the amount of the proposed third-party 3323
distribution is fixed or contingent under the terms of the 3324
agreement between the affected beneficiary and the recipient of 3325
the proposed third-party distribution; 3326

(4) Whether the beneficiary was represented by an attorney 3327
during the pendency of the probate action, or the beneficiary 3328
authorized the recipient of the proposed third-party distribution 3329
to retain an attorney who is licensed to practice law in Ohio for 3330
the beneficiary to formally represent the beneficiary in any 3331

proceeding regarding the decedent's estate, and the recipient of 3332
the proposed third-party distribution is responsible for paying 3333
the attorney's fees; 3334

(5) The extent, if any, to which the recipient of the 3335
proposed third-party distribution incurred expenses in connection 3336
with the services provided to the affected beneficiary, estate, or 3337
trust; 3338

(6) Whether the beneficiary was required to advance any 3339
payments for fees or expenses to the recipient of the proposed 3340
third-party distribution. 3341

(E) Division (D)(4) of this section does not prohibit the 3342
beneficiary from retaining the beneficiary's own legal counsel. 3343

(F) This section does not apply to third-party distributions 3344
to an attorney who represents a beneficiary and does not affect 3345
any other provision of law regarding the compensation of 3346
attorneys. 3347

Sec. 2109.37. (A) Except as otherwise provided by law, 3348
including division (D) of this section, or by the instrument 3349
creating the trust, a fiduciary having funds belonging to a trust 3350
~~which~~ that are to be invested may invest them in the following: 3351

(1) Bonds or other obligations of the United States or of 3352
this state; 3353

(2) Bonds or other interest-bearing obligations of any 3354
county, municipal corporation, school district, or other legally 3355
constituted political taxing subdivision within the state, 3356
provided that ~~such~~ the county, municipal corporation, school 3357
district, or other subdivision has not defaulted in the payment of 3358
the interest on any of its bonds or interest-bearing obligations, 3359
for more than one hundred twenty days during the ten years 3360
immediately preceding the investment by the fiduciary in the bonds 3361

or other obligations, and provided that ~~such~~ the county, municipal 3362
corporation, school district, or other subdivision, is not, at the 3363
time of the investment, in default in the payment of principal or 3364
interest on any of its bonds or other interest-bearing 3365
obligations; 3366

(3) Bonds or other interest-bearing obligations of any other 3367
state of the United States which, within twenty years prior to the 3368
making of ~~such~~ that investment, has not defaulted for more than 3369
ninety days in the payment of principal or interest on any of its 3370
bonds or other interest-bearing obligations; 3371

(4) Any bonds issued by or for federal land banks and any 3372
debentures issued by or for federal intermediate credit banks 3373
under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 3374
U.S.C.A. 641, as amended; or any debentures issued by or for banks 3375
for cooperatives under the "Farm Credit Act of 1933," 48 Stat. 3376
257, 12 U.S.C.A. 131, as amended; 3377

(5) Notes ~~which~~ that are: (a) secured by a first mortgage on 3378
real ~~estate~~ property held in fee and located in the state, 3379
improved by a unit designed principally for residential use for 3380
not more than four families or by a combination of ~~such~~ that 3381
dwelling unit and business property, the area designed or used for 3382
nonresidential purposes not to exceed fifty per cent of the total 3383
floor area; (b) secured by a first mortgage on real ~~estate~~ 3384
property held in fee and located in the state, improved with a 3385
building designed for residential use for more than four families 3386
or with a building used primarily for business purposes, if the 3387
unpaid principal of the notes secured by ~~such~~ that mortgage does 3388
not exceed ten per cent of the value of the estate or trust or 3389
does not exceed five thousand dollars, whichever is greater; or 3390
(c) secured by a first mortgage on an improved farm held in fee 3391
and located in the state, provided that ~~such~~ the mortgage requires 3392
that the buildings on the mortgaged property shall be well insured 3393

against loss by fire, and so kept, for the benefit of the 3394
mortgagee, until the debt is paid, and provided that the unpaid 3395
principal of the notes secured by the mortgage shall not exceed 3396
fifty per cent of the fair value of the mortgaged real ~~estate~~ 3397
property at the time the investment is made, and the notes shall 3398
be payable not more than five years after the date on which the 3399
investment in them is made; except that the unpaid principal of 3400
the notes may equal sixty per cent of the fair value of the 3401
mortgaged real ~~estate~~ property at the time the investment is made, 3402
and may be payable over a period of fifteen years following the 3403
date of the investment by the fiduciary if regular installment 3404
payments are required sufficient to amortize four per cent or more 3405
of the principal of the outstanding notes per annum and if the 3406
unpaid principal and interest become due and payable at the option 3407
of the holder upon any default in the payment of any installment 3408
of interest or principal upon the notes, or of taxes, assessments, 3409
or insurance premiums upon the mortgaged premises or upon the 3410
failure to cure any such default within any grace period provided 3411
~~therein~~ in the notes not exceeding ninety days in duration; 3412

(6) Life, endowment, or annuity contracts of legal reserve 3413
life insurance companies regulated by sections 3907.01 to 3907.21, 3414
3909.01 to 3909.17, 3911.01 to 3911.24, 3913.01 to 3913.10, 3415
3915.01 to 3915.15, and 3917.01 to 3917.05 of the Revised Code, 3416
and licensed by the superintendent of insurance to transact 3417
business within the state, provided that the purchase of contracts 3418
authorized by this division shall be limited to executors or the 3419
successors to their powers when specifically authorized by will 3420
and to guardians and trustees, which contracts may be issued on 3421
the life of a ward, a beneficiary of a trust fund, or according to 3422
a will, or upon the life of a person in whom ~~such~~ the ward or 3423
beneficiary has an insurable interest and the contracts shall be 3424
drawn by the insuring company so that the proceeds shall be the 3425
sole property of the person whose funds are so invested; 3426

(7) Notes or bonds secured by mortgages and insured by the federal housing administrator or debentures issued by such <u>that</u> administrator;	3427 3428 3429
(8) Obligations issued by a federal home loan bank created under the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12 U.S.C.A. 1421, as amended;	3430 3431 3432
(9) Shares and certificates or other evidences of deposits issued by a federal savings and loan association organized and incorporated under the "Home Owners' Loan Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, as amended, to the extent and only to the extent that those shares or certificates or other evidences of deposits are insured pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended;	3433 3434 3435 3436 3437 3438 3439 3440
(10) Bonds issued by the home owners' loan corporation created under the "Home Owners' Act of 1933," 48 Stat. 128, 12 U.S.C.A. 1461, as amended;	3441 3442 3443
(11) Obligations issued by the national mortgage association created under the "National Housing Act," 48 Stat. 1246 (1934), 12 U.S.C.A. 1701, as amended;	3444 3445 3446
(12) Shares and certificates or other evidences of deposits issued by a domestic savings and loan association organized under the laws of the state, which association has obtained insurance of accounts pursuant to the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as amended, or as may be otherwise provided by law, only to the extent that such <u>the</u> evidences of deposits are insured under that act, as amended;	3447 3448 3449 3450 3451 3452 3453 3454
(13) Shares and certificates or other evidences of deposits issued by a domestic savings and loan association organized under the laws of the state, provided that no fiduciary may invest such	3455 3456 3457

the deposits except with the approval of the probate court, and 3458
then in an amount not to exceed the amount ~~which~~ that the 3459
fiduciary is permitted to invest under division (A)(12) of this 3460
section; 3461

(14) In savings accounts in, or certificates or other 3462
evidences of deposits issued by, a national bank located in the 3463
state or a state bank located in and organized under the laws of 3464
the state by depositing the funds in the bank, and ~~such~~ the 3465
national or state bank when itself acting in a fiduciary capacity 3466
may deposit the funds in savings accounts in, or certificates or 3467
other evidences of deposits issued by, its own savings department 3468
or any bank subsidiary corporation owned or controlled by the bank 3469
holding company that owns or controls ~~such~~ the national or state 3470
bank; provided that no deposit shall be made by any fiduciary, 3471
individual, or corporate, unless the deposits of the depository 3472
bank are insured by the federal deposit insurance corporation 3473
created under the "Federal Deposit Insurance Corporation Act of 3474
1933," 48 Stat. 162, 12 U.S.C. 264, as amended, and provided that 3475
the deposit of the funds of any one trust in ~~any such~~ those 3476
savings accounts in, or certificates or other evidences of 3477
deposits issued by, any one bank shall not exceed the sum insured 3478
under that act, as amended; 3479

(15) Obligations consisting of notes, bonds, debentures, or 3480
equipment trust certificates issued under an indenture, ~~which~~ that 3481
are the direct obligations, or in the case of equipment trust 3482
certificates are secured by direct obligations, of a railroad or 3483
industrial corporation, or a corporation engaged directly and 3484
primarily in the production, transportation, distribution, or sale 3485
of electricity or gas, or the operation of telephone or telegraph 3486
systems or waterworks, or in some combination of them; provided 3487
that the obligor corporation is one ~~which~~ that is incorporated 3488
under the laws of the United States, any state, ~~or~~ the District of 3489

Columbia, or foreign government, and the obligations are rated at 3490
the time of purchase in the highest or next highest classification 3491
established by at least two standard rating services selected from 3492
a list of the standard rating services ~~which~~ that shall be 3493
prescribed by the superintendent of financial institutions; 3494
provided that every such list shall be certified by the 3495
superintendent to the clerk of each probate court in the state, 3496
and shall continue in effect until a different list is prescribed 3497
and certified as provided in this division; 3498

(16) Obligations issued, assumed, or guaranteed by the 3499
international finance corporation or by the international bank for 3500
reconstruction and development, the Asian development bank, the 3501
inter-American development bank, the African development bank, or 3502
other similar development bank in which the president, as 3503
authorized by congress and on behalf of the United States, has 3504
accepted membership, provided that the obligations are rated at 3505
the time of purchase in the highest or next highest classification 3506
established by at least one standard rating service selected from 3507
a list of standard rating services ~~which~~ that shall be prescribed 3508
by the superintendent of financial institutions; 3509

(17) Securities of any investment company, as defined in and 3510
registered under sections 3 and 8 of the "Investment Company Act 3511
of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8, that are 3512
invested exclusively in forms of investment or in instruments that 3513
are fully collateralized by forms of investment in which the 3514
fiduciary is permitted to invest pursuant to divisions (A)(1) to 3515
(16) of this section, provided that, in addition to ~~such~~ those 3516
forms of investment, the investment company may, for the purpose 3517
of reducing risk of loss or of stabilizing investment returns, 3518
engage in hedging transactions. 3519

(B) No administrator or executor may invest funds belonging 3520
to an estate in any asset other than a direct obligation of the 3521

United States that has a maturity date not exceeding one year from 3522
the date of investment, or other than in a short-term investment 3523
fund that is invested exclusively in obligations of the United 3524
States or of its agencies, or primarily in ~~such~~ those obligations 3525
and otherwise only in variable demand notes, corporate money 3526
market instruments including, but not limited to, commercial 3527
paper, or fully collateralized repurchase agreements or other 3528
evidences of indebtedness that are payable on demand or generally 3529
have a maturity date not exceeding ninety-one days from the date 3530
of investment, except with the approval of the probate court or 3531
with the permission of the instruments creating the trust. 3532

(C)(1) In addition to the investments allowed by this 3533
section, a guardian or trustee, with the approval of the court, 3534
may invest funds belonging to the trust in productive real ~~estate~~ 3535
property located within the state, provided that neither the 3536
guardian nor the trustee nor any member of the family of either 3537
has any interest in ~~such~~ the real ~~estate~~ property or in the 3538
proceeds of the purchase price. The title to any real ~~estate~~ 3539
property so purchased by a guardian ~~must~~ shall be taken in the 3540
name of the ward. 3541

(2) Notwithstanding the provisions of division (C)(1) of this 3542
section, the court may permit the funds to be used to purchase or 3543
acquire a home for the ward or an interest in a home for the ward 3544
in which a member of the ward's family may have an interest. After 3545
the filing of the petition by a guardian or a conservator for 3546
authority to purchase or acquire a home for the ward or an 3547
interest in a home for the ward in which a member of the ward's 3548
family may have an interest, the matter shall be set for a hearing 3549
before the probate court. 3550

(D) If the fiduciary is a trustee appointed by and 3551
accountable to the probate court, the fiduciary shall invest the 3552
trust's assets pursuant to the requirements and standards set 3553

forth in the Ohio Uniform Prudent Investor Act. 3554

Sec. 2109.371. (A) In addition to those investments made 3555
eligible by section 2109.37 or 2109.372 of the Revised Code, 3556
investments may be made by a fiduciary other than a guardian under 3557
sections 5905.01 to 5905.19 of the Revised Code, and subject to 3558
the restriction placed on an administrator or executor by division 3559
(B) of section 2109.37 of the Revised Code, in any of the 3560
following kinds and classes of securities, provided that it may be 3561
lawfully sold in Ohio and investment is made only in ~~such~~ those 3562
securities ~~as~~ that would be acquired by prudent persons of 3563
discretion and intelligence in ~~such~~ those matters who are seeking 3564
a reasonable income and the preservation of their capital: 3565

(1) Securities of corporations organized and existing under 3566
the laws of the United States, the District of Columbia, ~~or~~ any 3567
state of the United States, or any foreign government or state, 3568
including, but not limited to, bonds, debentures, notes, equipment 3569
trust obligations, or other evidences of indebtedness, and shares 3570
of common and preferred stocks of ~~such~~ those corporations; 3571

(2) Subject to division (C) of this section, collective 3572
investment funds established in accordance with section 1111.14 of 3573
the Revised Code or securities of any investment company, 3574
including any affiliated investment company, whether or not the 3575
fiduciary has invested other funds held by it in an agency or 3576
other nonfiduciary capacity in the securities of the same 3577
investment company or affiliated investment company. ~~Such~~ Those 3578
investments may be made regardless of the eligibility of the 3579
underlying assets held by the fund portfolios of the investment 3580
company. 3581

(3) Bonds or other interest-bearing obligations of any state 3582
or territory of the United States, or of any county, city, 3583
village, school district, or other legally constituted political 3584

taxing subdivision of any state or territory of the United States, 3585
not otherwise eligible under division (A)(2) or (3) of section 3586
2109.37 of the Revised Code, or of any foreign government; 3587

(4) Debt or equity securities of foreign corporations that 3588
trade on recognized United States domiciled exchanges. 3589

(B) No investment shall be made pursuant to this section 3590
~~which that~~, at the time ~~such the~~ investment is made, causes the 3591
aggregate market value of the investments, not made eligible by 3592
section 2109.37 or 2109.372 of the Revised Code, to exceed sixty 3593
per cent of the aggregate market value at that time of all the 3594
property of the fund held by the fiduciary. No sale or other 3595
liquidation of any investment shall be required solely because of 3596
any change in the relative market value of those investments made 3597
eligible by this section and those made eligible by section 3598
2109.37 or 2109.372 of the Revised Code; provided that, in the 3599
event of a sale of investments authorized by this section, the 3600
proceeds from the sale may be reinvested in the kinds and classes 3601
of securities authorized by this section without regard to the 3602
percentage limitation provided in this division. In determining 3603
the aggregate market value of the property of a fund and the 3604
percentage of a fund to be invested under this section, a 3605
fiduciary may rely upon published market quotations as to those 3606
investments for which ~~such those~~ quotations are available and upon 3607
~~such the~~ valuations of other investments ~~as that~~, in the 3608
fiduciary's best judgment, seem fair and reasonable according to 3609
available information. 3610

(C)(1)(a) A fiduciary making an investment of trust funds in 3611
securities of an affiliated investment company, or a bank 3612
subsidiary corporation or other corporation owned or controlled by 3613
the bank holding company that owns or controls the fiduciary, may 3614
charge a reasonable fee for investment advisory, brokerage, 3615
transfer agency, registrar, management, or other similar services 3616

provided to an affiliated investment company. The fee may be in 3617
addition to the compensation to which the fiduciary is otherwise 3618
entitled to receive from the trust, provided that the fee is 3619
charged as a percentage of either asset value or income earned or 3620
actual amount charged and is disclosed at least annually by 3621
prospectus, account statement, or any other written means to all 3622
persons entitled to receive statements of account activity. The 3623
fiduciary shall disclose the relationship between the fiduciary 3624
and the affiliated investment company, at least annually by 3625
account statement, whether or not the fee is charged. 3626

(b) A fiduciary making an investment of trust funds in 3627
securities of an affiliated investment company pursuant to 3628
division (A)(2) of this section shall, when providing any periodic 3629
account statements to the trust fund, report the net asset value 3630
of the shares comprising the investment of the trust funds in the 3631
affiliated investment company. 3632

(c) If a fiduciary making an investment of trust funds in 3633
securities of an affiliated investment company pursuant to 3634
division (A)(2) of this section invests ~~such~~ those funds in any 3635
mutual fund, the fiduciary shall disclose, in at least ten-point 3636
boldface type, by prospectus, account statement, or any other 3637
written means to all persons entitled to receive statements of 3638
account activity, that the mutual fund is not insured or 3639
guaranteed by the federal deposit insurance corporation or by any 3640
other government-sponsored agency of the federal government or of 3641
this state. 3642

(2) Unless the investment of trust funds in securities of an 3643
affiliated investment company can be made under the terms of the 3644
instrument creating the trust, an exception to the investment of 3645
trust funds in securities of an affiliated investment company may 3646
be filed with the probate court. Any exception filed pursuant to 3647
this division ~~must~~ shall be signed by all persons who would, at 3648

the time the exception is filed, be permitted to file an exception 3649
to an account pursuant to section 2109.33 of the Revised Code and 3650
~~must~~ shall state that all ~~such~~ of those persons request that the 3651
current investment of trust funds in securities of an affiliated 3652
investment company be terminated within a reasonable time. If the 3653
probate court determines that the exception complies with the 3654
requirements of this division, the probate court shall establish a 3655
schedule for disposing of any current investments in securities of 3656
an affiliated investment company, and the fiduciary shall cause 3657
the trust to dispose of the investments in accordance with the 3658
schedule. The fiduciary shall not be liable for any loss incurred 3659
by the trust as a result of complying with division (C)(2) of this 3660
section. 3661

(D) As used in this section, "affiliated investment company" 3662
and "reasonable fee" have the same meanings as in division (E) of 3663
section 1111.13 of the Revised Code. 3664

Sec. 2109.372. (A) As used in this section: 3665

(1) "Short term trust-quality investment fund" means a short 3666
term investment fund that meets both of the following conditions: 3667

(a) The fund may be either a collective investment fund 3668
established in accordance with section 1111.14 of the Revised Code 3669
or a registered investment company, including any affiliated 3670
investment company whether or not the fiduciary has invested other 3671
funds held by it in an agency or other nonfiduciary capacity in 3672
the securities of the same registered investment company or 3673
affiliated investment company. 3674

(b) The fund is invested in any one or more of the following 3675
manners: 3676

(i) In obligations of the United States or of its agencies; 3677

(ii) In obligations of one or more of the states of the 3678

United States or their political subdivisions;	3679
(iii) <u>In obligations of foreign governments or states;</u>	3680
(iv) In variable demand notes, corporate money market instruments including, but not limited to, commercial paper rated at the time of purchase in either of the two highest classifications established by at least one nationally recognized standard rating service;	3681 3682 3683 3684 3685
(iv) (v) Deposits in banks, savings banks, or savings and loan associations, whose deposits are insured by the federal deposit insurance corporation, or in credit unions insured by the national credit union administration or by a credit union share guaranty corporation established under Chapter 1761. of the Revised Code, if the rate of interest paid on such <u>those</u> deposits is at least equal to the rate of interest generally paid by such <u>those</u> banks, savings banks, savings and loan associations, or credit unions on deposits of similar terms or amounts;	3686 3687 3688 3689 3690 3691 3692 3693 3694
(v) (vi) In fully collateralized repurchase agreements or other evidences of indebtedness that are of trust quality and are payable on demand or have a maturity date consistent with the purpose of the fund and the duty of fiduciary prudence.	3695 3696 3697 3698
(2) "Registered investment company" means any investment company that is defined in and registered under sections 3 and 8 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8.	3699 3700 3701 3702
(3) "Affiliated investment company" has the same meaning as in division (E)(1) of section 1111.13 of the Revised Code.	3703 3704
(B) A fiduciary is not required to invest cash that belongs to the trust and may hold that cash for the period prior to distribution if either of the following applies:	3705 3706 3707
(1) The fiduciary reasonably expects to do either of the	3708

following:	3709
(a) Distribute the cash to beneficiaries of the trust on a quarterly or more frequent basis;	3710 3711
(b) Use the cash for the payment of debts, taxes, or expenses of administration within the ninety-day period following the receipt of the cash by the fiduciary.	3712 3713 3714
(2) Determined on the basis of the facilities available to the fiduciary and the amount of the income that reasonably could be earned by the investment of the cash, the amount of the cash does not justify the administrative burden or expense associated with its investment.	3715 3716 3717 3718 3719
(C) If a fiduciary wishes to hold funds that belong to the trust in liquid form and division (B) of this section does not apply, the fiduciary may so hold the funds as long as they are temporarily invested as described in division (D) of this section.	3720 3721 3722 3723
(D)(1) A fiduciary may make a temporary investment of cash that the fiduciary may hold uninvested in accordance with division (B) of this section, and shall make a temporary investment of funds held in liquid form pursuant to division (C) of this section, in any of the following investments, unless the governing instrument provides for other investments in which the temporary investment of cash or funds is permitted:	3724 3725 3726 3727 3728 3729 3730
(a) A short term trust-quality investment fund;	3731
(b) Direct obligations of the United States or of its agencies;	3732 3733
(c) <u>Obligations of foreign governments or states;</u>	3734
(d) A deposit with a bank, savings bank, savings and loan association, or credit union, including a deposit with the fiduciary itself or any bank subsidiary corporation owned or controlled by the bank holding company that owns or controls the	3735 3736 3737 3738

fiduciary, whose deposits are insured by the federal deposit 3739
insurance corporation, if the rate of interest paid on that 3740
deposit is at least equal to the rate of interest generally paid 3741
by that bank, savings bank, savings and loan association, or 3742
credit union on deposits of similar terms or amounts. 3743

(2) A fiduciary that makes a temporary investment of cash or 3744
funds pursuant to division (D)(1) of this section may charge a 3745
reasonable fee for the services associated with that investment. 3746
The fee shall be in addition to the compensation to which the 3747
fiduciary is entitled for ordinary fiduciary services. 3748

(3) Fiduciaries that make one or more temporary investments 3749
of cash or funds pursuant to division (D)(1) of this section shall 3750
provide to the beneficiaries of the trusts involved, that are 3751
currently receiving income or have a right to receive income, a 3752
written disclosure of their temporary investment practices and, if 3753
applicable, the method of computing reasonable fees for their 3754
temporary investment services pursuant to division (D)(2) of this 3755
section. Fiduciaries may comply with this requirement in any 3756
appropriate written document, including, but not limited to, any 3757
periodic statement or account. 3758

(4) A fiduciary that makes a temporary investment of cash or 3759
funds in an affiliated investment company pursuant to division 3760
(D)(1)(a) of this section shall, when providing any periodic 3761
account statements of its temporary investment practices, report 3762
the net asset value of the shares comprising the investment in the 3763
affiliated investment company. 3764

(5) If a fiduciary that makes a temporary investment of cash 3765
or funds in an affiliated investment company pursuant to division 3766
(D)(1)(a) of this section invests in any mutual fund, the 3767
fiduciary shall provide to the beneficiaries of the trust 3768
involved, that are currently receiving income or have a right to 3769
receive income, a written disclosure, in at least ten-point 3770

boldface type, that the mutual fund is not insured or guaranteed 3771
by the federal deposit insurance corporation or by any other 3772
government agency or government-sponsored agency of the federal 3773
government or of this state. 3774

Sec. 2109.38. Sections 2109.37, 2109.371, and 2109.372 of the 3775
Revised Code do not prohibit a fiduciary from retaining any part 3776
of a trust estate as received by ~~him~~ the fiduciary even though 3777
~~such that~~ part is not of the class or percentage permitted to 3778
fiduciaries, or from retaining any investment made by ~~him~~ the 3779
fiduciary after ~~such the~~ investment ceases to be of a class or 3780
exceeds the percentage permitted by law, provided the 3781
circumstances are not such as to require the fiduciary to dispose 3782
of ~~such the~~ investment in the performance of ~~his~~ the fiduciary's 3783
duties. 3784

Sec. 2109.39. A fiduciary entitled to a distributive share of 3785
the assets of an estate or trust has the same right as other 3786
beneficiaries to accept or demand distribution in kind and may 3787
retain any security or investment so distributed to ~~him~~ the 3788
fiduciary as though it were a part of the original estate received 3789
by ~~him~~ the fiduciary. 3790

Sec. 2109.40. Unless the instrument creating a trust forbids, 3791
a fiduciary may do all of the things ~~which that~~ an individual 3792
holder might do with respect to securities held by ~~him~~ the 3793
fiduciary, including the exercise or sale of subscription rights, 3794
the acceptance of new stock in the same corporation in place of 3795
the stock held, or in the event of reorganization, sale, or merger 3796
in a different corporation, and with the approval of the probate 3797
court, the investment of additional funds ~~where~~ if required of all 3798
shareholders participating in a reorganization. 3799

Sec. 2109.42. Subject to section 2109.372 of the Revised Code, a fiduciary who has funds belonging to a trust ~~which that~~ are not required for payment of current obligations of ~~his the~~ fiduciary's trust or distribution shall, unless otherwise ordered by the probate court, invest ~~such those~~ funds within a reasonable time according to section 2109.37 or 2109.371 of the Revised Code. On failure to do so, ~~such the~~ fiduciary shall account to the trust for ~~such any~~ loss of interest ~~as that~~ is found by the court to be due to ~~his the~~ fiduciary's negligence.

Sec. 2109.43. No fiduciary shall make any personal use of the funds or property belonging to a trust. For a violation of this section, ~~such the~~ fiduciary and ~~his the~~ fiduciary's bond shall be liable in an action for any loss occasioned by ~~such that~~ use and for ~~such any~~ additional amount by way of forfeiture, not exceeding the amount of the loss occasioned by ~~such the~~ use, ~~as that~~ may be fixed by the probate court hearing ~~such the~~ case. ~~Such Those~~ amounts shall be payable for the benefit of the beneficiary, if living, and to ~~his the~~ beneficiary's estate if ~~he the~~ beneficiary is deceased. In addition to the penalties under this section, the court may remove the fiduciary pursuant to section 2109.24 of the Revised Code for fraudulent conduct or dereliction of duty related to the fiduciary's personal use or misuse of funds or property belonging to a trust. However, if all interested persons consent to the fiduciary's use of the property in a signed writing filed with the probate court, the fiduciary may make personal use of property belonging to the trust.

An action under this section shall be brought not later than one year after the termination of the trust or the discovery of ~~such that~~ loss.

It is within the court's discretion, upon application, notice to interested persons, and a hearing, to allow the personal use of

trust property by the fiduciary. 3831

Sec. 2109.44. (A) Fiduciaries shall not buy from or sell to 3832
themselves and shall not have in their individual capacities any 3833
dealings with the estate, except as expressly authorized by the 3834
instrument creating the trust and then only ~~1111.13~~ ~~1111.14~~ with 3835
the approval of the probate court in each instance. No corporate 3836
fiduciary, τ as defined in section 1101.01 of the Revised Code, 3837
that is not subject to examination or regulatory oversight by the 3838
superintendent of financial institutions, the comptroller of the 3839
currency, or the office of thrift supervision shall be permitted 3840
to deal with the estate, any power in the instrument creating the 3841
trust to the contrary notwithstanding. This section does not 3842
prohibit a fiduciary from making an advancement ~~when~~ if the 3843
advancement has been expressly authorized by the instrument 3844
creating the trust or ~~when~~ if the probate court approves or from 3845
engaging in any act authorized by this chapter. 3846

(B) The fiduciary or the attorney for the estate may petition 3847
the court for authority to purchase property of the estate if all 3848
of the following requirements are met: 3849

(1) Written consent to the purchase is signed by the 3850
following: 3851

(a) Each known heir whose interest in the estate would be 3852
affected by the proposed purchase; 3853

(b) Each known devisee whose interest in the estate would be 3854
affected by the proposed purchase. 3855

(2) The written consents are filed with the court. 3856

(3) The purchase is shown to be to the advantage of the 3857
estate. 3858

(C) The court shall deliver notice of the hearing on the 3859
petition to the heirs, devisees, or legatees of the estate or any 3860

interested person. 3861

Sec. 2109.45. Before the probate court confirms a sale by an 3862
executor, administrator, guardian, assignee, or trustee made under 3863
an order allowing that officer to make a private sale, the court 3864
shall require that officer to file a statement indicating that the 3865
private sale was made after diligent endeavor to obtain the best 3866
price for the property and that the private sale was at the 3867
highest price ~~he~~ the executor, administrator, guardian, assignee, 3868
or trustee could ~~get~~ obtain for the property. 3869

Sec. 2109.46. When it appears to be for the best interests of 3870
the ~~trust~~ entrusted estate, a fiduciary other than an executor or 3871
administrator may, with the approval of the probate court, borrow 3872
money and mortgage real estate property belonging to the ~~trust~~ 3873
entrusted estate, whether ~~such~~ the real estate property was 3874
acquired by purchase or by descent and distribution. 3875

The fiduciary proposing ~~se~~ to borrow money ~~must~~ shall file in 3876
the probate court ~~which~~ that appointed ~~him~~ the fiduciary a 3877
~~petition~~ complaint describing all of the real estate property in 3878
the trust and stating the nature and amount of the encumbrances 3879
~~thereon~~ on that real property, the date ~~such~~ those encumbrances 3880
became or will become due, and the rate of interest ~~thereon~~ on 3881
those encumbrances. The ~~petition~~ complaint shall also contain a 3882
statement of the personal property in the trust, the income from 3883
~~such~~ the personal property, and the income from the real estate 3884
property in ~~such~~ the trust. ~~Such petition~~ The complaint if filed 3885
by a guardian shall state the names, ages, and residences of the 3886
ward and next of kin known to be a resident ~~in the~~ of this state, 3887
including the spouse of ~~such~~ the ward and persons holding liens on 3888
~~such~~ the real estate property unless the liens will be 3889
extinguished, all of whom ~~must~~ shall be made defendants and be 3890
notified of the pendency and prayer of the ~~petition~~ complaint in 3891

~~such~~ the manner ~~as~~ that the court directs. In addition ~~such~~ 3892
~~petition, the complaint~~ shall contain a statement of the nature of 3893
the ~~imbecility incompetency~~ or ~~insanity~~ incapacity, if any, of 3894
~~such~~ the ward, whether temporary or confirmed and its duration. 3895
Except as provided in this section, the defendants and notice 3896
~~thereto to the defendants~~ shall be the same as though the real 3897
~~estate property~~ proposed to be mortgaged were being sold by the 3898
fiduciary. The ~~petition~~ complaint shall set forth the purpose of 3899
the loan, the amount required ~~therefor~~ for the loan, and ~~such~~ any 3900
other facts ~~as~~ that may be pertinent to the question whether ~~such~~ 3901
the money should be borrowed and shall contain a prayer that the 3902
fiduciary be authorized to mortgage so much of the ward's lands as 3903
may be necessary to secure ~~such~~ the loan. 3904

Upon the filing of ~~such~~ petition the complaint, the 3905
proceedings as to pleadings and proof shall be the same as on 3906
~~petition~~ a complaint to sell real ~~estate~~ property belonging to the 3907
trust. 3908

Sec. 2109.47. Before the probate court makes an order 3909
authorizing a guardian to mortgage real ~~estate~~ property for the 3910
purpose of borrowing money to make repairs or improvements, the 3911
court shall appoint ~~three~~ disinterested persons whose duty it 3912
shall be to investigate fully the necessity for and the 3913
advisability of making the repairs or improvements and their 3914
probable cost and to report their conclusions to the court. 3915

Sec. 2109.48. If on the final hearing of a fiduciary's 3916
~~petition~~ complaint to borrow money and mortgage real ~~estate~~ 3917
property belonging to the trust it appears to be for the best 3918
interests of the trust that the prayer of the ~~petition~~ complaint 3919
be granted, the probate court shall fix the amount necessary to be 3920
borrowed, direct what ~~lands~~ real property shall be encumbered by 3921
mortgage to secure ~~such~~ that amount, and issue an order to ~~such~~ 3922

the fiduciary directing ~~him~~ the fiduciary to ascertain and report 3923
to the court the rate of interest and the length of time for which 3924
~~he~~ the fiduciary can borrow ~~such~~ that amount. 3925

If ~~such~~ the report of the fiduciary and the terms proposed 3926
are satisfactory to the court, they may be accepted and confirmed 3927
and the fiduciary ordered, as fiduciary, to execute a note for 3928
~~such~~ the amount to be borrowed and a mortgage on the ~~lands~~ real 3929
property so designated, which shall be a valid lien ~~thereon~~ on the 3930
property. The fiduciary in no way shall be personally liable for 3931
the payment of any part of the sum borrowed, but ~~such~~ the 3932
mortgaged ~~lands~~ real property alone shall be bound ~~therefor~~ for 3933
its payment. ~~Such~~ The court shall direct the distribution of the 3934
fund and the fiduciary shall report to the court, for its 3935
approval, the execution of ~~such~~ the notes and mortgage and ~~his~~ the 3936
fiduciary's distribution of the fund. 3937

Sec. 2109.49. The probate judge, ~~when~~ if the probate judge 3938
~~deems~~ considers it necessary or upon the written application of 3939
any party interested in the trust estate, may appoint a suitable 3940
~~persons~~ person to investigate the administration of the trust or 3941
estate and report to the court. The expense ~~thereof~~ of the 3942
investigation shall be taxed as costs against the party asking for 3943
~~such~~ the examination or the trust fund, as the court may decree. 3944
This section shall not apply to a corporate trustee ~~which~~ that is 3945
subject to section 1111.28 of the Revised Code. 3946

Sec. 2109.50. Upon complaint made to the probate court of the 3947
county having jurisdiction of the administration of ~~a trust~~ an 3948
estate, a testamentary trust, or a guardianship or of the county 3949
~~wherein~~ where a person resides against whom the complaint is made, 3950
by a person interested in ~~such trust~~ the estate, testamentary 3951
trust, or guardianship or by the creditor of a person interested 3952
in ~~such trust~~ the estate, testamentary trust, or guardianship 3953

against any person suspected of having concealed, embezzled, or 3954
conveyed away or of being or having been in the possession of any 3955
moneys, ~~chattels~~ personal property, or choses in action of ~~such~~ 3956
the estate, testamentary trust, or guardianship, said the court 3957
shall by citation, ~~attachment or warrant, or, if circumstances~~ 3958
~~require it, by warrant or attachment in the first instance, or~~ 3959
other judicial order compel the person or persons ~~so~~ suspected to 3960
~~forthwith~~ appear before it to be examined, on oath, touching the 3961
matter of the complaint. ~~Where~~ If necessary ~~such, the~~ citation, 3962
~~attachment or warrant~~ or other judicial order may be issued into 3963
any county in the state and shall be served and returned by the 3964
officer to whom it is delivered. The officer to whom ~~such the~~ 3965
process is delivered shall be liable for negligence in its service 3966
or return in ~~like a similar~~ manner as sheriffs are liable for 3967
negligence in not serving or returning a capias issued upon an 3968
indictment. Before issuing an extra-county citation, ~~attachment or~~ 3969
~~warrant~~ or other judicial order, the probate judge may require the 3970
complainant to post security with the probate court in ~~such an~~ 3971
amount and in ~~such a form as~~ that the probate judge ~~shall find~~ 3972
finds acceptable in order to cover the costs of the proceeding 3973
under this section, including in ~~such those~~ costs a reasonable 3974
allowance for the ~~travelling travel~~ expenses of the person or 3975
persons against whom an extra-county citation, ~~attachment or~~ 3976
~~warrant~~ or other judicial order is to be issued. ~~Such~~ The security 3977
may be in the form of a bond, the amount, terms, conditions, and 3978
sureties of which shall be subject to the approval of the probate 3979
judge. 3980

The probate court may initiate proceedings on its own motion. 3981

The probate court shall ~~forthwith~~ promptly proceed to hear 3982
and determine the matter. 3983

The examinations, including questions and answers, shall be 3984
reduced to writing, signed by the party examined, and filed in the 3985

probate court. 3986

If required by either party, the probate court shall swear 3987
~~such~~ the witnesses ~~as may be~~ who are offered by either party 3988
touching the matter of ~~such~~ the complaint and cause the 3989
examination of every ~~such~~ witness, including questions and 3990
answers, to be reduced to writing, signed by the witness, and 3991
filed in the probate court. 3992

All costs of ~~such~~ the proceedings, including the reasonable 3993
~~travelling~~ travel expenses of a person against whom an 3994
extra-county citation, ~~attachment or warrant~~ or judicial order is 3995
issued, shall be assessed against and paid by the party making the 3996
complaint, except as provided by section 2109.52 of the Revised 3997
Code. 3998

Sec. 2109.51. If a person compelled under section 2109.50 of 3999
the Revised Code to appear for examination refuses to answer 4000
interrogatories propounded, the probate court shall commit ~~such~~ 4001
the person to the county jail, and ~~such~~ the person shall remain in 4002
close custody until ~~he~~ the person submits to the court's order. 4003

Sec. 2109.52. When passing on a complaint made under section 4004
2109.50 of the Revised Code, the probate court shall determine, by 4005
the verdict of a jury if either party requires it or without if 4006
not required, whether the person accused is guilty of having 4007
concealed, embezzled, conveyed away, or been in the possession of 4008
moneys, ~~chattels~~ personal property, or choses in action of the 4009
~~trust~~ estate, testamentary trust, or guardianship. If ~~such~~ the 4010
person is found guilty, the probate court shall assess the amount 4011
of damages to be recovered or the court may order the return of 4012
the specific thing concealed or embezzled or may order restoration 4013
in kind. The probate court may issue a citation or other judicial 4014
order into any county in this state, ~~which citation~~ that shall be 4015

served and returned as provided in section 2109.50, ~~requiring of~~ 4016
the Revised Code. The citation or other judicial order shall 4017
require any person ~~to appear before it~~ who claims any interest in 4018
the assets alleged to have been concealed, embezzled, conveyed, or 4019
held in possession ~~and at such~~ to appear before the court. At the 4020
hearing, the court may hear and determine questions of title 4021
relating to ~~such~~ those assets. In all cases, except when the 4022
person found guilty is the fiduciary, the probate court shall 4023
~~forthwith~~ render judgment in favor of the fiduciary or if there is 4024
no fiduciary in this state, the probate court shall render 4025
judgment in favor of the state, against the person found guilty, 4026
for the amount of the moneys or the value of the ~~chattels~~ personal 4027
property or choses in action concealed, embezzled, conveyed away, 4028
or held in possession, together with ten per cent penalty and all 4029
costs of ~~such~~ the proceedings or complaint; except that ~~such~~ the 4030
judgment shall be reduced to the extent of the value of any thing 4031
specifically restored or returned in kind as provided in this 4032
section. 4033

If the person found guilty is the fiduciary, the probate 4034
court shall ~~forthwith~~ render judgment in favor of the state 4035
against ~~him~~ the fiduciary for ~~such~~ the amount of the moneys or the 4036
value of the personal property or choses in action concealed, 4037
embezzled, conveyed away, or held in possession, together with 4038
penalty and costs as provided in this section. 4039

Sec. 2109.53. If a judgment is rendered against a fiduciary 4040
under section 2109.52 of the Revised Code, ~~he~~ the fiduciary shall 4041
~~forthwith~~ be removed by the probate court ~~and that part of the~~ 4042
~~trust not already administered shall be committed to some other~~ 4043
~~person. If any portion of the estate, testamentary trust, or~~ 4044
guardianship remains to be administered by the probate court at 4045
the time of the removal of the fiduciary, the court shall appoint 4046
a new fiduciary to continue the administrative process. A 4047

fiduciary ~~so~~ that is removed shall not receive compensation for 4048
acting as fiduciary and ~~must~~ shall be charged ~~in his account with~~ 4049
for the amount of ~~such~~ the judgment. ~~Such~~ The fiduciary's property 4050
also shall be liable for the satisfaction of the judgment on 4051
execution issued ~~thereon~~ on the judgment by ~~his~~ the fiduciary's 4052
successor. 4053

Sec. 2109.54. The fiduciary in whose favor a judgment has 4054
been rendered by the probate court under section 2109.52 of the 4055
Revised Code shall ~~forthwith~~ deliver to the clerk of the court of 4056
common pleas a certificate of ~~such~~ that judgment in accordance 4057
with section 2329.04 of the Revised Code, ~~which certificate the~~ 4058
The probate judge court shall make out complete and deliver the 4059
certificate to ~~such~~ the fiduciary on demand. The clerk shall 4060
~~forthwith~~ issue an execution of the court of common pleas for the 4061
amount of the judgment and the costs that have accrued or that may 4062
accrue ~~thereon~~ on the judgment. Thenceforth proceedings on 4063
execution shall be the same as if the judgment had been rendered 4064
in ~~such~~ that court of common pleas. 4065

Sec. 2109.55. If a judgment is rendered in the name of the 4066
state under section 2109.52 of the Revised Code and there is no 4067
fiduciary within this state, the prosecuting attorney shall cause 4068
the certificate provided for in section 2109.54 of the Revised 4069
Code to be filed in the clerk's office and proceed ~~thereon~~ to 4070
execution on the judgment as provided in ~~such~~ that section. ~~Such~~ 4071
The prosecuting attorney shall pay the money realized upon ~~such~~ 4072
the execution to the county treasurer for the use of ~~such trust~~ 4073
the estate, testamentary trust, or guardianship, reserving ~~such~~ 4074
the compensation to ~~himself as the prosecuting attorney that~~ the 4075
probate court allows. 4076

Sec. 2109.56. All gifts, grants, or conveyances of ~~land,~~ 4077

~~tenements, hereditaments~~ real property, rents, or ~~chattels~~ 4078
personal property and all bonds, judgments, or executions made or 4079
obtained with intent to avoid the purpose of the proceedings set 4080
forth in sections 2109.50 to 2109.55, ~~inclusive~~, of the Revised 4081
Code, or in contemplation of any examination or complaint provided 4082
for by ~~such~~ those sections, shall be void. 4083

Sec. 2109.57. In any action or proceeding pending in a court 4084
of record, if it is made to appear to the court that any person 4085
entitled to all or a part of the proceeds of property sold in ~~such~~ 4086
that action or proceeding is unknown or is a nonresident and not 4087
represented in ~~such~~ the action or proceeding or that the person 4088
entitled cannot, at the time, definitely be ascertained, the 4089
probate court may appoint a trustee to whom the notes and 4090
mortgages for the unpaid part shall be made, delivered, and paid 4091
and to receive, hold, and manage ~~such~~ the proceeds or part ~~thereof~~ 4092
of the proceeds. ~~Such~~ The trustee shall collect the unpaid part of 4093
the proceeds of the property sold, by action or otherwise, and 4094
shall pay over ~~such~~ that fund only on the order of the probate 4095
court appointing ~~him~~ the trustee. 4096

Payment to ~~such~~ the trustee shall be a bar to any claim 4097
thereafter made by any person and the persons or corporations 4098
paying ~~such~~ the money in no case shall be required to see to the 4099
application of the money paid. 4100

If a person entitled to any portion of the money held by ~~such~~ 4101
the trustee fails for seven or more years after ~~such~~ the trustee's 4102
appointment to make claim to the money and to present the proof 4103
necessary to entitle ~~such~~ the person to ~~such~~ the money, the 4104
prosecuting attorney of the county in which ~~such~~ the trustee was 4105
appointed shall collect it, with the interest accrued ~~thereon~~ on 4106
the money, from ~~such~~ the trustee and pay it into ~~such~~ the county's 4107
treasury, to be placed to the credit of the general fund. 4108

~~When~~ Upon application to the probate court ~~which that~~ 4109
appointed ~~such the~~ trustee is ~~satisfied that a~~ and presentment of 4110
~~the proof necessary to entitle the person who appears and claims~~ 4111
~~to the moneys paid into the county treasury has a right to receive~~ 4112
~~them, money, the court shall order the payment of the money to the~~ 4113
~~person~~ in whole or part, less the costs of collection by the 4114
prosecuting attorney, ~~such court shall order the payment thereof~~ 4115
~~to the person shown to be entitled to such moneys. Such. The~~ 4116
person, on the judge's certificate, shall be given a warrant 4117
~~therefor~~ for the money by the county auditor. 4118

Sec. 2109.58. Each fiduciary as to whom definite provision is 4119
not made in sections 2111.14 and 2115.02 of the Revised Code shall 4120
make and file within three months after ~~his~~ the fiduciary's 4121
appointment a full inventory of the real and personal property 4122
~~belonging to the trust~~ be entrusted with the fiduciary, its value, 4123
and the value of the yearly rent of the real property. 4124

Except as provided by section 2115.16 of the Revised Code, 4125
exceptions to the inventory of a fiduciary may be filed at any 4126
time within six months after the return of the inventory by any 4127
person interested in the ~~trust~~ entrusted property or in any of the 4128
property included in the inventory, but the six-month period shall 4129
not apply in case of fraud or concealment of assets. At the 4130
hearing, the fiduciary and any witness may be examined under oath. 4131
The probate court shall enter its finding on the journal and tax 4132
the costs as may be equitable. 4133

Sec. 2109.59. If a fiduciary, upon demand, refuses or 4134
neglects to pay any creditor whose claim has been allowed by the 4135
fiduciary and not subsequently rejected or to pay any creditor or 4136
make distribution to any person interested in the estate whose 4137
claim or interest has been established by judgment, decree, or 4138
order of court, including an order of distribution, ~~such the~~ 4139

creditor or other person may file a petition against the fiduciary 4140
in the probate court from which the fiduciary received ~~his~~ the 4141
fiduciary's appointment to enforce ~~such~~ the payment or 4142
distribution, briefly setting forth ~~therein~~ in the petition the 4143
amount and nature of ~~his~~ the creditor's or other person's claim or 4144
interest. ~~Such~~ The petition shall not be filed against an executor 4145
or administrator until the expiration of the period prescribed in 4146
section 2117.30 of the Revised Code. 4147

When ~~such~~ the petition is filed, the probate court shall 4148
issue a citation to the fiduciary setting forth the filing of the 4149
petition and the nature of the claim of the petitioner and 4150
commanding ~~such~~ the fiduciary to appear before the court on the 4151
return day ~~thereof~~ to answer and show cause why a judgment should 4152
not be rendered or order entered against ~~him~~ the fiduciary. ~~Such~~ 4153
The citation shall be returnable not less than twenty nor more 4154
than forty days from its date and shall be served and returned by 4155
an officer as in the case of summons. ~~Such~~ The citation may issue 4156
to any county in the state. 4157

On the return of the citation, the cause shall be set for 4158
hearing, unless for good cause shown it is continued. The probate 4159
court may hear and determine all questions necessary to ascertain 4160
and fix the amount due from the fiduciary to the petitioner and 4161
render ~~such~~ the judgment or make ~~such~~ the order ~~as~~ that may be 4162
proper. If necessary, ~~such~~ the court may hear, determine, and 4163
settle the rights and claims of all parties interested in the 4164
subject matter of the petition. For ~~such~~ that purpose the probate 4165
court may ~~cause~~ allow all parties in interest to be made parties 4166
to ~~such~~ the petition by amended, supplemental, or ~~crosspetition~~ 4167
cross-petition. The court shall cause notice to be served on all 4168
~~such~~ the parties in the manner provided in this section for 4169
service of the citation upon the fiduciary. 4170

In any ~~such~~ proceeding under this section, the sureties on 4171

the bond of the fiduciary, if made parties ~~thereto~~ to the 4172
proceeding, may make any defense that the fiduciary could make and 4173
the court may render ~~such~~ the judgment or make ~~such~~ the order with 4174
respect to the sureties ~~as~~ that may be proper. 4175

Sec. 2109.60. When a proceeding set forth in section 2109.59 4176
of the Revised Code is pending in the probate court, ~~such~~ the 4177
court, on motion of any party ~~thereto~~ or on the court's own 4178
motion, may ~~reserve and send such~~ transfer the cause to the court 4179
of common pleas ~~which~~, and the court of common pleas shall hear, 4180
settle, and determine all issues as provided in ~~such~~ that section. 4181
In case of ~~such reservation the transfer~~, the probate court shall 4182
prepare a transcript of the proceedings in the cause, so far as it 4183
has progressed, ~~which~~ that, with the petition and other papers 4184
~~therein in the proceedings~~, ~~forthwith~~ shall be filed with the 4185
clerk of the court of common pleas. 4186

Sec. 2109.61. An action may be prosecuted on the bond of a 4187
fiduciary against any one or more of the obligors ~~thereof~~ on the 4188
bond by any person who has been injured by reason of the breach of 4189
any condition of the bond. ~~Such~~ The action shall be prosecuted for 4190
the benefit of all persons who are interested in the estate and 4191
who have been similarly injured. Any such person or any obligor on 4192
the bond who is not already a party to the action may intervene 4193
~~therein in the action~~ or be made a party ~~thereto~~ to the action by 4194
supplemental, amended, or ~~crosspetition~~ cross-petition. Notice of 4195
any action or proceeding against the bonded fiduciary shall be 4196
given to the surety. 4197

If a surety on the bond of a fiduciary is not made a party to 4198
an action or proceeding against ~~such~~ the fiduciary, the fact that 4199
a judgment was rendered or an order was entered against the 4200
fiduciary shall constitute only prima-facie evidence of the 4201
justice and validity of the claim in an action subsequently 4202

brought against the sureties on the bond of the fiduciary. 4203

Sec. 2109.62. (A)(1) Upon the filing of a motion by a trustee 4204
with the court that has jurisdiction over the trust, upon the 4205
provision of reasonable notice to all beneficiaries who are known 4206
and in being and who have vested or contingent interests in the 4207
trust, and after holding a hearing, the court may terminate the 4208
trust, in whole or in part, if it determines that all of the 4209
following apply: 4210

(a) It is no longer economically feasible to continue the 4211
trust. 4212

(b) The termination of the trust is for the benefit of the 4213
beneficiaries. 4214

(c) The termination of the trust is equitable and practical. 4215

(d) The current value of the trust is less than one hundred 4216
thousand dollars. 4217

(2) The existence of a spendthrift or similar provision in a 4218
trust instrument or will does not preclude the termination of a 4219
trust pursuant to this section. 4220

(B) If property is to be distributed from an estate being 4221
probated to a trust and the termination of the trust pursuant to 4222
this section does not clearly defeat the intent of the testator, 4223
the probate court has jurisdiction to order the outright 4224
distribution of the property or to make the property custodial 4225
property under sections 5814.01 to 5814.09 of the Revised Code. A 4226
probate court may so order whether the ~~application~~ motion for the 4227
order is made by an inter vivos trustee named in the will of the 4228
decedent or by a testamentary trustee. 4229

(C) Upon the termination of a trust pursuant to this section, 4230
the probate court shall order the distribution of the trust estate 4231
in accordance with any provision specified in the trust instrument 4232

for the premature termination of the trust. If there is no 4233
provision of that nature in the trust instrument, the probate 4234
court shall order the distribution of the trust estate among the 4235
beneficiaries of the trust in accordance with their respective 4236
beneficial interests and in a manner that the court determines to 4237
be equitable. For purposes of ordering the distribution of the 4238
trust estate among the beneficiaries of the trust under this 4239
division, the court shall consider all of the following: 4240

(1) The existence of any agreement among the beneficiaries 4241
with respect to their beneficial interests; 4242

(2) The actuarial values of the separate beneficial interests 4243
of the beneficiaries; 4244

(3) Any expression of preference of the beneficiaries that is 4245
contained in the trust instrument. 4246

Sec. 2111.02. (A) ~~When~~ If found necessary, the probate court 4247
on its own motion or on application by any interested party shall 4248
appoint, subject to divisions (C) and (D) of this section and to 4249
section 2109.21 and division (B) of section 2111.121 of the 4250
Revised Code, a guardian of the person, the estate, or both, of a 4251
minor or incompetent, provided the person for whom the guardian is 4252
to be appointed is a resident of the county or has a legal 4253
settlement in the county and, except in the case of a minor, has 4254
had the opportunity to have the assistance of counsel in the 4255
proceeding for the appointment of ~~such~~ that guardian. An 4256
interested party includes, but is not limited to, a person 4257
nominated in a durable power of attorney as described in division 4258
(D) of section 1337.09 of the Revised Code or in a writing as 4259
described in division (A) of section 2111.121 of the Revised Code. 4260

Except when the guardian of an incompetent is an agency under 4261
contract with the department of developmental disabilities for the 4262
provision of protective services under sections 5123.55 to 5123.59 4263

of the Revised Code, the guardian of an incompetent, by virtue of 4264
~~such~~ the appointment as guardian, shall be the guardian of the 4265
minor children of the guardian's ward, unless the court appoints 4266
some other person as their guardian. 4267

When the primary purpose of the appointment of a guardian is, 4268
or was, the collection, disbursement, or administration of moneys 4269
awarded by the veterans administration to the ward, or assets 4270
derived from ~~such~~ those moneys, no court costs shall be charged in 4271
the proceeding for the appointment or in any subsequent 4272
proceedings made in pursuance of the appointment, unless the value 4273
of the estate, including the moneys then due under the veterans 4274
administration award, exceeds one thousand five hundred dollars. 4275

(B)(1) If the probate court finds it to be in the best 4276
interest of an incompetent or minor, it may appoint pursuant to 4277
divisions (A) and (C) of this section, on its own motion or on 4278
application by an interested party, a limited guardian with 4279
specific limited powers. The sections of the Revised Code, rules, 4280
and procedures governing guardianships apply to a limited 4281
guardian, except that the order of appointment and letters of 4282
authority of a limited guardian shall state the reasons for, and 4283
specify the limited powers of, the guardian. The court may appoint 4284
a limited guardian for a definite or indefinite period. An 4285
incompetent or minor for whom a limited guardian has been 4286
appointed retains all of the incompetent's or minor's rights in 4287
all areas not affected by the court order appointing the limited 4288
guardian. 4289

(2) If a guardian appointed pursuant to division (A) of this 4290
section is temporarily or permanently removed or resigns, and if 4291
the welfare of the ward requires immediate action, at any time 4292
after the removal or resignation, the probate court may appoint, 4293
ex parte and with or without notice to the ward or interested 4294
parties, an interim guardian for a maximum period of fifteen days. 4295

If the court appoints the interim guardian ex parte or without notice to the ward, the court, at its first opportunity, shall enter upon its journal with specificity the reason for acting ex parte or without notice, and, as soon as possible, shall serve upon the ward a copy of the order appointing the interim guardian. For good cause shown, after notice to the ward and interested parties and after hearing, the court may extend an interim guardianship for a specified period, but not to exceed an additional thirty days.

(3) If a minor or incompetent has not been placed under a guardianship pursuant to division (A) of this section and if an emergency exists, and ~~if~~ it is reasonably certain that immediate action is required to prevent significant injury to the person or estate of the minor or incompetent, at any time after it receives notice of the emergency, the court, ex parte, may issue any order that it considers necessary to prevent injury to the person or estate of the minor or incompetent, or may appoint an emergency guardian for a maximum period of seventy-two hours. A written copy of any order issued by a court under this division shall be served upon the incompetent or minor as soon as possible after its issuance. Failure to serve ~~such an~~ that order after its issuance or prior to the taking of any action under its authority does not invalidate the order or the actions taken. The powers of an emergency guardian shall be specified in the letters of appointment, and shall be limited to those powers that are necessary to prevent injury to the person or estate of the minor or incompetent. If the court acts ex parte or without notice to the minor or incompetent, the court, at its first opportunity, shall enter upon its journal a record of the case and, with specificity, the reason for acting ex parte or without notice. For good cause shown, after notice to the minor or incompetent and interested parties, and after hearing, the court may extend an emergency guardianship for a specified period, but not to exceed

an additional thirty days. 4329

(C) Prior to the appointment of a guardian or limited 4330
guardian under division (A) or (B)(1) of this section, the court 4331
shall conduct a hearing on the matter of the appointment. The 4332
hearing shall be conducted in accordance with all of the 4333
following: 4334

(1) The proposed guardian or limited guardian shall appear at 4335
the hearing and, if appointed, shall swear under oath that the 4336
proposed guardian or limited guardian has made and will continue 4337
to make diligent efforts to file a true inventory in accordance 4338
with section 2111.14 of the Revised Code and find and report all 4339
assets belonging to the estate of the ward and that the proposed 4340
guardian or limited guardian faithfully and completely will 4341
fulfill the other duties of guardian, including the filing of 4342
timely and accurate reports and accountings~~+~~. 4343

(2) If the hearing is conducted by a ~~referee~~ magistrate, the 4344
procedures set forth in Civil Rule 53 shall be followed~~+~~. 4345

(3) If the hearing concerns the appointment of a guardian or 4346
limited guardian for an alleged incompetent, the burden of proving 4347
incompetency shall be by clear and convincing evidence~~+~~. 4348

(4) Upon request of the applicant, the alleged incompetent 4349
for whom the appointment is sought or the alleged incompetent's 4350
counsel, or any interested party, a recording or record of the 4351
hearing shall be made~~+~~. 4352

(5) Evidence of a less restrictive alternative to 4353
guardianship may be introduced, and when introduced, shall be 4354
considered by the court~~+~~. 4355

(6) The court may deny a guardianship based upon a finding 4356
that a less restrictive alternative to guardianship exists~~+~~. 4357

(7) If the hearing concerns the appointment of a guardian or 4358

limited guardian for an alleged incompetent, the alleged 4359
incompetent has all of the following rights: 4360

(a) The right to be represented by independent counsel of the 4361
alleged incompetent's choice; 4362

(b) The right to have a friend or family member of the 4363
alleged incompetent's choice present; 4364

(c) The right to have evidence of an independent expert 4365
evaluation introduced; 4366

(d) If the alleged incompetent is indigent, upon the alleged 4367
incompetent's request: 4368

(i) The right to have counsel and an independent expert 4369
evaluator appointed at court expense; 4370

(ii) If the guardianship, limited guardianship, or standby 4371
guardianship decision is appealed, the right to have counsel 4372
appointed and necessary transcripts for appeal prepared at court 4373
expense. 4374

(D)(1) ~~When~~ If a person has been nominated to be a guardian 4375
of the estate of a minor in or pursuant to a durable power of 4376
attorney as described in division (D) of section 1337.09 of the 4377
Revised Code or a writing as described in division (A) of section 4378
2111.121 of the Revised Code, the person nominated has preference 4379
in appointment over a person selected by the minor. A person who 4380
has been nominated to be a guardian of the person of a minor in or 4381
pursuant to a durable power of attorney or writing of that nature 4382
does not have preference in appointment over a person selected by 4383
the minor, but the probate court may appoint the person named in 4384
the durable power of attorney or the writing, the person selected 4385
by the minor, or another person as guardian of the person of the 4386
minor. 4387

(2) A person nominated as a guardian of an incompetent adult 4388

child pursuant to section 1337.09 or 2111.121 of the Revised Code 4389
shall have preference in appointment over a person applying to be 4390
guardian if the person nominated is competent, suitable, and 4391
willing to accept the appointment, and if the incompetent adult 4392
child does not have a spouse or an adult child and has not 4393
designated a guardian prior to the court finding the adult child 4394
incompetent. 4395

Sec. 2111.021. A competent adult who is physically infirm may 4396
petition the probate court of the county in which ~~he~~ the 4397
petitioner resides, to place, for a definite or indefinite period 4398
of time, ~~his~~ the petitioner's person, any or all of ~~his~~ the 4399
petitioner's real or personal property, or both under a 4400
conservatorship with the court. A petitioner either may grant 4401
specific powers to the conservator or court or may limit any 4402
powers granted by law to the conservator or court, except that the 4403
petitioner may not limit the powers granted to the court by this 4404
section and may not limit the requirement for bond as determined 4405
by the court. The petition shall state whether the person of the 4406
competent adult will be placed under the conservatorship, shall 4407
state with particularity all real and personal property that will 4408
be placed under the conservatorship, shall state the powers 4409
granted and any limitation upon the powers of the conservator or 4410
court, and shall state the name of a proposed suitable 4411
conservator. 4412

After a hearing, if the court finds that the petition was 4413
voluntarily filed and that the proposed conservator is suitable, 4414
the court shall issue an order of conservatorship. Upon issuance 4415
of the order, all sections of the Revised Code governing a 4416
guardianship of the person, the estate, or both, whichever is 4417
involved, except those sections the application of which 4418
specifically is limited by the petitioner, and all rules and 4419
procedures governing ~~such~~ a guardianship of the person, the 4420

estate, or both, shall apply to the conservatorship, including, 4421
but not limited to, applicable bond and accounting requirements. 4422

A conservatorship shall terminate upon a judicial 4423
determination of incompetency, the death of the petitioner, the 4424
order of the probate court, or the execution of a written 4425
termination notice by the petitioner. A termination notice shall 4426
take effect upon execution by the petitioner, and shall be filed 4427
with the court and served upon the conservator. A termination 4428
notice executed by a petitioner relative to a conservatorship of 4429
the estate and the termination of a conservatorship of the estate 4430
based upon a termination notice are void unless the termination 4431
notice is filed with the court within fourteen days after its 4432
execution. Modification of the powers of a conservator or the 4433
court may be made by the petitioner upon motion to the court at 4434
any time during the conservatorship. Neither the establishment of 4435
a conservatorship nor the filing of a petition for conservatorship 4436
with the probate court shall be considered as evidence of mental 4437
impairment under section 2111.01 of the Revised Code. 4438

Upon motion to the probate court and a showing of good cause, 4439
the court may make confidential, or remove from confidential 4440
status, any file, record, petition, motion, account, or paper, 4441
except for an index, docket, or journal, that pertains to a 4442
conservatorship and that is in the possession of the court. 4443

Sec. 2111.031. In connection with an application for the 4444
appointment of a guardian for an alleged incompetent, the court 4445
may appoint physicians and other qualified persons to examine, 4446
investigate, or represent the alleged incompetent, to assist the 4447
court in deciding whether a guardianship is necessary. If the 4448
person is determined to be an incompetent and a guardian is 4449
appointed for ~~him~~ the person, the costs, fees, or expenses 4450
incurred to so assist the court shall be charged either against 4451

the estate of the person or against the applicant, unless the 4452
court determines, for good cause shown, that the costs, fees, or 4453
expenses are to be recovered from the county, in which case they 4454
shall be charged against the county. If the person is not 4455
determined to be an incompetent or a guardian is not appointed for 4456
~~him~~ the person, the costs, fees, or expenses incurred to so assist 4457
the court shall be charged against the applicant, unless the court 4458
determines, for good cause shown, that the costs, fees, or 4459
expenses are to be recovered from the county, in which case they 4460
shall be charged against the county. 4461

A court may require the applicant to make an advance deposit 4462
of an amount that the court determines is necessary to defray the 4463
anticipated costs of examinations of an alleged incompetent and to 4464
cover fees or expenses to be incurred to assist it in deciding 4465
whether a guardianship is necessary. 4466

This section does not affect or apply to the duties of a 4467
probate court investigator under sections 2111.04 and 2111.041 of 4468
the Revised Code. 4469

Sec. 2111.04. (A) Except for an interim or emergency guardian 4470
appointed under division (B)(2) or (3) of section 2111.02 of the 4471
Revised Code, no guardian of the person, the estate, or both shall 4472
be appointed until at least seven days after the probate court has 4473
caused written notice, setting forth the time and place of the 4474
hearing, to be served as follows: 4475

(1) In the appointment of the guardian of a minor, notice 4476
shall be served as follows: 4477

(a) Upon the minor, if over the age of fourteen, by personal 4478
service; 4479

(b) Upon each parent of the minor whose name and address is 4480
known or with reasonable diligence can be ascertained, provided 4481

the parent is free from disability other than minority; 4482

(c) Upon the next of kin of the minor who are known to reside 4483
in this state, if there is no living parent, the name and address 4484
of the parent cannot be ascertained, or the parent is under 4485
disability other than minority; 4486

(d) Upon the person having the custody of the minor. 4487

(2) In the appointment of the guardian of an incompetent, 4488
notice shall be served as follows: 4489

(a)(i) Upon the person for whom appointment is sought by 4490
personal service, by a probate court investigator, or in the 4491
manner provided in division (A)(2)(a)(ii) of this section. The 4492
notice shall be in boldface type and shall inform the alleged 4493
incompetent, in boldface type, of ~~his~~ the alleged incompetent's 4494
rights to be present at the hearing, to contest any application 4495
for the appointment of a guardian for ~~his~~ the alleged 4496
incompetent's person, estate, or both, and to be represented by an 4497
attorney and of all of the rights set forth in division (C)(7) of 4498
section 2111.02 of the Revised Code. 4499

(ii) If the person for whom appointment is sought is a 4500
resident of, or has a legal settlement in, the county in which the 4501
court has jurisdiction, but is absent from that county, the 4502
probate court may designate, by order, a temporary probate court 4503
investigator, in lieu of a regular probate court investigator 4504
appointed or designated under section 2101.11 of the Revised Code, 4505
to make the personal service of the notice described in division 4506
(A)(2)(a)(i) of this section upon the person for whom appointment 4507
is sought. 4508

(b) Upon the next of kin of the person for whom appointment 4509
is sought who are known to reside in this state. 4510

(B) After service of notice in accordance with division (A) 4511
of this section and for good cause shown, the court may appoint a 4512

guardian prior to the time limitation specified in that division. 4513

(C) Notice may not be waived by the person for whom the 4514
appointment is sought. 4515

(D) From the service of notice until the hearing, no sale, 4516
gift, conveyance, or encumbrance of the property of an alleged 4517
incompetent shall be valid as to persons having notice of the 4518
proceeding. 4519

Sec. 2111.041. (A) At the time of the service of notice upon 4520
an alleged incompetent, as required by division (A)(2)(a) of 4521
section 2111.04 of the Revised Code, the court shall require a 4522
regular probate court investigator appointed or designated under 4523
section 2101.11 of the Revised Code or appoint a temporary probate 4524
court investigator to investigate the circumstances of the alleged 4525
incompetent, and, to the maximum extent feasible, to communicate 4526
to the alleged incompetent in a language or method of 4527
communication that ~~he~~ the alleged incompetent can understand, ~~his~~ 4528
the alleged incompetent's rights as specified in that division, 4529
and subsequently to file with the court a report that contains all 4530
of the following: 4531

(1) A statement indicating that the notice was served and 4532
describing the extent to which the alleged incompetent's rights to 4533
be present at the hearing, to contest any application for the 4534
appointment of a guardian for ~~his~~ the alleged incompetent's 4535
person, estate, or both, and to be represented by an attorney were 4536
communicated to ~~him~~ the alleged incompetent in a language or 4537
method of communication understandable to the alleged incompetent; 4538

(2) A brief description, as observed by the investigator, of 4539
the physical and mental condition of the alleged incompetent; 4540

(3) A recommendation regarding the necessity for a 4541
guardianship or a less restrictive alternative; 4542

(4) A recommendation regarding the necessity of appointing 4543
pursuant to section 2111.031 of the Revised Code, an attorney to 4544
represent the alleged incompetent. 4545

(B) The report that is required by division (A) of this 4546
section shall be made a part of the record in the case and shall 4547
be considered by the court prior to establishing any guardianship 4548
for the alleged incompetent. 4549

Sec. 2111.06. If the powers of the person appointed as 4550
guardian of a minor or incompetent are not limited by the order of 4551
appointment, ~~such the~~ person shall be guardian both of the person 4552
and estate of the ward. In every instance the court shall appoint 4553
the same person as guardian of the person and estate of ~~any such~~ 4554
~~the~~ ward, unless in the opinion of the court the interests of the 4555
ward will be promoted by the appointment of different persons as 4556
guardians of the person and of the estate. 4557

A guardian of the person of a minor shall be appointed as to 4558
a minor having ~~neither~~ no father ~~nor~~ or mother, ~~or~~ whose parents 4559
are unsuitable persons to have the custody ~~and tuition~~ of ~~such the~~ 4560
minor and to provide for the education of the minor as required by 4561
section 3321.01 of the Revised Code, or whose interests, in the 4562
opinion of the court, will be promoted ~~thereby~~ by the appointment 4563
of a guardian. A guardian of the person shall have the custody and 4564
provide for the maintenance of the ward, and if the ward is a 4565
minor, ~~such the~~ guardian shall also provide for the education of 4566
~~such the~~ ward as required by section 3321.01 of the Revised Code. 4567

Before exercising its jurisdiction to appoint a guardian of a 4568
minor, the court shall comply with the jurisdictional standards of 4569
sections 3127.01 to 3127.53 of the Revised Code. 4570

Sec. 2111.07. Each person appointed guardian of the person 4571
and estate of a minor shall have the custody ~~and tuition~~ of ~~his~~ 4572

the ward, the obligation to provide for the education of the ward 4573
as required under section 3321.01 of the Revised Code, and the 4574
management of ~~such~~ the ward's estate during minority, unless ~~such~~ 4575
the guardian is removed or discharged from ~~such~~ that trust or the 4576
guardianship terminates from any of the causes specified in 4577
Chapters 2101. to 2131., ~~inclusive,~~ of the Revised Code. 4578

Sec. 2111.09. Unless expressly appointed or designated to act 4579
both as guardian and executor by a ~~last~~ will in writing, no person 4580
who is or has been an administrator or executor of a ~~last~~ will 4581
shall, prior to the approval of ~~his~~ the person's final account as 4582
~~such~~ executor or administrator, be appointed a guardian of the 4583
person and estate or of the estate only of a ward who is 4584
interested in the estate administered upon or entitled to an 4585
interest under ~~such~~ the will, except that a surviving spouse may 4586
be executor or administrator of the deceased spouse's estate and 4587
also guardian of the person and estate or of the estate only of a 4588
minor child of ~~such~~ the surviving spouse, whether or not ~~such~~ the 4589
minor child is interested in the estate of the deceased spouse. 4590
~~But~~ However, an executor or an administrator may be appointed a 4591
guardian of the person only of a ward. 4592

Sec. 2111.091. No attorney who represents any other person 4593
~~other than himself~~ and who is appointed as a guardian under this 4594
chapter or under any other provision of the Revised Code shall do 4595
either of the following: 4596

(A) Act as a person with co-responsibility for any 4597
guardianship asset for which the guardian ~~he represents~~ is 4598
responsible; 4599

(B) Be a cosignatory on any financial account related to the 4600
guardianship, including any checking account, savings account, or 4601
other banking or trust account. 4602

Sec. 2111.12. (A) A minor over the age of fourteen years may 4603
select a guardian who shall be appointed if a suitable person. If 4604
~~such~~ the minor fails to select a suitable person, an appointment 4605
may be made without reference to the minor's wishes. The minor 4606
shall not select one person to be the guardian of the minor's 4607
estate only and another to be the guardian of the person only, 4608
unless the court ~~which~~ that appoints the guardian is of the 4609
opinion that the interests of ~~such~~ the minor will ~~thereby~~ be 4610
promoted by that selection. 4611

(B) A surviving parent by ~~last~~ a will in writing may appoint 4612
a guardian for any of the surviving parent's children, whether 4613
born at the time of making the will or afterward, to continue 4614
during the minority of the child or for a less time. 4615

When the father or mother of a minor names a person as 4616
guardian of the estate of ~~such~~ the minor in a will, the person 4617
named shall have preference in appointment over the person 4618
selected by ~~such~~ the minor. A person named in ~~such a~~ that will as 4619
guardian of the person of ~~such~~ the minor shall have no preference 4620
in appointment over the person selected by ~~such~~ the minor, but in 4621
~~such~~ that event the probate court may appoint the person named in 4622
the will, the person selected by the minor, or some other person. 4623

Whenever a testamentary guardian is appointed, the 4624
testamentary guardian's duties, powers, and liabilities in all 4625
other respects shall be governed by the law regulating guardians 4626
not appointed by will. 4627

(C) A parent pursuant to a durable power of attorney as 4628
described in division (D) of section 1337.09 or a writing as 4629
described in division (A) of section 2111.121 of the Revised Code 4630
may nominate a person to be a guardian for one or more of the 4631
parent's minor children, whether born at the time of the making of 4632
the ~~petition~~ nomination or afterward. 4633

Sec. 2111.131. (A) The probate court may enter an order that
authorizes a person under a duty to pay or deliver money or
personal property to a minor who does not have a guardian of the
person and estate or a guardian of the estate, to perform that
duty in amounts not exceeding five thousand dollars annually, by
paying or delivering the money or property to any of the
following:

(1) The guardian of the person only of the minor;

(2) The minor's natural guardians, if any, as determined
pursuant to section 2111.08 of the Revised Code;

(3) The ~~minor's own self~~ minor;

(4) Any person who has the care and custody of the minor and
with whom the minor resides, other than a guardian of the person
only or a natural guardian;

(5) A financial institution incident to a deposit in a
federally insured savings account in the sole name of the minor;

(6) A custodian designated by the court in its order, for the
minor under sections 5814.01 to 5814.09 of the Revised Code.

(B) An order entered pursuant to division (A) of this section
authorizes the person or entity specified in it, to receive the
money or personal property on behalf of the minor from the person
under the duty to pay or deliver it, in amounts not exceeding five
thousand dollars annually. Money or personal property so received
by guardians of the person only, natural guardians, and custodians
as described in division (A)(4) of this section may be used by
them only for the support, maintenance, or education of the minor
involved. The order of the court is prima-facie evidence that a
guardian of the person only, a natural guardian, or a custodian as
described in division (A)(4) of this section has the authority to
use the money or personal property received.

(C) A person who pays or delivers moneys or personal property 4664
in accordance with a court order entered pursuant to division (A) 4665
of this section is not responsible for the proper application of 4666
the moneys or property by the recipient. 4667

Sec. 2111.14. (A) In addition to ~~his~~ a guardian's other 4668
duties, every guardian appointed to take care of the estate of a 4669
ward shall have the following duties: 4670

~~(A)~~(1) To make and file within three months after ~~his~~ the 4671
guardian's appointment a full inventory of the real and personal 4672
property of the ward, its value, and the value of the yearly rent 4673
of the real property, provided that, if the guardian fails to file 4674
the inventory for thirty days after ~~he has~~ having been notified of 4675
the expiration of the time by the probate judge, the judge shall 4676
remove ~~him~~ the guardian and appoint a successor; 4677

~~(B)~~(2) To manage the estate for the best interest of the 4678
ward; 4679

~~(C)~~(3) To pay all just debts due from the ward out of the 4680
estate in ~~his hands~~ the possession or under the control of the 4681
guardian, collect all debts due to the ward, compound doubtful 4682
debts, and appear for and defend, or cause to be defended, all 4683
suits against the ward; 4684

~~(D)~~(4) To obey all orders and judgments of the courts 4685
touching the guardianship; 4686

~~(E)~~(5) To bring suit for the ward when a suit is in the best 4687
interests of the ward; 4688

~~(F)~~(6) To settle and adjust, when necessary or desirable, the 4689
assets that ~~he~~ the guardian may receive in kind from an executor 4690
or administrator to the greatest advantage of the ward. Before a 4691
settlement and adjustment is valid and binding, it shall be 4692
approved by the probate court and the approval shall be entered on 4693

its journal. The guardian also shall have the approval of the 4694
probate court to hold the assets as received from the executor or 4695
administrator or to hold what may be received in the settlement 4696
and adjustment of those assets. 4697

(B) No guardian appointed to take care of the estate of a 4698
ward may open a safety deposit box held in the name of the ward, 4699
until the contents of the box have been audited by an employee of 4700
the county auditor in the presence of the guardian and until a 4701
verified report of the audit has been filed by the auditor with 4702
the probate court, ~~which.~~ The court then shall issue a release to 4703
the guardian permitting the guardian to have access to the safety 4704
deposit box of the ward. 4705

Sec. 2111.141. The court, by order or rule, may require that 4706
any inventory filed by a guardian pursuant to section 2111.14 of 4707
the Revised Code be supported by evidence that the inventory is a 4708
true and accurate inventory of the estate of the ward of the 4709
guardian, ~~which.~~ The evidence may include, but is not limited to, 4710
prior income tax returns, bank statements, and social security 4711
records of the ward or other documents that are relevant to 4712
determining the accuracy of the inventory. In order to verify the 4713
accuracy of an inventory, the court may order a guardian to 4714
produce any additional evidence that may tend to prove that the 4715
guardian is in possession of or has knowledge of assets that 4716
belong to the estate of ~~his~~ the ward and that have not been 4717
included in the guardianship inventory, ~~which.~~ The additional 4718
evidence may include, but is not limited to, the guardian's income 4719
tax returns and bank statements and any other documents that are 4720
relevant to determining the accuracy of an inventory. The court 4721
may assign court employees or appoint an examiner to verify an 4722
inventory filed by a guardian. Upon appointment, the assigned 4723
court employees or appointed examiner shall conduct an 4724
investigation to verify the accuracy of the inventory filed by the 4725

guardian. Upon order of the court, the assigned court employees or 4726
appointed examiner may subpoena any documents necessary for ~~his~~ 4727
the investigation. Upon completion of the investigation, the 4728
assigned court employees or appointed examiner shall file a report 4729
with the court. The court shall hold a hearing on the report with 4730
notice to all interested parties. At the hearing, the guardian 4731
shall have the right to examine and cross-examine any assigned 4732
court employees or appointed examiner who conducted the 4733
investigation and filed the report that is the subject of the 4734
hearing. The court shall charge any costs associated with the 4735
verification of an inventory filed by a guardian against the 4736
estate of the ward, except that, if the court determines that the 4737
guardian wrongfully withheld, or aided in the wrongful 4738
withholding, of assets from the inventory filed by the guardian, 4739
the court shall charge the costs against the guardian. 4740

Sec. 2111.16. Unless previously authorized by the court, no 4741
voucher that is signed or purports to be signed by the ward shall 4742
be received from or allowed as a credit in the settlement of a 4743
guardian's account ~~which is signed or purports to be signed by his~~ 4744
~~ward.~~ 4745

Sec. 2111.17. A guardian may sue in ~~his~~ the guardian's own 4746
name, describing ~~himself as~~ the guardian as suing on behalf of the 4747
ward ~~for whom he sues~~. When ~~his~~ the guardianship ceases, actions 4748
or proceedings then pending shall not abate, if the right 4749
survives. ~~His~~ The guardian's successor as guardian, the executor 4750
or administrator of the ward, or the ward ~~himself~~, if the 4751
guardianship has terminated other than by the ward's death, shall 4752
be made party to the suit or other proceeding as the case 4753
requires, in the same manner an executor or administrator is made 4754
a party to a similar suit or proceeding ~~where~~ if the plaintiff 4755
dies during its pendency. 4756

Sec. 2111.181. ~~When~~ If personal injury, damage to tangible or 4757
intangible property, or damage or loss on account of personal 4758
injury or damage to tangible or intangible property is caused to a 4759
minor~~7~~, who claims to be emancipated, by wrongful act, neglect, or 4760
default ~~which~~ that would entitle the minor to maintain an action 4761
and recover damages for the injury, damage, or loss, and ~~when~~ if 4762
any minor who claims to be emancipated is entitled to maintain an 4763
action for damages or any other relief based on any claim, or is 4764
subject to any claim to recover damages or any other relief based 4765
on any claim, the minor~~7~~, who claims to be emancipated~~7~~, may file an 4766
application in the probate court in the county where ~~he~~ the minor 4767
then resides, praying for a finding by the court that the minor is 4768
in fact emancipated, and authorizing, approving, and consenting to 4769
the settlement of the claim by the minor without the appointment 4770
of a guardian. Upon hearing on the application, after five days' 4771
written notice of the time and place of the hearing has been given 4772
to each of the living parents of the minor, whose name and address 4773
is known, provided the parent is free from disability other than 4774
minority, or, if there is no living parent, after ~~such~~ that notice 4775
to the next of kin of the minor known to reside in the county, the 4776
court may find the minor to be emancipated ~~and~~, may authorize, 4777
approve, and consent to the settlement of the claim by the minor 4778
without the appointment of a guardian ~~and~~, may authorize the minor 4779
to receive and receipt for the settlement, and, upon the minor 4780
executing and delivering a full and complete release for the 4781
injuries, damages, losses, or claims, may authorize the delivery 4782
and payment of ~~such~~ the moneys to the minor, to a trustee or 4783
guardian of the estate of the minor appointed by the court for the 4784
benefit of the minor, or to a depository authorized to receive 4785
fiduciary funds to hold the moneys payable to the ward when ~~he~~ the 4786
ward attains majority, or for the benefit of the minor, as the 4787
court may direct. 4788

Upon the finding of the probate court that the minor was, at 4789
the time of the injury, damage, loss, or claim, an emancipated 4790
minor, and provided the notice required by this section has been 4791
given to each living parent, whose name and address is known, then 4792
the release executed by the emancipated minor shall be a full and 4793
complete discharge and release of any claim ~~which~~ that either or 4794
both of the parents might have by reason of the personal injury, 4795
damage to tangible or intangible property, damage or loss on 4796
account of personal injury, or damage to tangible or intangible 4797
property, or any other claim of the minor. 4798

Sec. 2111.19. A guardian, whether appointed by a court in 4799
this state or elsewhere, may complete the contracts of ~~his~~ the 4800
ward for the purchase or sale of real estate property or any 4801
authorized contract relating to real estate property entered into 4802
by a guardian who has died or been removed. ~~Said~~ The appointed 4803
guardian shall proceed in the manner provided by sections 2113.48 4804
to 2113.50, ~~inclusive,~~ of the Revised Code. 4805

Sec. 2111.20. The guardian of the person and estate, or of 4806
the estate only, may sell all or any part of the personal estate 4807
property of the ward ~~when such~~ if the sale is for the interest of 4808
the ward. 4809

Sec. 2111.21. The guardian of a ward who has or is claimed to 4810
have a right of dower, or a contingent right to it, in ~~lands or~~ 4811
~~tenements~~ real property of which the spouse of ~~such~~ the ward was 4812
or is seized as an estate of inheritance, ~~where~~ if the dower has 4813
not been assigned, may sell, compromise, or adjust ~~such~~ the dower 4814
or may release ~~such~~ the contingent right of dower in the event the 4815
spouse of ~~such~~ the ward desires to mortgage ~~such~~ the property upon 4816
~~such~~ the terms ~~as such~~ that the guardian ~~deems~~ considers for the 4817
interest of ~~such~~ the ward and upon ~~such~~ the terms ~~as~~ that the 4818

probate court of the county in which the guardian was appointed 4819
approves, or if ~~such~~ the guardian was appointed to a foreign 4820
state, upon ~~such~~ the terms ~~as that~~ that the probate court of the county 4821
~~wherein in which~~ the land real property is situated approves. 4822
After ~~such~~ the approval, the guardian may execute and deliver all 4823
the necessary deeds, mortgages, releases, and agreements for the 4824
sale, compromise, assignment, or mortgage of ~~such~~ the dower or 4825
contingent right to dower. As a basis for computing the value of 4826
an inchoate dower right in any sale, compromise, or adjustment 4827
pursuant to this section, the value of the ~~lands or tenements~~ real 4828
property may be considered to be the sale price or, if there is no 4829
sale, the appraised value. ~~Such~~ The sale, compromise, adjustment, 4830
or mortgage may be made upon application and entry in the pending 4831
proceedings. 4832

Sec. 2111.22. When a ward has title to real estate property 4833
by tax title only, the guardian, by deed of release and quitclaim, 4834
may convey ~~such~~ the ward's interest or title to the person 4835
entitled to redeem ~~such~~ the real ~~estate~~ property, upon receiving 4836
from ~~such~~ that person the amount paid for ~~such~~ the tax title with 4837
the forfeiture and interest allowed by sections 319.52 and 323.121 4838
of the Revised Code. If the guardian tenders ~~such~~ that deed to the 4839
person entitled to redeem ~~such~~ the real estate property and ~~he~~ the 4840
person so entitled refuses to accept and pay for it, ~~he~~ the person 4841
entitled shall not recover costs in any proceeding thereafter 4842
instituted to redeem ~~such~~ the real estate property. 4843

Sec. 2111.25. A guardian⁷ of the person and estate or of the 4844
estate only, without application to the probate court, may lease 4845
the possession or use of any real ~~estate~~ property of ~~his~~ the ward 4846
for a term not exceeding three years, provided ~~such~~ the term does 4847
not extend beyond the minority, if the ward is a minor. If the 4848
lease extends beyond the death of the ward or beyond the removal 4849

of the disability of a ward other than a minor, ~~such~~ the lease 4850
shall terminate on ~~such~~ that death or removal of disability, 4851
unless confirmed by the ward or ~~his~~ the ward's legal 4852
representatives. In the event of such determination, the tenant 4853
shall have a lien on the premises for any sum expended by ~~him~~ the 4854
tenant in pursuance of the lease in making improvements for which 4855
compensation was not made in rent or otherwise. 4856

Sec. 2111.26. A guardian may lease the possession and use of 4857
the real estate property of ~~his~~ the guardian's ward or any part of 4858
it for a term of years, renewable or otherwise, by perpetual 4859
lease, with or without the privilege of purchase, or may lease 4860
upon ~~such~~ the terms and for ~~such~~ the time ~~as~~ that the probate 4861
court approves any lands belonging to the ward containing coal, 4862
gypsum, petroleum oil, natural gas, gravel, stone, or any other 4863
mineral substance for the purpose of drilling, mining, or 4864
excavating for and removing any of ~~such~~ those substances, or ~~such~~ 4865
the guardian may modify or change in any respect any lease 4866
previously made. 4867

~~Such~~ The lease, or modification or change in a lease 4868
previously made, may be made when the guardian of the person and 4869
estate or of the estate only applies to the court by which ~~he~~ the 4870
guardian was appointed and ~~such~~ the court finds that the lease or 4871
modification or change is necessary for the support of the ward or 4872
of ~~his~~ the ward's family, for the payment of the just debts of the 4873
ward, for the ward's education, if a minor, to secure the 4874
improvement of the real estate property of the ward and increase 4875
the rent, to pay any liens or claims against ~~said~~ the real estate 4876
property, ~~or~~ if ~~such~~ the court finds that ~~such~~ the real estate 4877
property is suffering unavoidable waste, or that in any other 4878
respect it will be for the best interests of the ward or those 4879
persons for whom the ward is required by law to provide. 4880

Sec. 2111.27. A guardian's application for authority to lease 4881
real estate property of a ward shall be by petition setting forth 4882
the following: 4883

(A) The legal capacity of the petitioner; 4884

(B) The name of the ward, the character of ~~his~~ the ward's 4885
disability, and if it is ~~idiocy, imbecility, or lunacy~~ 4886
incompetence, whether ~~such~~ the disability is curable or not, 4887
temporary, or confirmed, and its duration; 4888

(C) The number, names, ages, and residence of the family of 4889
the ward, including the spouse and those residents of the county 4890
who have the next estate of inheritance from ~~such~~ the ward, all of 4891
whom, as well as the ward, ~~must~~ shall be made defendants; 4892

(D) The indebtedness of the ward, the expense of supporting 4893
and maintaining ~~him~~ the ward, the expense of educating ~~him~~ the 4894
ward if ~~he~~ the ward is a minor, and any other expense of the ward; 4895

(E) The value of all the property and effects of the ward 4896
including the real estate property proposed to be leased; 4897

(F) The income of the ward and the net annual value to the 4898
ward of the real estate property proposed to be leased; 4899

(G) A description of the real estate property proposed to be 4900
leased and the probable amount for which ~~such~~ the real estate 4901
property can be leased; 4902

(H) A detailed statement of the improvements proposed to be 4903
made to the real estate property sought to be leased; 4904

(I) The reasons for the proposed lease and the terms, 4905
covenants, conditions, and stipulations ~~thereof~~ of the proposed 4906
lease, including the time for which it is proposed the real estate 4907
property should be leased; 4908

(J) ~~Such~~ Any other facts necessary to apprise the court fully 4909

of the necessity or benefit to the ward or the estate of the 4910
proposed lease, or ~~such any~~ other facts ~~as~~ that may be required by 4911
the court; 4912

(K) A prayer for the proper authority. 4913

Sec. 2111.28. In an application for authority to lease real 4914
~~estate~~ property of a ward under sections 2111.26 and 2111.27 of 4915
the Revised Code, the guardian may act for two or more wards and 4916
two or more guardians of different wards may unite, ~~when~~ if all 4917
the wards are jointly or in common interested in the real ~~estate~~ 4918
property. ~~When~~ If the same person is guardian of two or more wards 4919
owning lands in common, ~~such~~ the wards may be joined as defendants 4920
in the same petition under section 2111.27 of the Revised Code. 4921

The ward's spouse shall be made a defendant to ~~such~~ the 4922
petition, and if the proposed lease is for the purpose of mining 4923
or removing mineral or other substances, ~~and if~~ ~~such~~ the spouse 4924
files an answer consenting to the lease, free and discharged of 4925
all right and expectancy of dower ~~therein~~, ~~such~~ the answer shall 4926
be a full release of ~~such~~ the spouse's expectancy of dower when 4927
the lease is confirmed. Unless in ~~such~~ the answer an allowance in 4928
lieu of dower is waived, the court shall allow, out of the 4929
proceeds of the lease, ~~such~~ a sum in money ~~as~~ that is the just and 4930
reasonable value of ~~such~~ the expectancy of dower. 4931

Sec. 2111.29. When a guardian files an application for 4932
authority to lease the real ~~estate~~ property of a ward, the same 4933
rules shall apply as to the parties and, upon the filing of the 4934
petition described in section 2111.27 of the Revised Code, ~~like~~ 4935
similar proceedings shall be had as in an action to sell real 4936
~~estate~~ property belonging to the ward under sections 2127.01 to 4937
2127.43, ~~inclusive~~, of the Revised Code, including services of 4938
summons, notice, appraisal, pleading, rule days, and proof. 4939

Sec. 2111.30. When a guardian applies for authority to lease 4940
the real estate property of a ward, the duties of the appraisers 4941
shall be the same as in proceedings to sell real estate property 4942
belonging to the ward under sections 2127.22 and 2127.23 of the 4943
Revised Code, except that they shall appraise not only the value 4944
of the real estate property but also the value of the annual 4945
rental upon the terms, covenants, conditions, and stipulations of 4946
the proposed lease. If ~~said~~ the proposed lease is for the mining 4947
or removal of mineral or other substances, the appraisers shall 4948
report in writing to the probate court their opinion as to the 4949
probability of the lands containing ~~such~~ those substances, the 4950
probable quantity of ~~such~~ the substances, and the terms upon which 4951
it would be advantageous to the ward to lease the lands for mining 4952
or removing ~~such~~ the substances. In their report the appraisers 4953
shall state whether in their opinion, the proposed lease will be 4954
for the best interests of the ward, those whom ~~he~~ the ward is 4955
required by law to support, or the estate. They may also suggest 4956
any change in the terms, covenants, and stipulations proposed in 4957
the petition. The report of the appraisers shall be returned on or 4958
before the day named in the order for the final hearing of the 4959
case. On the return of the appraisalment, the guardian need not 4960
give an additional bond, but in case of sale under the terms of 4961
the lease, ~~such~~ the guardian ~~must~~ shall give ~~such~~ the additional 4962
bond before the confirmation of the sale. 4963

Sec. 2111.31. If the report of the appraisers under section 4964
2111.30 of the Revised Code is favorable to the lease and on the 4965
final hearing the court is of the opinion that it will be to the 4966
advantage of the ward, those whom ~~he~~ the ward is required by law 4967
to support, or the estate to lease the real estate property, the 4968
probate court shall make an order authorizing the lease to be made 4969
by public or private letting, as it ~~deems~~ considers best, on ~~such~~ 4970

the terms, covenants, conditions, and stipulations, either in 4971
accordance with those set forth in the petition or otherwise, ~~as~~ 4972
~~that~~ it directs, provided ~~such~~ the terms, covenants, conditions, 4973
and stipulations are not less favorable to the ward than those 4974
reported by the appraisers. The lease shall not take effect until 4975
~~such~~ the lease and the security, if any, ~~therein~~ prescribed in the 4976
lease are approved and confirmed. 4977

~~In the~~ The lease made ~~in pursuance of such~~ pursuant to the 4978
court order ~~it may be provided~~ provide that the improvements shall 4979
be made by the tenant as part of the rent, or by the guardian, 4980
either out of the rent or other means of the ward as the court 4981
directs. 4982

If the lease is for the mining or removal of mineral or other 4983
substances and the guardian is unable to lease the lands upon the 4984
terms ordered, ~~he~~ the guardian may report the fact to the court 4985
and ~~such~~ the court may change the terms of leasing, but not below 4986
the customary royalty in the vicinity of ~~such~~ the lands. 4987

Sec. 2111.33. (A) A guardian may use the moneys and personal 4988
estate property of ~~his~~ the guardian's ward to improve ~~his~~ the 4989
ward's real estate property. ~~Such~~ The guardian shall file in the 4990
probate court in which ~~he~~ the guardian was appointed a petition 4991
containing the following: 4992

~~(A)~~(1) A description of the premises to be improved; 4993

~~(B)~~(2) The amount of rent the premises yield at the time the 4994
petition is filed; 4995

~~(C)~~(3) In what manner ~~it~~ the improvement is proposed to ~~make~~ 4996
~~such improvement~~ be made; 4997

~~(D)~~(4) The proposed expenditures for ~~such~~ the improvement; 4998

~~(E)~~ ~~What~~ (5) The rent the premises will probably yield when 4999
so improved; 5000

~~(F)~~(6) A statement of the value of the ward's personal estate 5001
property; 5002

~~(G)~~(7) Other facts ~~which~~ that are pertinent to the question 5003
whether the improvement should be made; 5004

~~(H)~~(8) A prayer that ~~such~~ the guardian be authorized to use 5005
so much of ~~his~~ the ward's money and personal estate ~~as~~ property 5006
that is necessary to make ~~such~~ the improvement; 5007

~~(I)~~(9) The character of the disability of the ward, and if it 5008
is incompetency, whether ~~such~~ the disability is curable or not, 5009
temporary, or confirmed, and its duration; 5010

~~(J)~~(10) The names, ages, and residence of the family of the 5011
ward, including the spouse and those known to be residents of the 5012
county who have the next estate of inheritance from the ward. All 5013
~~such~~ of those persons, as well as the ward, ~~must~~ shall be made 5014
defendants and notified of the pendency and prayer of the petition 5015
in ~~such~~ the manner ~~as~~ that the court directs. 5016

(B) If the property is so situated that, to the best 5017
interests of the ward's estate, it can be advantageously improved 5018
in connection with the improvement of property adjacent to it, the 5019
petition shall show this and have a prayer ~~in accordance therewith~~ 5020
to so improve the property. 5021

Sec. 2111.34. Upon the filing of the petition described in 5022
section 2111.33 of the Revised Code, ~~like~~ similar proceedings 5023
shall be had as to pleadings and proof as on petition by a 5024
guardian to sell the real estate property of a ward under sections 5025
2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code. The probate 5026
court shall appoint three disinterested freeholders of the county 5027
as commissioners to examine the premises to be improved, to 5028
examine the surroundings, and to report to the court their opinion 5029
whether the improvement proposed will be advantageous to the 5030

estate of the ward. 5031

Sec. 2111.35. On the final hearing of a guardian's proceeding 5032
to improve the real ~~estate~~ property of ~~his~~ the guardian's ward, if 5033
the prayer of the petition is granted, the probate court shall fix 5034
the amount of money and personal ~~estate~~ property that may be used 5035
in making ~~such~~ the improvement. ~~Such~~ The court may authorize ~~such~~ 5036
the guardian to unite with the owners of adjacent property, upon 5037
~~such~~ equitable terms and conditions ~~as~~ that the court approves, 5038
for the improvement of the premises of ~~his~~ the ward and for the 5039
proper management and repair of the property when so improved. 5040
5041

Sec. 2111.36. A guardian shall distinctly report to the 5042
probate court the amount of money and personal property expended 5043
in making an improvement to the ward's real property under section 5044
2111.35 of the Revised Code, within forty days after the 5045
improvement is completed. If the ward dies before the removal of 5046
the disability and there are heirs who inherit real property only 5047
from ~~him~~ the ward, the money expended shall descend and pass in 5048
the same manner as ~~his~~ the ward's other personal property and 5049
shall be a charge on the premises improved in favor of the heirs 5050
who inherit the personal property. 5051

Sec. 2111.37. ~~When~~ If a nonresident minor, incompetent, or 5052
person confined in a state, charitable, or correctional 5053
institution has real ~~estate, chattels,~~ property or rights, 5054
credits, ~~or~~ moneys, or other personal property in this state, the 5055
probate court of the county in which the property or a part of it 5056
is situated may appoint a resident guardian of the ward to manage, 5057
collect, lease, and take care of the ward's property. The 5058
appointment may be made whether or not a ward has a guardian, 5059
trustee, or other conservator in the state of the ward's 5060

residence, and, if the ward has a guardian, trustee, or other 5061
conservator in the state of the ward's residence, the control and 5062
authority of the resident guardian appointed in ~~Ohio~~ this state 5063
shall be superior as to all property of the ward in ~~Ohio~~ this 5064
state. 5065

The first appointment of a resident guardian of a nonresident 5066
ward shall extend to all the property and effects of the ward in 5067
this state and exclude the jurisdiction of the probate court of 5068
any other county. 5069

Sec. 2111.38. The resident guardian of a nonresident ward 5070
shall give bond and be bound and controlled by all the statutes of 5071
~~Ohio~~ this state as though ~~he~~ the resident guardian were a guardian 5072
of a ward resident in this state, and shall have all of the 5073
authority of a guardian of a resident ward including the authority 5074
to lease or sell real ~~estate~~ property belonging to the ward. 5075

Unless removed by the probate court, a resident guardian of a 5076
nonresident minor shall hold ~~his~~ that appointment until ~~such~~ the 5077
minor dies or arrives at the age of majority, whether or not ~~such~~ 5078
the minor is over fourteen years of age at the time of 5079
appointment. A resident guardian of any other nonresident ward 5080
shall hold ~~his~~ that appointment until the death of the ward or 5081
until the court is satisfied that the necessity for the 5082
guardianship no longer exists. 5083

All moneys due to ~~such~~ the nonresident ward while ~~such~~ the 5084
resident guardianship continues shall be paid over to ~~his~~ the 5085
ward's foreign guardian so far as necessary or proper for the 5086
ward's support and maintenance. If the ward dies, ~~such~~ the moneys 5087
shall be paid to ~~his~~ the ward's ancillary administrator or other 5088
legal representative, provided that the court ~~which~~ that appointed 5089
~~such~~ the resident guardian has satisfactory proof, as provided by 5090
section 2111.39 of the Revised Code, of the authority of ~~such~~ the 5091

foreign guardian, administrator, or other legal representative to 5092
receive the moneys or ~~estates~~ properties of ~~such the~~ nonresident 5093
ward, that the security given by ~~such the~~ foreign guardian, 5094
administrator, or other legal representative is sufficient to 5095
protect ~~such the~~ ward's interest or estate, and ~~provided such that~~ 5096
the court deems considers it best for ~~him~~ the ward or ~~his~~ the 5097
ward's estate. 5098

Sec. 2111.39. When a foreign legal representative of a 5099
nonresident ward applies to have all or any of the moneys or 5100
property in the ~~hands~~ possession or under the control of the 5101
resident guardian of ~~such the~~ ward paid or delivered to ~~him~~ the 5102
foreign representative, ~~he must~~ the foreign representative shall 5103
file ~~his~~ a petition or motion in the probate court by which ~~such~~ 5104
the resident guardian was appointed. ~~Such~~ The resident guardian 5105
~~must~~ shall be given thirty days' notice of the time of hearing 5106
~~thereon~~ on the petition or motion, and ~~such the~~ foreign 5107
representative ~~must~~ shall produce an exemplification under the 5108
seal of the office, if there ~~be~~ is a seal, of the proper court of 5109
the state of ~~his~~ the foreign representative's residence containing 5110
all the entries on record in relation to ~~his~~ the foreign 5111
representative's appointment and qualification, authenticated as 5112
required by the act of congress in ~~such those~~ cases. Upon the 5113
hearing ~~thereof~~, the court shall make ~~such an~~ order ~~as that~~ it 5114
~~deems~~ considers for the best interests of ~~such the~~ nonresident 5115
ward or ~~his~~ the nonresident ward's estate. 5116

Sec. 2111.40. ~~When~~ If a nonresident ward for whom a resident 5117
guardian was appointed has become a resident since the appointment 5118
and a guardian has been appointed for ~~such the~~ ward, the probate 5119
court shall remove the resident guardian previously appointed and 5120
require an immediate settlement of ~~his~~ the account of the resident 5121
guardian previously appointed. 5122

~~Sec. 2111.41. When~~ If a ward for whom a guardian has been 5123
appointed in this state removes to another state or territory, and 5124
a guardian of the ward is there appointed, the guardian in this 5125
state may be removed and required to settle ~~his~~ that guardian's 5126
account. 5127

~~Such a~~ That removal of the guardian in this state shall not 5128
be made unless the guardian appointed in another state or 5129
territory applies to the probate court in this state that made the 5130
former appointment, and files an exemplification from the record 5131
of the court making the foreign appointment containing all the 5132
entries and proceedings relating to ~~his~~ the foreign guardian's 5133
appointment, ~~his~~ and giving bond, with a copy ~~thereof,~~ of the bond 5134
and of the letters of guardianship, all authenticated as required 5135
by the act of congress. Before ~~such an~~ the application is heard or 5136
action taken by the court, at least thirty days' written notice 5137
shall be served on the guardian appointed in this state specifying 5138
the object of the application, and the time it is to be heard. 5139

No ~~such~~ removal of a guardian under this section shall be 5140
made in favor of a foreign guardian, unless at the time of the 5141
hearing the state or territory in which ~~he~~ the foreign guardian 5142
was appointed has a similar provision as to wards removing from 5143
that state or territory. The court shall grant the application 5144
unless it makes an affirmative finding that the removal of the 5145
guardian appointed in this state would not be in the interest of 5146
the ward. 5147

If on ~~such a~~ the hearing the court removes the guardian, it 5148
shall make all suitable orders for discharging the guardian and 5149
shall deliver to the foreign guardian all moneys and other 5150
property in the ~~hands~~ possession or under the control of the 5151
resident guardian after ~~his~~ the resident guardian's settlement. 5152

Sec. 2111.44. Applications for the sale of real estate 5153
property by guardians of wards who live out of this state shall be 5154
made in the county in which the land is situated. If ~~such the~~ real 5155
estate property is situated in two or more counties, ~~such the~~ 5156
application shall be made in one of the counties in which a part 5157
of it is situated. Additional security, ~~which that~~ may be approved 5158
by the probate court of the county in which the application is 5159
made, shall be required from ~~such the~~ guardian ~~when deemed if~~ 5160
considered necessary. 5161

Sec. 2111.46. When a guardian has been appointed for a minor 5162
before ~~such the~~ minor is over fourteen years of age, ~~such the~~ 5163
guardian's power shall continue until the ward arrives at the age 5164
of majority, unless removed for good cause or unless ~~such the~~ ward 5165
selects another suitable guardian. After ~~such the~~ selection is 5166
made and approved by the probate court and the person selected is 5167
appointed and qualified, the powers of the former guardian shall 5168
cease. ~~Thereupon his~~ The former guardian's final account as 5169
guardian shall then be filed and settled in court. 5170

Upon the termination of a guardianship of the person, estate, 5171
or both of a minor before ~~such the~~ minor reaches eighteen years of 5172
age, if a successor guardian is not appointed and if the court 5173
finds that ~~such the~~ minor is without proper care, the court shall 5174
certify a copy of its finding together with as much of the record 5175
and ~~such any~~ further information as that the court ~~deems~~ considers 5176
necessary, or as the juvenile court may request, to the juvenile 5177
court for further proceedings ~~and thereupon such~~. Upon that 5178
certification, the juvenile court shall have exclusive 5179
jurisdiction respecting ~~such child~~ the minor. 5180

Sec. 2111.48. All sales, leases, encumbrances, or liens made 5181
or created on any real estate property located in ~~Ohio~~ this state 5182

by guardians for persons who are incompetent by reason of advanced 5183
age or mental or physical disability since August 17, 1919, by 5184
order of any court of this state shall not be declared invalid for 5185
the reason that ~~such~~ the guardians for the incompetents were not 5186
vested with all the statutory powers given to guardians of ~~idiots,~~ 5187
~~imbeciles, and lunatics~~ incompetents. ~~Such~~ Those acts of guardians 5188
for incompetents are legal and effective. 5189

Sec. 2111.50. (A)(1) At all times, the probate court is the 5190
superior guardian of wards who are subject to its jurisdiction, 5191
and all guardians who are subject to the jurisdiction of the court 5192
shall obey all orders of the court that concern their wards or 5193
guardianships. 5194

(2)(a) Subject to divisions (A)(2)(b) and (c) of this 5195
section, the control of a guardian over the person, the estate, or 5196
both of ~~his~~ the guardian's ward is limited to the authority that 5197
is granted to the guardian by the Revised Code, relevant decisions 5198
of the courts of this state, and orders or rules of the probate 5199
court. 5200

(b) Except for the powers specified in division (E) of this 5201
section and unless otherwise provided in or inconsistent with 5202
another section of the Revised Code, the probate court may confer 5203
upon a guardian any power that this section grants to the probate 5204
court in connection with wards. 5205

(c) For good cause shown, the probate court may limit or 5206
deny, by order or rule, any power that is granted to a guardian by 5207
a section of the Revised Code or relevant decisions of the courts 5208
of this state. 5209

(B) In connection with any person whom the probate court has 5210
found to be an incompetent or a minor subject to guardianship and 5211
for whom the court has appointed a guardian, the court has, 5212
subject to divisions (C) to (E) of this section, all the powers 5213

that relate to the person and estate of the ~~person~~ ward and that 5214
he the ward could exercise if present and not a minor or under a 5215
disability, except the power to make or revoke a will. These 5216
powers include, but are not limited to, the power to do any of the 5217
following: 5218

(1) Convey or release the present, contingent, or expectant 5219
interests in real or personal property of the ~~person~~ ward, 5220
including, but not limited to, dower and any right of survivorship 5221
incident to a survivorship tenancy, joint tenancy, or tenancy by 5222
the entirety; 5223

(2) Exercise or release powers as a trustee, personal 5224
representative, custodian for a minor, guardian, or donee of a 5225
power of appointment; 5226

(3) Enter into contracts, or create revocable trusts of 5227
property of the estate of the ~~person~~ ward, that may not extend 5228
beyond the minority, disability, or life of the ~~person~~ or ward; 5229

(4) Exercise options to purchase securities or other 5230
property; 5231

(5) Exercise rights to elect options under annuities and 5232
insurance policies, and to surrender an annuity or insurance 5233
policy for its cash value; 5234

(6) Exercise the right to an elective share in the estate of 5235
the deceased spouse of the ~~person~~ ward pursuant to section ~~2107.45~~ 5236
2106.08 of the Revised Code; 5237

(7) Make gifts, in trust or otherwise, to relatives of the 5238
~~person~~ ward and, consistent with any prior pattern of the ~~person~~ 5239
ward of giving to charities or of providing support for friends, 5240
to charities and friends of the ~~person~~ ward. 5241

(C) Except for the powers specified in division (D) of this 5242
section, all powers of the probate court that are specified in 5243

this chapter and that relate either to any person whom it has 5244
found to be an incompetent or a minor subject to guardianship and 5245
for whom it has appointed a guardian and all powers of a guardian 5246
that relate to ~~his~~ the guardian's ward or guardianship as 5247
described in division (A)(2) of this section, shall be exercised 5248
in the best interest, as determined in the court's or guardian's 5249
judgment, of the following: 5250

(1) The ~~person~~ ward whom the probate court has found to be an 5251
incompetent or a minor subject to guardianship; 5252

(2) The dependents of the ~~person~~ ward; 5253

(3) The members of the household of the ~~person~~ ward. 5254

(D) If the court is to exercise or direct the exercise, 5255
pursuant to division (B) of this section, of the power to make 5256
gifts in trust or otherwise, the following conditions shall apply: 5257

(1) The exercise of the particular power shall not impair the 5258
financial ability of the estate of the ~~person~~ ward whom the 5259
probate court has found to be an incompetent or a minor subject to 5260
guardianship and for whom the court has appointed a guardian, to 5261
provide for ~~his~~ the ward's foreseeable needs for maintenance and 5262
care; 5263

(2) If applicable, the court shall consider any of the 5264
following: 5265

(a) The estate, income, and other tax advantages of the 5266
exercise of a particular power to the estate of a ~~person~~ ward whom 5267
the probate court has found to be an incompetent or a minor 5268
subject to guardianship and for whom the court has appointed a 5269
guardian; 5270

(b) Any pattern of giving of, or any pattern of support 5271
provided by, the ~~person~~ ward prior to ~~his~~ the ward's incompetence; 5272

(c) The disposition of property made by the ward's will ~~of~~ 5273

~~the person;~~ 5274

(d) If there is no knowledge of a will of the ~~person~~ ward, 5275
~~his~~ the ward's prospective heirs; 5276

(e) Any relevant and trustworthy statements of the ~~person~~ 5277
ward, whether established by hearsay or other evidence. 5278

(E)(1) The probate court shall cause notice as described in 5279
division (E)(2) of this section to be given and a hearing to be 5280
conducted prior to its exercise or direction of the exercise of 5281
any of the following powers pursuant to division (B) of this 5282
section: 5283

(a) The exercise or release of powers as a donee of a power 5284
of appointment; 5285

(b) Unless the amount of the gift is no more than one 5286
thousand dollars, the making of a gift, in trust or otherwise. 5287

(2) The notice required by division (E)(1) of this section 5288
shall be given to the following persons: 5289

(a) Unless a guardian of a ward has applied for the exercise 5290
of a power specified in division (E)(1) of this section, to the 5291
guardian; 5292

(b) To the ~~person~~ ward whom the probate court has found to be 5293
an incompetent or a minor subject to guardianship; 5294

(c) If known, to a guardian who applied for the exercise of a 5295
power specified in division (E)(1) of this section, to the 5296
prospective heirs of the ~~person~~ ward whom the probate court has 5297
found to be an incompetent or a minor subject to guardianship 5298
under section 2105.06 of the Revised Code, and any person who has 5299
a legal interest in property that may be divested or limited as 5300
the result of the exercise of a power specified in division (E)(1) 5301
of this section; 5302

(d) To any other persons the court orders. 5303

(F) When considering any question related to, and issuing 5304
orders for, medical or surgical care or treatment of incompetents 5305
or minors subject to guardianship, the probate court has full 5306
parens patriae powers unless otherwise provided by a section of 5307
the Revised Code. 5308

Sec. 2113.01. Upon the death of a resident of this state who 5309
dies intestate, letters of administration of ~~his~~ the decedent's 5310
estate shall be granted by the probate court of the county in 5311
which ~~he~~ the decedent was a resident at the time ~~he died of death.~~ 5312

If the will of any person is admitted to probate in this 5313
state, letters testamentary or of administration shall be granted 5314
by the probate court in which ~~such~~ the will was admitted to 5315
probate. 5316

Sec. 2113.03. (A) Subject to division ~~(D)~~(I) of this section, 5317
an estate may be released from administration under division (B) 5318
of this section if either of the following applies: 5319

(1) The value of the assets of the estate is thirty-five 5320
thousand dollars or less. 5321

(2) The value of the assets of the estate is one hundred 5322
thousand dollars or less and either of the following applies: 5323

(a) The decedent devised and bequeathed in a valid will all 5324
of the assets of the decedent's estate to a person who is named in 5325
the will as the decedent's spouse, and the decedent is survived by 5326
that person. 5327

(b) The decedent is survived by a spouse whose marriage to 5328
the decedent was solemnized in a manner consistent with Chapter 5329
3101. of the Revised Code or with a similar law of another state 5330
or nation, the decedent died without a valid will, and the 5331
decedent's surviving spouse is entitled to receive all of the 5332
assets of the decedent's estate under section 2105.06 of the 5333

Revised Code or by the operation of that section and division 5334
(B)(1) or (2) of section 2106.13 of the Revised Code. 5335

(B) Upon the application of any interested party, after 5336
notice of the filing of the application has been given to the 5337
surviving spouse and heirs at law in the manner and for the length 5338
of time the probate court directs, and after notice to all 5339
interested parties by publication in a newspaper of general 5340
circulation in the county, unless the notices are waived or found 5341
unnecessary, the court, when satisfied that division (A)(1) or (2) 5342
of this section is satisfied, may enter an order relieving the 5343
estate from administration and directing delivery of personal 5344
property and transfer of real ~~estate~~ property to the persons 5345
entitled to the personal property or real ~~estate~~ property. 5346

(C) For the purposes of this section, the value of an estate 5347
that reasonably can be considered to be in an amount specified in 5348
division (A)(1) or (2) of this section and that is not composed 5349
entirely of money, stocks, bonds, or other property the value of 5350
which is readily ascertainable, shall be determined by an 5351
appraiser selected by the applicant, subject to the approval of 5352
the court. The appraiser's valuation of the property shall be 5353
reported to the court in the application to relieve the estate 5354
from administration. The appraiser shall be paid in accordance 5355
with section 2115.06 of the Revised Code. 5356

(D) For the purposes of this section, the amount of property 5357
to be delivered or transferred to the surviving spouse, minor 5358
children, or both, of the decedent as the allowance for support 5359
shall be established in accordance with section 2106.13 of the 5360
Revised Code. 5361

~~When a delivery, sale, or transfer of personal property has~~ 5362
~~been ordered from an estate that has been relieved from~~ 5363
~~administration, the~~ (E) The court may appoint a commissioner to 5364
execute all necessary instruments of conveyance, including the 5365

instruments of conveyance and other documents required for the 5366
transfer of title upon the sale of real property pursuant to 5367
section 2127.011 of the Revised Code. The commissioner shall 5368
receipt for the property, distribute the proceeds of the 5369
conveyance upon court order, and report to the court after 5370
~~distribution~~ the delivery, sale, or transfer of personal or real 5371
property from an estate that has been relieved from 5372
administration. 5373

~~When~~ (F) If the decedent died testate, the will shall be 5374
presented for probate, and, if admitted to probate, the court may 5375
relieve the estate from administration and order distribution of 5376
the estate under the will. 5377

(G) An order of the court relieving an estate from 5378
administration shall have the same effect as administration 5379
proceedings in freeing ~~land~~ real property in the ~~hands~~ possession 5380
or under the control of an innocent purchaser for value from 5381
possible claims of unsecured creditors. 5382

~~(C)~~(H) Any delivery of personal property or transfer of real 5383
~~estate~~ property pursuant to an order relieving an estate from 5384
administration is made subject to the limitations pertaining to 5385
the claims of creditors set forth in divisions (B) and (C) of 5386
section 2117.06 of the Revised Code. 5387

~~(D)~~(I) The release of an estate from administration under 5388
this section does not affect any duty of any person to file an 5389
estate tax return and certificate under division (A) of section 5390
5731.21 of the Revised Code and does not affect the duties of a 5391
probate court set forth in that division. 5392

~~(E)~~(J) This section does not affect the ability of qualified 5393
persons to file an application for a summary release from 5394
administration under section 2113.031 of the Revised Code or to 5395
file an application for the grant of letters testamentary or 5396

letters of administration. 5397

Sec. 2113.04. (A) Any employer, including the state or a 5398
political subdivision, at any time after the death of ~~his or its~~ 5399
an employee, may pay all wages or personal earnings due to the 5400
deceased employee to: ~~(A) the surviving spouse; (B) any one or~~ 5401
~~more of the children eighteen years of age or older; or (C) the~~ 5402
~~father or mother of the deceased employee~~ the following, 5403
preference being given in the order named, without requiring 5404
letters testamentary or letters of administration to be issued 5405
upon the estate of the deceased employee, and without requiring an 5406
Ohio estate tax release ~~where~~ if the wages or personal earnings do 5407
not exceed ~~two~~ five thousand ~~five hundred~~ dollars. ~~The:~~ 5408

(1) The surviving spouse; 5409

(2) Any one or more of the children eighteen years of age or 5410
older; 5411

(3) The father or mother of the deceased employee. 5412

(B) The payment of wages or personal earnings under division 5413
(A) of this section is a full discharge and release to the 5414
employer from any claim for the wages or personal earnings. If 5415
letters testamentary or letters of administration are thereafter 5416
issued upon the estate of the deceased employee, any person 5417
receiving payment of wages or personal earnings under ~~this section~~ 5418
that division is liable to the executor or administrator for the 5419
sum received by ~~him~~ the person. 5420

Sec. 2113.05. When a will is approved and allowed, the 5421
probate court shall issue letters testamentary to the executor 5422
named in the will or to the executor nominated by holders of a 5423
power as described in section 2107.65 of the Revised Code, or to 5424
the executor named in the will and to a coexecutor nominated by 5425
holders of ~~such a~~ that power, if ~~he~~ the executor or coexecutor is 5426

suitable, competent, accepts the appointment, and gives bond if 5427
that is required. 5428

If no executor is named in a will and no power as described 5429
in section 2107.65 of the Revised Code is conferred in the will, 5430
or if the executor named in a will or nominated pursuant to ~~such a~~ 5431
that power dies, fails to accept the appointment, resigns, or is 5432
otherwise disqualified and the holders of ~~such a~~ the power do not 5433
have authority to nominate another executor or ~~no such~~ the power 5434
is not conferred in the will, or if ~~such a~~ the power is conferred 5435
in a will but the power cannot be exercised because of the death 5436
of a holder of the power, letters of administration with the will 5437
annexed shall be granted to a suitable person or persons, named as 5438
devisees or legatees in the will, who would have been entitled to 5439
administer the estate if the decedent had died intestate, unless 5440
the will indicates an intention that the person or persons shall 5441
not be granted letters of administration. Otherwise, the court 5442
shall grant letters of administration with the will annexed to 5443
some other suitable person. 5444

Sec. 2113.06. (A) Administration of the estate of an 5445
intestate shall be granted to persons mentioned in this ~~section~~ 5446
division, in the following order: 5447

~~(A)~~(1) To the surviving spouse of the deceased, if resident 5448
of the state; 5449

~~(B)~~(2) To one of the next of kin of the deceased, resident of 5450
the state. 5451

(B) If the persons entitled to administer the estate under 5452
division (A) of this section fail to take or renounce 5453
administration voluntarily, ~~they shall be cited by the probate~~ 5454
~~court for that purpose~~ the matter shall be set for hearing and 5455
notice given to the persons. 5456

(C) If there are no persons entitled to administration, ~~or~~ if they are for any reason unsuitable for the discharge of the trust, or if without sufficient cause they neglect to apply within a reasonable time for the administration of the estate, their right to priority shall be lost, and the court shall commit the administration to some suitable person who is a resident of the state, or to the attorney general or the attorney general's designee, if the department of job and family services is seeking to recover medical assistance from the deceased pursuant to section 5111.11 or 5111.111 of the Revised Code. ~~Such~~ The person granted administration may be a creditor of the estate.

(D) This section applies to the appointment of an administrator de bonis non.

Sec. 2113.07. Before being appointed executor or administrator, every person shall make and file an application that shall contain the names of the surviving spouse and all the next of kin of the deceased known to the applicant, their ~~post-office~~ addresses of usual residence if known, a statement in general terms ~~as to~~ of what the estate consists ~~of~~ and its probable value, and a statement of any indebtedness the deceased had against the applicant.

The application may be accompanied by a waiver signed by the persons who have priority to administer the estate, and, in the absence of a waiver, those persons shall be ~~cited by the probate court~~ served notice for the purpose of ascertaining whether they desire to take or renounce administration. Minors who would have been entitled to priority to administer the estate except for their minority also shall be served notice pursuant to the Rules of Civil Procedure.

Letters of administration shall not be issued upon the estate of an intestate until the person to be appointed has made and

filed a statement indicating that ~~there is not to his~~ the person 5488
has no knowledge of a ~~last will and testament~~ of the intestate. 5489

Sec. 2113.12. If a person named as executor in the will of a 5490
decedent, or nominated as an executor by holders of a power as 5491
described in section 2107.65 of the Revised Code, refuses to 5492
accept the trust, or, if after being ~~cited~~ served notice for that 5493
purpose, neglects to appear and accept, or if ~~he~~ the person named 5494
or nominated as executor neglects for twenty days after the 5495
probate of the will to give any required bond, the probate court 5496
shall grant letters testamentary to the other executor, if there 5497
is one capable and willing to accept the trust, and if there is no 5498
~~such~~ other executor named in the will or nominated by holders of a 5499
power as described in section 2107.65 of the Revised Code, the 5500
court shall commit administration of the estate, with the will 5501
annexed, to some suitable and competent person, pursuant to 5502
section 2113.05 of the Revised Code. 5503

Sec. 2113.13. When a person ~~appointed~~ nominated as executor 5504
is under the age of eighteen years at the time of ~~proving~~ 5505
admitting the will to probate, administration may be granted with 5506
the will annexed during ~~his~~ the nominee's minority, unless there 5507
is another executor who will accept the trust. If there is ~~such an~~ 5508
that other executor, the estate shall be administered by ~~him~~ that 5509
executor until the minor arrives at full age when ~~such~~ the former 5510
minor may be admitted as executor ~~with him~~ upon giving bond as 5511
provided in section 2109.04 of the Revised Code. 5512

Sec. 2113.14. The executor of an executor has no authority, 5513
as such, to administer the estate of the first testator. On the 5514
death of the sole or surviving executor of a ~~last~~ will, 5515
administration of that part of the estate of the first testator 5516
not already administered may be granted, with the will annexed, to 5517

~~such~~ the person as ~~that~~ the probate court appoints. 5518

Sec. 2113.15. When there is delay in granting letters 5519
testamentary or of administration, the probate court may appoint a 5520
special administrator to collect and preserve the effects of the 5521
deceased and grant the special administrator any other authority 5522
that the court considers appropriate. 5523

~~Such~~ The special administrator ~~must~~ shall collect the 5524
~~chattels~~ assets and debts of the deceased and preserve them for 5525
the executor or administrator who thereafter is appointed. For 5526
that purpose ~~such~~ the special administrator may begin ~~and,~~ 5527
maintain, or defend suits as administrator and also sell ~~such~~ 5528
~~goods as~~ any assets the court orders sold. ~~He~~ The special 5529
administrator shall be allowed ~~such~~ the compensation for ~~his~~ the 5530
special administrator's services ~~as~~ that the court thinks 5531
reasonable, if ~~he forthwith delivers the property and effects of~~ 5532
~~the estate to the executor or administrator who supersedes him~~ the 5533
special administrator faithfully fulfills the fiduciary duties. 5534

Sec. 2113.16. Upon granting of letters testamentary or of 5535
administration, the power of a special administrator appointed 5536
under section 2113.15 of the Revised Code shall ~~cease~~ terminate 5537
and ~~he forthwith must deliver~~ the special administrator shall 5538
transfer to the executor or administrator all the ~~chattels and~~ 5539
~~moneys~~ assets of the deceased in ~~his hands~~ the possession or under 5540
the control of the special administrator. The special 5541
administrator shall file an account of the special administration 5542
within thirty days of the appointment of the executor or 5543
administrator. The account shall be in conformance with section 5544
2109.30 of the Revised Code. The executor or administrator may be 5545
admitted to prosecute any suit begun by the special administrator, 5546
as an administrator de bonis non is authorized to prosecute a suit 5547
commenced by a former executor or administrator. 5548

If ~~such~~ the special administrator neglects or refuses to 5549
~~deliver over~~ transfer the ~~property assets~~ and estate to the 5550
executor or administrator, the probate court may compel ~~him to de~~ 5551
~~se~~ the transfer by citation and attachment. The executor or 5552
administrator also may proceed, by civil action, to recover the 5553
value of the assets from ~~such~~ the special administrator and ~~his~~ 5554
the special administrator's sureties. 5555

Sec. 2113.17. A creditor's claim may be presented in 5556
accordance with section 2117.06 of the Revised Code to a special 5557
administration appointed under section 2113.15 of the Revised 5558
Code. 5559

Sec. 2113.18. (A) The probate court may remove any executor 5560
or administrator if there are unsettled claims existing between 5561
~~him~~ the executor or administrator and the estate, ~~which~~ that the 5562
court thinks may be the subject of controversy or litigation 5563
between ~~him~~ the executor or administrator and the estate or 5564
persons interested ~~therein~~ in the estate. 5565

(B) The probate court may remove any executor or 5566
administrator upon motion of the surviving spouse, children, or 5567
other next of kin of the deceased person whose estate is 5568
administered by the executor or administrator if both of the 5569
following apply: 5570

(1) The executor or administrator refuses to bring an action 5571
for wrongful death in the name of the deceased person; 5572

(2) The court determines that a prima-facie case for a 5573
wrongful death action can be made from the information available 5574
to the executor or administrator. 5575

Sec. 2113.19. When a sole executor or administrator dies 5576
without having fully administered the estate, the probate court 5577

shall grant letters of administration, with the will annexed or 5578
otherwise as the case requires, to some suitable person pursuant 5579
to section 2113.05 or 2113.06 of the Revised Code. ~~Such~~ That 5580
person shall administer the ~~goods and estate~~ assets of the 5581
deceased not previously administered, ~~in case there is personal~~ 5582
~~estate to be administered to the amount of twenty dollars or debts~~ 5583
~~to that amount due from the estate.~~ 5584

Sec. 2113.20. If a will of a deceased is proved and allowed 5585
after letters of administration have been granted as of an 5586
intestate estate, the first administration shall be revoked, 5587
unless before ~~such~~ the revocation a ~~petition~~ complaint contesting 5588
the probate of ~~such~~ the will is filed in the probate court ~~of~~ 5589
~~common pleas~~. If ~~such~~ a ~~petition~~ complaint of that nature is 5590
filed, the probate court may allow the administration to be 5591
continued ~~in the hands of~~ by the original administrators until the 5592
final determination of ~~such~~ the contest. If the will is sustained, 5593
the first administration ~~must~~ shall be revoked. In either case, 5594
upon revocation of the first administration and the appointment of 5595
an executor or administrator with the will annexed, ~~such~~ that 5596
executor or administrator shall be admitted to prosecute or defend 5597
any suit, proceeding, or matter begun by or against the original 5598
administrator, in ~~like~~ the same manner as an administrator de 5599
bonis non is authorized to prosecute or defend a suit commenced by 5600
a former executor or administrator. 5601

Sec. 2113.21. (A) When a will is contested, the executor, the 5602
administrator de bonis non, with the will annexed, or the 5603
testamentary trustee may, during the contest, do the following: 5604

~~(A)(1)~~ Control all the real ~~estate which is included in the~~ 5605
~~will but not specifically devised~~ property and all the personal 5606
~~estate~~ property of the testator not administered before ~~such~~ the 5607
contest; 5608

~~(B)~~(2) Collect the debts and convert all assets into money, 5609
except those ~~which~~ that are specially bequeathed; 5610

~~(C)~~(3) Pay all taxes on ~~such~~ the real and personal property 5611
and all debts; 5612

~~(D)~~(4) Repair buildings and make other improvements if 5613
necessary to preserve the real property from waste; 5614

~~(E)~~(5) Insure ~~such~~ those buildings upon an order first 5615
obtained from the probate court having jurisdiction of ~~such~~ the 5616
executor, administrator, or testamentary trustee; 5617

~~(F)~~(6) Advance or borrow money on the credit of ~~such~~ the 5618
estate for ~~such~~ the repairs, taxes, and insurance ~~which~~ that shall 5619
be a charge ~~thereon~~ on the estate; 5620

~~(G)~~(7) Receive and receipt for a distributive share of an 5621
estate or trust to which ~~such~~ the testator would have been 5622
entitled, if living. 5623

(B) The court may require ~~such~~ additional bonds ~~as~~ that from 5624
time to time ~~seems~~ seem proper. 5625

Sec. 2113.22. An ~~administrator or~~ executor or administrator 5626
appointed in the place of an executor or administrator who has 5627
resigned or been removed, whose letters have been revoked, or 5628
whose authority has been extinguished is entitled to the 5629
possession of all the unadministered personal effects and assets 5630
of the estate ~~unadministered~~, and all other funds collected and 5631
unaccounted for by ~~such~~ the former executor or administrator, and 5632
may maintain a suit against the former executor or administrator 5633
and ~~his~~ the former executor's or administrator's sureties on the 5634
administration bond to recover ~~such~~ those effects, assets, and 5635
funds and for all damages arising from the maladministration or 5636
omissions of the former executor or administrator. 5637

~~Sec. 2113.25. So far as the executor or administrator is~~ 5638
~~able, the~~ The executor or administrator of an estate shall collect 5639
the assets and complete the administration of that estate within 5640
~~thirteen~~ six months after the date of appointment unless an 5641
extension of the time to file a final and distributive account is 5642
authorized under division (B) of section 2109.301 of the Revised 5643
Code. 5644

~~Upon application of the executor or administrator and notice~~ 5645
~~to the interested parties, if the probate court considers that~~ 5646
~~notice necessary, the court may allow further time in which to~~ 5647
~~collect assets, to convert assets into money, to pay creditors, to~~ 5648
~~make distributions to legatees or distributees, to file partial,~~ 5649
~~final, and distributive accounts, and to settle estates. The~~ 5650
~~court, upon application of any interested party, may authorize the~~ 5651
~~examination under oath in open court of the executor or~~ 5652
~~administrator upon any matter relating to the administration of~~ 5653
~~the estate~~ For good cause shown, the court may grant an extension 5654
of the time to file the inventory and accounts. 5655

Sec. 2113.26. The court, upon application of any interested 5656
party, may authorize the examination of the executor or 5657
administrator under oath in open court on any matter relating to 5658
the administration of the estate. 5659

Sec. 2113.30. (A) Except as otherwise directed by the 5660
decedent in the decedent's ~~last will and testament~~, an executor or 5661
administrator, without personal liability for losses incurred, may 5662
continue the decedent's business during four months next following 5663
the date of the appointment of that executor or administrator, 5664
unless the probate court directs otherwise, and for any further 5665
time that the court may authorize upon a hearing and after notice 5666
to the surviving spouse and distributees. In either case, no debts 5667

incurred or contracts entered into shall involve the estate beyond 5668
the assets used in that business immediately prior to the death of 5669
the decedent without first obtaining the approval of the court. 5670
During the time the business is continued, the executor or 5671
administrator shall file monthly reports in the court, setting 5672
forth the receipts and expenses of the business for the preceding 5673
month and any other pertinent information that the court may 5674
require. The executor or administrator may not bind the estate 5675
without court approval beyond the period during which the business 5676
is continued. 5677

(B) As used in this section, "decedent's business" means a 5678
business that is owned by the decedent as a sole proprietor at the 5679
time of the decedent's death. "Decedent's business" does not 5680
include a business that is owned in whole or in part by the 5681
decedent as a shareholder of a corporation, a member of a limited 5682
liability company, or a partner of a partnership, or under any 5683
other form of ownership other than a sole proprietorship. 5684

Sec. 2113.31. Every executor or administrator is chargeable 5685
with all ~~chattels, rights, and credits~~ assets of the deceased 5686
~~which that~~ come into his hands the possession or under the control 5687
of the executor or administrator and are to be administered, 5688
although not included in the inventory required by section 2115.02 5689
of the Revised Code. ~~Such~~ The executor or administrator is also 5690
chargeable with all the proceeds of personal property and real 5691
~~estate~~ property sold for the payment of debts or legacies, and all 5692
the interest, profit, and income that in any way comes ~~to his~~ 5693
~~hands~~ into the possession or under the control of the executor or 5694
administrator from the personal ~~estate~~ property of the deceased. 5695

Sec. 2113.311. (A) If, within a reasonable time after the 5696
appointment of the executor or administrator, no one in authority 5697
has taken over the management and rental of any real estate 5698

property of which the decedent died seized, the executor or 5699
administrator, or an heir or devisee may, unless the will 5700
otherwise provides, make application to the probate court for an 5701
order authorizing the executor or administrator to assume ~~such~~ 5702
those duties. ~~Such~~ The application shall contain the following: 5703

(1) A brief statement of the facts upon which the application 5704
is based and ~~such~~ any other pertinent information ~~as~~ that the 5705
court may require; 5706

(2) A description or identification of the real estate 5707
property and the interest owned by the decedent at the time of ~~his~~ 5708
death; 5709

(3) The names and addresses, if known to the applicant, of 5710
the persons to whom ~~such~~ the real estate property passed by 5711
descent or devise. 5712

(B) Notice of the time of hearing on ~~such~~ the application 5713
shall be given to the persons designated in ~~sub-paragraph~~ division 5714
(A)(3) of this section, unless for good cause the court dispenses 5715
with ~~such~~ that notice, and also to the executor or administrator, 5716
unless the executor or administrator is the applicant. 5717

(C) If the court finds that the statements contained in the 5718
application are true and that it would be for the best interest of 5719
~~such~~ those heirs or devisees that the application be granted, it 5720
may authorize the executor or administrator to assume the 5721
management and rental of ~~such~~ the real estate property. 5722

(D) The court may require bond, new or additional, in an 5723
amount to be fixed by the court and conditioned that the executor 5724
or administrator will faithfully and honestly discharge the duties 5725
devolving ~~upon him by~~ from the provisions of this section. 5726

~~(B)~~(E) In the exercise of ~~such~~ the authority granted under 5727
this section, the executor or administrator shall be authorized to 5728
do the following: 5729

(1) Collect rents;	5730
(2) From the rents collected:	5731
(a) Pay all taxes and assessments due on such <u>the</u> real estate <u>property</u> , and all such usual operating expenses in connection with <u>the</u> <u>its</u> management thereof ;	5732 5733 5734
(b) Make repairs when necessary to preserve such <u>the</u> real estate <u>property</u> from waste, provided that an order of the court shall first be obtained if the cost of such repairs exceeds one hundred dollars;	5735 5736 5737 5738
(c) Insure buildings against loss by fire or other casualty and against public liability ; .	5739 5740
(3) Advance money upon an order first obtained from the court, for such <u>the</u> repairs, taxes, insurance, and all usual operating expenses, which <u>that</u> shall be a charge on such <u>the</u> real estate <u>property</u> ;	5741 5742 5743 5744
(4) Rent the property on a month-to-month basis, or, upon an order first obtained from the court, for a period not to exceed one year;	5745 5746 5747
(5) Prosecute actions for forcible entry and detention <u>detainer</u> of such <u>the</u> real estate <u>property</u> .	5748 5749
<u>(F)</u> The executor or administrator shall, at intervals not to exceed twelve months, pay over to the heirs or devisees, if known, their share of the net rents, and shall account for all money received and paid out under authority of this section in his <u>the</u> <u>executor's or administrator's</u> regular accounts of the administration of the estate, but in a separate schedule. If any share of the net rents remains unclaimed, it may be disposed of in the same manner as is provided for unclaimed money under section 2113.64 of the Revised Code.	5750 5751 5752 5753 5754 5755 5756 5757 5758
<u>(G)</u> The authority granted under this section shall terminate	5759

upon the transfer of the real ~~estate~~ property to the heirs or 5760
devises in accordance with section 2113.61 of the Revised Code, 5761
~~or~~ upon a sale ~~thereof~~ of the real property, ~~or~~ upon application 5762
of the executor or administrator, or for a good cause shown, upon 5763
the application of an heir or devisee. 5764

(H) Upon application the court may allow compensation to the 5765
executor or administrator for extraordinary services, ~~which that~~ 5766
shall be charged against the rents, and if ~~said~~ the rents be are 5767
insufficient, shall be a charge against ~~such~~ the real estate 5768
property. 5769

Upon application the court may allow reasonable attorney fees 5770
paid by the executor or administrator when an attorney is employed 5771
in connection with the management and rental of ~~such~~ the real 5772
~~estate, which~~ property that shall be charged against the rents, 5773
and if ~~said~~ the rents be are insufficient, shall be a charge 5774
against ~~such~~ the real estate property. 5775

Sec. 2113.33. An executor or administrator is not accountable 5776
for debts inventoried as due to the decedent, if it appears to the 5777
probate court that, without ~~his~~ the executor's or administrator's 5778
fault, they remain uncollected. 5779

Sec. 2113.34. If an executor or administrator neglects to 5780
sell personal property ~~which he~~ that is required to ~~sell~~ be sold, 5781
and retains, consumes, or disposes of it for ~~his~~ the executor's or 5782
administrator's own benefit, ~~he~~ the executor or administrator 5783
shall be charged ~~therewith~~ with the personal property at double 5784
the value affixed ~~thereto~~ to the property by the appraisers. 5785

Sec. 2113.35. (A) Executors and administrators shall be 5786
allowed ~~commissions~~ fees upon the amount of all the personal 5787
~~estate~~ property, including the income from the personal ~~estate~~ 5788
property, that is received and accounted for by them and upon the 5789

proceeds of real estate property that is sold, as follows: ~~(A)~~ 5790

(1) For the first one hundred thousand dollars, at the rate 5791
of four per cent; ~~(B)~~ 5792

(2) All above one hundred thousand dollars and not exceeding 5793
four hundred thousand dollars, at the rate of three per cent; ~~(C)~~ 5794

(3) All above four hundred thousand dollars, at the rate of 5795
two per cent. ~~Executors~~ 5796

(B) Executors and administrators ~~also~~ shall be allowed a 5797
~~commission fee~~ of one per cent on the value of real estate 5798
property that is not sold. Executors and administrators also shall 5799
be allowed a ~~commission fee~~ of one per cent on all property that 5800
is not subject to administration and that is includable for 5801
purposes of computing the Ohio estate tax, except joint and 5802
survivorship property. ~~The~~ 5803

(C) The basis of valuation for the allowance of ~~such~~ 5804
~~commissions the fees~~ on real estate property sold shall be the 5805
gross proceeds of sale, and for all other property the fair market 5806
value of the other property as of the date of death of the 5807
decedent. The ~~commissions fees~~ allowed to executors and 5808
administrators in this section shall be received in full 5809
compensation for all their ordinary services. ~~If~~ 5810

(D) If the probate court finds, after a hearing, that an 5811
executor or administrator, in any respect, has not faithfully 5812
discharged ~~his~~ the duties as executor or administrator, the court 5813
may deny the executor or administrator any compensation whatsoever 5814
or may allow the executor or administrator the reduced 5815
compensation that the court thinks proper. 5816

Sec. 2113.36. Allowances, in addition to those provided by 5817
section 2113.35 of the Revised Code for an executor or 5818
administrator, ~~which~~ that the probate court considers just and 5819

reasonable shall be made for actual and necessary expenses and for 5820
extraordinary services not required of an executor or 5821
administrator in the common course of ~~his duty~~ the executor's or 5822
administrator's duties. 5823

Upon the application of an executor or administrator for 5824
further allowances for extraordinary services rendered, the court 5825
shall review both ordinary and extraordinary services claimed to 5826
have been rendered. If the ~~commissions~~ fees payable pursuant to 5827
section 2113.35 of the Revised Code, exceed the reasonable value 5828
of ~~such~~ the ordinary services rendered, the court ~~must~~ shall 5829
adjust any allowance made for extraordinary services so that the 5830
total ~~commissions~~ fees and allowances to be made fairly reflect 5831
the reasonable value of both ordinary and extraordinary services. 5832

~~When~~ If an attorney has been employed in the administration 5833
of the estate, reasonable attorney fees paid by the executor or 5834
administrator shall be allowed as a part of the expenses of 5835
administration. The court may at any time during administration 5836
fix the amount of ~~such~~ those fees and, on application of the 5837
executor or administrator or the attorney, shall fix the amount 5838
~~thereof~~ of the fees. ~~When~~ If provision is made by the will of the 5839
deceased for compensation to an executor, the amount provided 5840
shall be a full satisfaction for ~~his~~ the executor's or 5841
administrator's services, in lieu of ~~such commissions~~ the fees or 5842
~~his share thereof~~ of the fees, unless by an instrument filed in 5843
the court within four months after ~~his~~ appointment ~~he~~ the executor 5844
or administrator renounces all claim to the compensation given by 5845
the will. 5846

Sec. 2113.39. If a qualified executor, administrator, or 5847
testamentary trustee is authorized by will or devise to sell any 5848
class of personal property ~~whatsoever~~ or real estate property, no 5849
order shall be required from the probate court ~~to enable him~~ for 5850

~~the executor, administrator, or testamentary trustee to act in~~ 5851
~~pursuance of the power vested in him proceed with the sale.~~ A 5852
power to sell authorizes a sale for any purpose ~~deemed~~ considered 5853
by ~~such~~ the executor, administrator, or testamentary trustee to be 5854
for the best interest of the estate, unless the power is expressly 5855
limited by ~~such~~ the will or devise. 5856

Sec. 2113.40. (A) At any time after the appointment of an 5857
executor or administrator, the probate court, ~~when~~ if satisfied 5858
that it would be for the best interests of the estate, may 5859
authorize ~~such~~ the executor or administrator to sell at public or 5860
private sale, at a fixed price or for the best price obtainable, 5861
and for cash or on ~~such~~ the terms ~~as~~ that the court may determine, 5862
any part or all of the personal property belonging to the estate, 5863
except the following: 5864

~~(A)~~ Such property as (1) Property that the surviving spouse 5865
desires to take at the appraised value; 5866

~~(B)~~ (2) Property specifically bequeathed, ~~when~~ if the sale of 5867
~~such~~ that property is not necessary for the payment of debts, 5868
provided that ~~such~~ the property may be sold with the consent of 5869
the person entitled ~~thereto~~ to the property, including executors, 5870
administrators, guardians, and trustees; 5871

~~(C)~~ (3) Property as to which distribution in kind has been 5872
demanded prior to the sale by the surviving spouse or other 5873
beneficiary entitled to ~~such~~ the distribution in kind; 5874

~~(D)~~ (4) Property which that the court directs shall not be 5875
sold pursuant to a wish expressed by the decedent in ~~his~~ the 5876
decedent's will; but at any later period, on application of a 5877
party interested, the court may, and for good cause shall, require 5878
~~such~~ the sale to be made. 5879

(B) In case of a sale before expiration of the time within 5880

which the surviving spouse may elect to take at the appraised 5881
value, not less than ten days' notice of ~~such the~~ sale shall be 5882
given to the surviving spouse, unless ~~such the~~ surviving spouse 5883
consents to ~~such the~~ sale or waives notice ~~thereof~~ of the sale. 5884
~~Such The~~ notice shall not be required as to perishable property. 5885

(C) The court may permit the itemized list of personal 5886
property being sold to be incorporated in documents and records 5887
relating to the sale, by reference to other documents and records 5888
~~which that~~ have been filed in the court. ~~Provided, provided~~ that a 5889
court order shall not be required to permit the public sale of 5890
personal ~~goods and chattels~~ property. 5891

Sec. 2113.41. (A) Public sales of personal property ~~mentioned~~ 5892
as provided in section 2113.40 of the Revised Code shall be at 5893
public auction and, unless otherwise directed by the probate 5894
court, after notice of ~~such the~~ sale has been given by any of the 5895
following methods: 5896

~~(A)(1)~~ By advertisement appearing at least three times in a 5897
newspaper of general circulation in the county during a period of 5898
fifteen days next preceding ~~such the~~ sale; 5899

~~(B)(2)~~ By advertisement posted not less than fifteen days 5900
next preceding ~~such the~~ sale in at least five public places in the 5901
township or municipal corporation where ~~such the~~ sale is to take 5902
place; 5903

~~(C)(3)~~ By both ~~such~~ forms of advertisement specified in 5904
divisions (A)(1) and (2) of this section. 5905

~~Such (B)~~ The advertisement published or posted as described 5906
in divisions (A)(1) and (2) of this section shall specify 5907
generally the property to be sold and the date, place, and terms 5908
of the sale. The executor or administrator, if considered in the 5909
best interests of the estate, may employ an auctioneer or clerk, 5910

or both, to conduct ~~such~~ the sale, and their reasonable fees and 5911
charges shall be deducted from the proceeds of the sale. The court 5912
for good cause may extend the time for sale. 5913

Sec. 2113.45. When a mortgagee of real ~~estate~~ property, or an 5914
assignee of ~~such~~ the mortgagee, dies without foreclosing the 5915
mortgage, the mortgaged premises and the debts secured ~~thereby~~ by 5916
the mortgage shall be considered personal assets in the ~~hands~~ 5917
possession or under the control of the executor or administrator 5918
of ~~such~~ the estate of the mortgagee or assignee, and shall be 5919
administered and accounted for as such. 5920

If the mortgagee or assignee did not obtain possession of the 5921
mortgaged premises in ~~his~~ the mortgagee's or assignee's lifetime, 5922
~~his~~ the executor or administrator of the estate of the deceased 5923
mortgagee or assignee may take possession of the premises by open 5924
and peaceable entry or by action, as the deceased might have done 5925
if living. 5926

Sec. 2113.46. In case of the redemption of a mortgage 5927
belonging to the estate of a decedent, the money paid ~~thereon must~~ 5928
on the redemption shall be received by the executor or 5929
administrator, ~~and thereupon he~~ the executor or administrator 5930
shall release and discharge the mortgage. Until ~~such~~ that 5931
redemption, if the executor, administrator, or decedent has taken 5932
possession of the mortgaged premises, the executor or 5933
administrator, ~~if possession has been taken by him or by the~~ 5934
~~decedent,~~ shall be seized of the mortgaged premises in trust for 5935
the same persons who would be entitled to the money if the 5936
premises had been redeemed. 5937

Sec. 2113.48. When a person who has entered into a written 5938
contract for the sale and conveyance of an interest in real ~~estate~~ 5939
property dies before its completion, ~~his~~ the executor or 5940

administrator ~~when~~ of the decedent's estate, if not required to 5941
otherwise dispose of ~~such the~~ contract, may, with the consent of 5942
the purchaser, obtain authority to complete ~~such the~~ contract by 5943
filing an application ~~therefor~~ for that authority in the probate 5944
court of the county in which ~~he~~ the executor or administrator was 5945
appointed. Notice of the time of hearing on ~~such the~~ application 5946
shall be given to the surviving spouse and heirs, if the decedent 5947
died intestate, and to the surviving spouse, and devisees or 5948
legatees having an interest in ~~such the~~ contract, if the decedent 5949
died testate. If the court is satisfied that it would be for the 5950
best interests of the estate, it may authorize the executor or 5951
administrator to complete ~~said the~~ contract and to execute and 5952
deliver to the purchaser ~~such the~~ instruments as that are required 5953
to make the order of the court effective. 5954

Sec. 2113.49. When a person who has entered into a written 5955
contract for the sale and conveyance of an interest in real estate 5956
property dies before its completion, ~~his the~~ executor or 5957
administrator of the decedent's estate, ~~when~~ if not required to 5958
otherwise dispose of the contract, may file a ~~petition~~ complaint 5959
for the alteration or cancellation of the contract, in the probate 5960
court of the county in which ~~he~~ the executor or administrator was 5961
appointed, or in which the real estate property or any part of it 5962
is situated. If the decedent died intestate, the surviving spouse 5963
and heirs, and if the decedent died testate, the surviving spouse, 5964
and devisees or legatees having an interest in the contract, ~~when~~ 5965
if not the plaintiffs, shall, together with the purchaser, be made 5966
parties defendant. 5967

If, upon hearing, the court is satisfied that it is for the 5968
best interests of the estate, it may, with the consent of the 5969
purchaser, authorize the executor or administrator to agree to the 5970
alteration or cancellation of the contract, and to execute and 5971
deliver to the purchaser the instruments required to make the 5972

order of the court effective. Before making ~~such an~~ its order, the 5973
court shall cause to be secured, to and for the benefit of the 5974
estate of the deceased, its just part of the consideration of the 5975
contract. The instruments executed and delivered pursuant to ~~such~~ 5976
~~an~~ the court's order shall recite the order, and be as binding on 5977
the heirs and other parties in interest, as if made by the 5978
deceased ~~in his lifetime~~ prior to death. 5979

Sec. 2113.50. When a person who has entered into a written 5980
contract for the purchase of an interest in real estate property 5981
dies before a the conveyance ~~thereof~~ of the interest to ~~him~~ the 5982
person, ~~his~~ the executor or administrator of the decedent's 5983
estate, ~~or~~ the surviving spouse, ~~or~~ any heir, or any devisee or 5984
legatee having an interest in ~~such~~ the contract, may file an 5985
application for authority to complete ~~such~~ the contract in the 5986
probate court of the county in which the executor or administrator 5987
was appointed. Notice of the time of the hearing on ~~such~~ the 5988
application shall be given to the surviving spouse and heirs, if 5989
the decedent died intestate, and to the surviving spouse, and 5990
devisees or legatees having an interest in ~~such~~ the contract, if 5991
the decedent died testate, to the executor or administrator, if 5992
not the applicant, and to all other persons having an interest in 5993
~~such~~ the real estate property that is the subject of the contract. 5994
If the court is satisfied that it would be for the best interests 5995
of the estate, it may, with the consent of the vendor, authorize 5996
the executor or administrator to complete the contract, pay to the 5997
vendor the amount due on the contract, and authorize a conveyance 5998
of the interest in the real estate property to the persons 5999
entitled ~~thereto~~ to it. If, however, the court finds that the 6000
condition of the estate at the time of the hearing does not 6001
warrant the payment out of the estate of the amount due under the 6002
contract, it may authorize the persons entitled to the interest of 6003
the decedent in the contract to pay to the vendor the amount due 6004

on the contract. The real estate property so conveyed shall 6005
thereafter be chargeable with the debts of the estate to the 6006
extent of the equitable interest of the estate ~~therein~~ in the real 6007
property, and may be sold in land sale proceedings, except that in 6008
the event of ~~such~~ that sale, the persons to whom the real estate 6009
property shall have been conveyed shall have a prior lien on the 6010
proceeds as against the estate to the extent of any portion of the 6011
purchase price paid by them. 6012

The executor or administrator, ~~or~~ surviving spouse, ~~or~~ any 6013
heir, or any devisee or legatee having an interest in ~~such a~~ the 6014
contract, may file a ~~petition~~ complaint for the alteration or 6015
cancellation of the contract in the probate court of the county in 6016
which the executor or administrator was appointed. If the decedent 6017
died intestate, the surviving spouse and heirs, and if the 6018
decedent died testate, the surviving spouse, and devisees or 6019
legatees having an interest in ~~such~~ the contract, and the executor 6020
or administrator, ~~when~~ if not the plaintiff, together with the 6021
vendor, and all other persons having an interest in the real 6022
~~estate which~~ property that is subject to the contract, shall be 6023
made parties defendant. If the court is satisfied that it would be 6024
for the best interests of the estate, the court, with the consent 6025
of the vendor, may authorize the executor or administrator to 6026
agree to the alteration or cancellation of the contract and to 6027
execute and deliver ~~such~~ the deeds or other instruments to the 6028
vendor ~~as~~ that are required to make the order of the court 6029
effective. ~~Such~~ The deeds or other instruments ~~as~~ that are 6030
executed and delivered pursuant to ~~such~~ the court's order shall 6031
recite the order and be as binding on the parties to the suit as 6032
if made by the deceased ~~in his lifetime~~ prior to death. 6033

Sec. 2113.51. The property of an estate ~~which~~ that is 6034
specifically bequeathed may be delivered over to the legatee 6035
entitled ~~thereto~~ to the property. ~~Such~~ The legatee ~~must~~ shall 6036

secure its redelivery on demand to the executor or administrator. 6037
Otherwise, ~~such~~ the property ~~must~~ shall remain in the ~~hands~~ 6038
possession or under the control of the executor or administrator 6039
to be distributed or sold, as required by law and the condition of 6040
the estate. 6041

Sec. 2113.52. (A) A devisee taking real ~~estate~~ property under 6042
a devise in a will, unless the will otherwise provides, or an heir 6043
taking real ~~estate~~ property under the statutes of descent and 6044
distribution shall take the real ~~estate~~ property subject to all 6045
taxes, penalties, interest, and assessments ~~which~~ that are a lien 6046
against that real ~~estate~~ property. 6047

(B) If real ~~estate~~ property devised in a will is subject to a 6048
mortgage lien that exists on the date of the testator's death, the 6049
person taking the real ~~estate~~ property under the devise has no 6050
right of exoneration for the mortgage lien, regardless of a 6051
general direction in the will to pay the testator's debts, unless 6052
the will specifically provides a right of exoneration that extends 6053
to that lien. 6054

Sec. 2113.54. When five months have expired after the 6055
appointment of an executor or administrator and the surviving 6056
spouse has made an election under section 2106.01 of the Revised 6057
Code, a legatee or distributee may apply to the probate court for 6058
an order requiring the executor or administrator to distribute the 6059
assets of the estate, either in whole or in part, in cash or in 6060
kind. Upon notice to the executor or administrator, the court 6061
shall inquire into the condition of the estate, and if all claims 6062
have been paid, or adequate provision has been or can be made for 6063
their payment, the court shall make ~~such~~ that order with reference 6064
to distribution of the estate as the condition of the estate and 6065
the protection of all parties interested in the estate may demand. 6066
The order of the court shall provide that assets be set aside for 6067

the payment of claims rejected within two months or in suit, and 6068
each claimant for whom assets are to be set aside shall be 6069
entitled to be fully heard as to the nature and amount of the 6070
assets to be set aside for payment of ~~his~~ the claim, and as to all 6071
other conditions in connection with the claim. Each legatee or 6072
distributee receiving distribution from the estate shall be liable 6073
to return the assets distributed to ~~him~~ the legatee or 6074
distributee, or the proceeds from the assets, if they are 6075
necessary to pay ~~such~~ those claims. The court, upon its own motion 6076
or upon application of the executor or administrator, as a 6077
condition precedent to any distribution, may require any legatee 6078
or distributee to give bond to the state with surety approved and 6079
in an amount fixed by the court, conditioned as provided in 6080
section 2113.53 of the Revised Code or as may be directed by the 6081
court. ~~Such~~ The bond may be in addition to the assets to be set 6082
aside or partially or wholly in lieu of those assets, as the court 6083
shall determine. 6084

Sec. 2113.58. ~~When~~ If by a ~~last will and testament~~ the use or 6085
income of personal property is given to a person for a term of 6086
years or for life and some other person has ~~an~~ a remainder 6087
interest in ~~such~~ the property ~~as remainderman~~, the probate court, 6088
unless ~~such last~~ the will ~~and testament~~ otherwise provides, may 6089
~~deliver such~~ authorize delivery of the personal property to the 6090
person having the limited estate, with or without bond, as the 6091
court may determine; or the court may order that ~~such~~ the property 6092
be held by the executor or some other trustee, with or without 6093
bond, for the benefit of the person having the limited estate. If 6094
bond is required of the person having the limited estate, or of 6095
the trustee, it may be increased or decreased, and if bond is not 6096
required in the first instance it may be required by the court at 6097
any time prior to the termination of the limited estate. 6098

Sec. 2113.61. (A)(1) When real property passes by the laws of
intestate succession or under a will, the administrator or
executor shall file in probate court, at any time after the filing
of an inventory that includes the real property but prior to the
filing of the administrator's or executor's final account, an
application requesting the court to issue a certificate of
transfer as to the real property. Real property sold by an
executor or administrator or land registered under Chapters 5309.
and 5310. of the Revised Code is excepted from the application
requirement. Cases in which an order has been made under section
2113.03 of the Revised Code relieving an estate from
administration and in which the order directing transfer of real
property to the person entitled to it may be substituted for the
certificate of transfer also are excepted from the application
requirement.

(2) In accordance with division (C)(3)(b) of section 2113.031
of the Revised Code, an application for a certificate of transfer
of an interest in real property included in the assets of the
decedent's estate shall accompany an application for a summary
release from administration under that section. This section
applies to the application for and the issuance of the requested
certificate of transfer except to the extent that the probate
court determines that the nature of any of the provisions of this
section is inconsistent with the nature of a grant of a summary
release from administration.

(B) Subject to division (A)(2) of this section, the
application for a certificate of transfer shall contain all of the
following:

(1) The name, place of ~~residence~~ domicile at death, and date
of death of the decedent;

(2) A statement whether the decedent died testate or

intestate; 6130

(3) ~~The fact and date of the filing and probate of the will, if applicable, and the fact and date of the appointment of the administrator or executor~~ reason the property is being transferred to the devisee or devisees; 6131
6132
6133
6134

(4) ~~A description of each parcel of real property situated in this state that is owned by the decedent at the time of death~~ Whether any spousal elections have been exercised; 6135
6136
6137

(5) ~~Insofar as they can be ascertained, the names, ages, places of residence, and relationship to the decedent of the persons to whom each parcel of real property described in division (B)(4) of this section passed by descent or devise~~ Whether any disclaimers or assignments have been filed; 6138
6139
6140
6141
6142

(6) A statement that all the known debts of the decedent's estate have been paid or secured to be paid, or that sufficient other assets are in hand to complete the payment of those debts or a statement that the estate is insolvent and the transfer is of the mansion house and is being made to satisfy all or a portion of the spousal allowance for support; 6143
6144
6145
6146
6147
6148

(7) Other pertinent information that the court requires. 6149

(C) Subject to division (A)(2) of this section, within five days following the filing of an application for a certificate of transfer that complies with division (B) of this section, the court shall issue a certificate of transfer for record in each county in this state in which real property so passing is situated, that shall recite all of the following: 6150
6151
6152
6153
6154
6155

(1) The name and date of death of the decedent; 6156

(2) Whether the decedent died testate or intestate ~~and, if testate, the volume and page of the record of the will;~~ 6157
6158

(3) The ~~volume and page~~ case number of the probate court 6159

record of the administration of the estate; 6160

(4) The names and places of residence of the devisees, the 6161
interests passing to them, the names and places of residence of 6162
the persons inheriting intestate, and the interests inherited by 6163
them, in each parcel of real property ~~described in division (B)(4)~~ 6164
~~of this section~~ being transferred; 6165

(5) A description of each parcel of real property ~~described~~ 6166
~~in division (B)(4) of this section~~ being transferred; 6167

(6) Other information that in the opinion of the court should 6168
be included. 6169

(D) If an executor or administrator has failed to file an 6170
application for a certificate of transfer before being discharged, 6171
the application may be filed by an heir or devisee, or a successor 6172
in interest, in the probate court in which the testator's will was 6173
probated or, in the case of intestate estates, in the probate 6174
court in which administration was had. If no administration was 6175
had on an estate and if no administration is contemplated, except 6176
in the case of the grant of or contemplated application for the 6177
grant of an order of a summary release from administration under 6178
section 2113.031 of the Revised Code, an application for a 6179
certificate of transfer may be filed by an heir or devisee, or a 6180
successor in interest, in the probate court of the county in which 6181
the decedent was a resident at the time of death or in which the 6182
real property of the decedent is located. 6183

(E) A foreign executor or administrator, ~~when~~ if no ancillary 6184
administration proceedings have been had or are being had in this 6185
state, may file in accordance with this section an application for 6186
a certificate of transfer in the probate court of any county of 6187
this state in which real property of the decedent is located. 6188

(F) When a person who has entered into a written contract for 6189
the sale and conveyance of an interest in real property dies 6190

before its completion, the interest of the decedent in the 6191
contract and the record title to the real property described in 6192
the contract may be transferred to the ~~persons, legatees,~~ 6193
~~devisees,~~ or heirs at law entitled to the interest of the decedent 6194
in the real property, in the same manner as provided in this 6195
section and ~~sections~~ section 2113.62 ~~and 2113.63~~ of the Revised 6196
Code for the transfer of real property. The application for the 6197
certificate of transfer and the certificate itself also shall 6198
recite that the real property described in the application or 6199
certificate is subject to a written contract for its sale and 6200
conveyance. 6201

Sec. 2113.62. Upon receipt of the certificate provided for in 6202
section 2113.61 of the Revised Code, the county recorder shall 6203
record it in the books provided for the recording of deeds and 6204
index ~~such~~ those records in the name of the decedent as grantor 6205
and the person to whom the real ~~estate~~ property passes as grantee 6206
in the index provided for the record of deeds. 6207

Sec. 2113.67. When a person entitled to the money invested or 6208
turned into the county treasury under section 2113.64 of the 6209
Revised Code satisfies the probate court of ~~his~~ the person's right 6210
to receive it, the court shall order it to be paid over and 6211
transferred to ~~him~~ the person. In case it has been turned into the 6212
treasury, the county auditor shall give to ~~him~~ the person a 6213
warrant ~~therefor~~ for the money upon the certificate of the probate 6214
judge. 6215

Sec. 2113.68. The probate judge with whom the certificates or 6216
evidences of title required by section 2113.65 of the Revised Code 6217
are deposited and each succeeding judge to whom they come, and ~~his~~ 6218
the judges' sureties, shall be responsible for their safekeeping 6219
and application, as provided in sections 2113.64 to 2113.67~~7~~ 6220

~~inclusive,~~ of the Revised Code. 6221

Sec. 2113.69. When newly discovered assets come into the 6222
~~hands possession or under the control~~ of an executor or 6223
administrator after the filing of the original inventory required 6224
by section 2115.02 of the Revised Code, ~~he~~ the executor or 6225
administrator shall administer, account for, and distribute ~~such~~ 6226
those assets in ~~like~~ the same manner as if received prior to the 6227
filing of ~~such~~ the inventory. Within thirty days, ~~he~~ the executor 6228
or administrator shall file in the probate court an itemized 6229
report of ~~such~~ those assets, with an estimate of ~~the~~ their value 6230
~~thereof~~, but shall not be required to make an inventory or 6231
appraisal of the ~~same~~ assets unless ordered to do so by the 6232
court, either upon its own motion or upon the application of any 6233
interested party. 6234

Sec. 2113.70. An executor or administrator appointed in any 6235
other state or country, or ~~his~~ the executor's or administrator's 6236
legal representatives, may be prosecuted in any appropriate court 6237
in this state in ~~his~~ the capacity of executor or administrator. 6238

Sec. 2113.72. Any court of common pleas may compel a foreign 6239
administrator or executor residing in this state, or having assets 6240
or property ~~herein~~ in this state, to account at the suit of an 6241
heir, distributee, or legatee, who is resident in this state, and 6242
make distribution of the amount found in ~~his hands~~ the possession 6243
or under the control of the foreign administrator or executor to 6244
the respective heirs, distributees, or legatees according to the 6245
law of the state granting ~~such~~ the letters of administration. ~~When~~ 6246
If suits are pending or there are unsettled demands against ~~such~~ 6247
the estate, the court also may require a refunding bond to be 6248
given to ~~such~~ the foreign executor or administrator by the heirs, 6249
distributees, or legatees entitled ~~thereto~~ to that distribution in 6250

case the amount paid is needed to pay debts of the estate. 6251

Sec. 2113.73. ~~When~~ If a foreign administrator or executor has 6252
wasted, misapplied, or converted assets of an estate, or has 6253
insufficient property to discharge ~~his~~ the foreign administrator's 6254
or executor's liability on account of the trust, or ~~his~~ the 6255
foreign administrator's or executor's sureties are irresponsible, 6256
the distributees, heirs, or legatees, in any court of common pleas 6257
or probate court may compel ~~him~~ the foreign administrator or 6258
executor to secure the amounts respectively due to them and any of 6259
~~his~~ the foreign administrator's or executor's sureties may require 6260
indemnity on account of their liability as bail. 6261

Sec. 2113.74. The several provisional remedies and 6262
proceedings authorized by sections 2113.70 to 2113.73, ~~inclusive,~~ 6263
of the Revised Code, against a foreign executor or administrator 6264
also apply to the person and property of a foreign administrator 6265
or executor. The probate court or the court of common pleas may 6266
make any order or decree touching ~~his~~ a foreign executor's or 6267
administrator's property and effects, or the assets of ~~such the~~ 6268
estate, necessary for the security of those interested ~~therein in~~ 6269
the property, effects, or assets. 6270

Sec. 2113.75. An executor or administrator appointed in any 6271
other state or country may commence and prosecute an action or 6272
proceeding in any court in this state, in ~~his~~ the capacity as 6273
executor or administrator, in ~~like~~ the same manner and under ~~like~~ 6274
the same restrictions as a ~~non-resident~~ nonresident is permitted 6275
to sue. 6276

Sec. 2113.81. ~~Where~~ If it appears that a legatee or a 6277
distributee, or a beneficiary of a trust not residing within the 6278
United States or its territories will not have the benefit ~~of,~~ 6279

use, or control of the money or other property due ~~him~~ the 6280
legatee or distributee from ~~an~~ the estate or due the beneficiary 6281
from the trust, because of circumstances prevailing at the place 6282
of residence of ~~such~~ the legatee, or distributee, or a the 6283
beneficiary of a the trust, the probate court may direct that ~~such~~ 6284
the money be paid into the county treasury to be held in trust or 6285
the probate court may direct that ~~such~~ the money or other property 6286
be delivered to a trustee ~~which~~. The trustee shall have the same 6287
powers and duties provided in section 2119.03 of the Revised Code 6288
for ~~such~~ that legatee, distributee, beneficiary of a the trust, or 6289
~~such~~ the persons who may thereafter be entitled ~~thereto~~ to the 6290
money or other property. ~~Such~~ The money or other property held in 6291
trust by ~~such~~ the county treasurer or trustee shall be paid out by 6292
order of the probate judge in accordance with section 2113.82 of 6293
the Revised Code. 6294

The county treasury shall not be liable for interest on ~~such~~ 6295
the money held in trust. 6296

Sec. 2113.82. When a person entitled to money or other 6297
property invested or turned into the county treasurer or to a 6298
trustee under section 2113.81 of the Revised Code satisfies the 6299
probate court of ~~his~~ the person's right to receive it, the court 6300
shall order the county treasurer or the trustee to pay it over to 6301
~~such~~ the person. 6302

Sec. 2113.85. As used in sections 2113.85 to 2113.90 of the 6303
Revised Code: 6304

(A) "Estate" means the gross estate of a decedent who is 6305
domiciled in this state, as determined for federal estate tax 6306
purposes under Subtitle B of the Internal Revenue Code of 1954, 26 6307
U.S.C. 2001, as amended, for Ohio estate tax purposes under 6308
Chapter 5731. of the Revised Code, and for estate tax purposes of 6309

any other jurisdiction that imposes a tax on the transfer of 6310
property by a decedent who is domiciled in this state. 6311

(B) "Person interested in the estate" means any person who is 6312
entitled to receive, or who has received, any property or property 6313
interest included in the decedent's estate. A "person interested 6314
in the estate" includes, but is not limited to, a personal 6315
representative, guardian, ~~and~~ or trustee. A "person interested in 6316
the estate" does not include a creditor of the decedent or of ~~his~~ 6317
the decedent's estate. 6318

(C) "Tax" means the federal estate tax determined under 6319
Subtitle B of the "Internal Revenue Code of 1954, 26 U.S.C. 2001, 6320
as amended, an Ohio estate tax determined under Chapter 5731. of 6321
the Revised Code, and the estate tax determined by any other 6322
jurisdiction that imposes a tax on the transfer of property by a 6323
decedent who is domiciled in this state. 6324

(D) "Fiduciary" means an executor, administrator, or other 6325
person who, by virtue of ~~his representation of~~ representing the 6326
decedent's estate, is required to pay the tax. 6327

Sec. 2113.86. (A) Unless a will or another governing 6328
instrument otherwise provides, and except as otherwise provided in 6329
this section, a tax shall be apportioned equitably in accordance 6330
with the provisions of this section among all persons interested 6331
in an estate in proportion to the value of the interest of each 6332
person as determined for estate tax purposes. 6333

(B) Except as otherwise provided in this division, any tax 6334
that is apportioned against a gift made in a clause of a will 6335
other than a residuary clause or in a provision of an inter vivos 6336
trust other than a residuary provision, shall be reapportioned to 6337
the residue of the estate or trust. It shall be charged in the 6338
same manner as a general administration expense. However, when a 6339
portion of the residue of the estate or trust is allowable as a 6340

deduction for estate tax purposes, the tax shall be reapportioned 6341
to the extent possible to the portion of the residue that is not 6342
so allowable. 6343

(C)(1) A tax shall not be apportioned against an interest 6344
that is allowable as an estate tax marital or charitable 6345
deduction, except to the extent that the interest is a part of the 6346
residue of an estate or trust against which tax is reapportioned 6347
pursuant to division (B) of this section. 6348

(2) Estate tax of this state or another jurisdiction shall 6349
not be reapportioned against an interest that is allowable as a 6350
deduction for federal estate tax purposes, to the extent that 6351
there is other property in the estate or trust that is not 6352
allowable as a deduction for federal estate tax purposes and 6353
against which estate tax of this state or another jurisdiction can 6354
be apportioned. 6355

(D) A tax shall not be apportioned against property that 6356
passes to a surviving spouse as an elective share under section 6357
2106.01 of the Revised Code or as an intestate share under section 6358
2105.06 of the Revised Code, to the extent that there is other 6359
property in the estate that is not allowable as a deduction for 6360
estate tax purposes against which the tax can be apportioned. 6361

(E)(1) Any federal estate tax credit for state or foreign 6362
death taxes on property that is includible in an estate for 6363
federal estate tax purposes, shall inure to the benefit of the 6364
persons chargeable with the payment of the state or foreign death 6365
taxes in proportion to the amount of the taxes paid by each 6366
person, but any federal estate tax credit for state or foreign 6367
death taxes inuring to the benefit of a person cannot exceed the 6368
federal estate tax apportioned to that person. 6369

(2) Any federal estate tax credit for gift taxes paid by a 6370
donee of a gift shall inure to the benefit of that donee for 6371

purposes of this section. 6372

(3) Credits against tax not covered by division (E)(1) or (2) 6373
of this section shall be apportioned equitably among persons in 6374
the manner in which the tax is apportioned among them. 6375

(F) Any additional estate tax that is due because a qualified 6376
heir has disposed of qualified farm property in a manner not 6377
authorized by law or ceased to use any part of the qualified farm 6378
property for a qualified use, shall be apportioned against the 6379
interest of the qualified heir. 6380

(G) If both a present interest and a future interest in 6381
property are involved, a tax shall be apportioned entirely to the 6382
principal. This shall be the case even if the future interest 6383
qualifies for an estate tax charitable deduction, even if the 6384
holder of the present interest also has rights in the principal, 6385
and even if the principal is otherwise exempt from apportionment. 6386

(H) Penalties shall be apportioned in the same manner as a 6387
tax, and interest on tax shall be apportioned to the income of the 6388
estate or trust, unless a court directs a different apportionment 6389
of penalties or interest based on a finding that special 6390
circumstances make an apportionment as provided in this division 6391
inequitable. 6392

(I) If any part of an estate consists of property, the value 6393
of which is included in the gross estate of the decedent by reason 6394
of section 2044 of the "Internal Revenue Code of 1986," 100 Stat. 6395
2085, 26 N 2044, as amended, or of section 5731.131 of the Revised 6396
Code, the estate is entitled to recover from the persons holding 6397
or receiving the property any amount by which the estate tax 6398
payable exceeds the estate tax that would have been payable if the 6399
value of the property had not been included in the gross estate of 6400
the decedent. This division does not apply if ~~a decedent provides~~ 6401
~~otherwise in his~~ the decedent's will or another governing 6402

instrument provides otherwise and the will or instrument refers to 6403
either section mentioned in this division or to qualified 6404
terminable interest marital deduction property. 6405

Sec. 2113.87. (A) The fiduciary, or any person interested in 6406
the estate who objects to the manner of apportionment of a tax, 6407
may apply to the court that has jurisdiction of the estate and 6408
request the court to determine the apportionment of the tax. If 6409
there are no probate proceedings, the probate court of the county 6410
in which the decedent was domiciled at death, upon application by 6411
the fiduciary or any other person interested in the estate who 6412
objects to the manner of apportionment of a tax, shall determine 6413
the apportionment of the tax. 6414

(B) The fiduciary may notify any person interested in the 6415
estate of the manner of the apportionment of tax determined by the 6416
fiduciary. Upon receipt of ~~such a~~ that notice, a person interested 6417
in the estate, within thirty days after the date of receipt of the 6418
notice, may indicate ~~his~~ the person's objection to the manner of 6419
apportionment by application to a probate court as described in 6420
division (A) of this section. If the person interested in the 6421
estate fails to make the application within the thirty-day period, 6422
~~he~~ the person is bound by the manner of apportionment determined 6423
by the fiduciary. The notice described in this division shall 6424
state the name and address of the probate court with jurisdiction 6425
over the apportionment and include the following statement: 6426

"If you fail to file an objection to this proposed 6427
apportionment with the probate court within thirty days of the 6428
receipt of this notice, you are bound by the proposed 6429
apportionment." 6430

(C) If a probate court finds that an assessment of penalties 6431
and interest assessed with respect to a tax is due to delay caused 6432
by the negligence of the fiduciary, the court may charge the 6433

fiduciary with the amount of the assessed penalties and interest. 6434
In any suit or judicial proceeding to recover from any person 6435
interested in the estate the amount of the tax apportioned to that 6436
person, the determination of the probate court is conclusive. 6437

Sec. 2113.88. (A) The fiduciary may withhold from any 6438
property distributable to any person interested in the estate the 6439
amount of tax attributable to the person's interest. If the 6440
property in possession of the fiduciary and distributable to any 6441
person interested in the estate is insufficient to satisfy the 6442
proportionate amount of the tax determined to be due from that 6443
person, the fiduciary may recover the deficiency from that person. 6444
If the property is not in the possession of the fiduciary, the 6445
fiduciary may recover from any person interested in the estate the 6446
amount of the tax apportioned to that person in accordance with 6447
this section by filing a complaint to recover the tax in the 6448
probate court that has jurisdiction of the administration of the 6449
estate. 6450

(B) If the property held by the fiduciary is distributed 6451
prior to final apportionment of the tax, the distributee shall 6452
provide a bond or other security for the apportionment liability 6453
in the form and amount prescribed by the fiduciary, with the 6454
approval of the probate court that has jurisdiction of the 6455
administration of the estate. 6456

Sec. 2115.02. Within three months after the date of the 6457
executor's or administrator's appointment, unless the probate 6458
court grants an extension of time for good cause shown, the 6459
executor or administrator shall file with the court an inventory 6460
of the decedent's interest in real ~~estate~~ property located in this 6461
state and of the tangible and intangible personal property of the 6462
decedent that is to be administered and that has come to the 6463
executor's or administrator's possession or knowledge. The 6464

inventory shall set forth values as of the date of death of the 6465
decedent. If a prior executor or administrator has done so, a 6466
successor executor or administrator need not file an inventory, 6467
unless, in the opinion of the court, it is necessary. 6468

Any asset, the value of which is readily ascertainable, is 6469
not required to be appraised but shall be included in the 6470
inventory. 6471

Sec. 2115.03. If an executor or administrator neglects or 6472
refuses to return an inventory as provided by section 2115.02 of 6473
the Revised Code, the probate court shall issue an order requiring 6474
~~him~~ the executor or administrator, at an early day specified in 6475
the order, to return an inventory. After personal service of the 6476
order by a person authorized to make the service, if the executor 6477
or administrator, by the day appointed, does not return the 6478
inventory or fails to obtain further time from the court to return 6479
it, or if the order cannot be served personally by reason of ~~his~~ 6480
the executor or administrator absconding or concealing ~~himself~~ 6481
self, the court may remove the executor or administrator and new 6482
letters shall be granted. The letters shall supersede all former 6483
letters testamentary or of administration, deprive the former 6484
executor or administrator of all power, authority, or control over 6485
the estate of the deceased, and entitle the person appointed to 6486
take, demand, and receive the effects of the deceased wherever 6487
they are found. 6488

In every case of the revocation of letters under this 6489
section, the bond given by the former executor or administrator 6490
shall be prosecuted and a recovery had on the bond to the full 6491
extent of any injury sustained by the estate of the deceased by 6492
the former executor's or administrator's acts or omissions, and to 6493
the full value of all the property of the deceased received and 6494
not administered by ~~him~~ the former executor or administrator. 6495

Sec. 2115.06. The real estate property and personal property 6496
comprised in the inventory required by section 2115.02 of the 6497
Revised Code, unless an appraisalment ~~thereof~~ of that real property 6498
or personal property has been dispensed with by an order of the 6499
probate court, shall be appraised by one suitable disinterested 6500
person appointed by the executor or administrator, subject to the 6501
approval of the court and sworn to a faithful discharge of ~~his~~ the 6502
trust. The executor or administrator, subject to the approval of 6503
the court, may appoint separate appraisers of property located in 6504
any other county and appoint separate appraisers for each asset. 6505

In lieu of the appointment of an appraiser for real property, 6506
the executor or administrator may accept the valuation of the real 6507
property by the county auditor. 6508

If appraisers fail to attend to the performance of their 6509
duty, the executor or administrator, subject to the approval of 6510
the probate judge, may appoint others to supply the place of ~~such~~ 6511
~~delinquents~~ the delinquent appraisers. 6512

Each appraiser shall be paid ~~such an~~ an amount for ~~his~~ the 6513
appraiser's services ~~as~~ that is determined by the executor or 6514
administrator, subject to the approval of the probate judge, 6515
taking into consideration ~~his~~ the appraiser's training, 6516
qualifications, experience, time reasonably required, and the 6517
value of the property appraised. The amount of ~~such~~ the fees may 6518
be charged against the estate as part of the cost of the 6519
proceeding. 6520

Sec. 2115.09. The inventory required by section 2115.02 of 6521
the Revised Code shall contain a particular statement of all 6522
securities for the payment of money that belong to the deceased 6523
and are known to the executor or administrator. ~~Such~~ The inventory 6524
shall specify the name of the debtor in each security, the date, 6525

the sum originally payable, the ~~indorsements thereon~~ endorsements 6526
on the securities with their dates, the serial numbers or other 6527
identifying data as to each security, and the sum that, in the 6528
judgment of the appraisers, can be collected on each claim. 6529

~~Such~~ The inventory shall contain a statement of all debts and 6530
accounts belonging to the deceased that are known to ~~such the~~ 6531
executor or administrator and specify the name of the debtor, the 6532
date, the balance or thing due, and the value or sum that can be 6533
collected ~~thereon~~ on the debt, in the judgment of the appraisers. 6534

~~Such~~ The inventory shall contain an account of all moneys 6535
that belong to the deceased and have come ~~to~~ into the ~~hands~~ 6536
possession or under the control of the executor or administrator. 6537
If none has come ~~to~~ into the ~~executor's or administrator's hands~~ 6538
possession or under the control of the executor or administrator, 6539
the fact shall be stated in the inventory. 6540

The inventory shall contain a statement whether or not, 6541
insofar as it can be ascertained, the filing of an Ohio estate tax 6542
return will be required. 6543

Sec. 2115.10. The emblements raised by labor, whether severed 6544
or not from the land of the deceased at the time of ~~his~~ the 6545
decedent's death, are assets in the ~~hands~~ possession or under the 6546
control of the executor or administrator and shall be included in 6547
the inventory required by section 2115.02 of the Revised Code. 6548

The executor or administrator, or the person to whom ~~he~~ the 6549
executor or administrator sells ~~such the~~ emblements, at all 6550
reasonable times may enter upon the lands to cultivate, sever, and 6551
gather them. 6552

Sec. 2115.11. The discharge or bequest, in a will, of a debt 6553
or demand of a testator against an executor named ~~therein~~ in the 6554
will, or against any other person, is not valid as against the 6555

decedent's creditors, but is only a specific bequest of ~~such that~~ 6556
debt or demand. The amount ~~thereof must~~ of the debt or demand 6557
shall be included in the inventory of the credits and effects of 6558
the deceased and, if necessary, ~~such that~~ amount ~~must~~ shall be 6559
applied in the payment of ~~his~~ the decedent's debts. If not 6560
necessary for that purpose, ~~such the~~ amount shall be paid in the 6561
same manner and proportion as other specific legacies. 6562

Sec. 2115.12. The naming of a person as executor in a will 6563
shall not operate as a discharge or bequest of a just claim ~~which~~ 6564
that the testator had against ~~such that~~ executor. ~~Such~~ The claim 6565
shall be included among the assets of the deceased in the 6566
inventory required by section 2115.02 of the Revised Code. The 6567
executor shall be liable for it as for so much money in ~~his hands~~ 6568
the possession or under the control of the executor at the time 6569
~~such that~~ debt or demand becomes due, and ~~must~~ shall apply and 6570
distribute it as part of the personal ~~estate~~ property of the 6571
deceased. 6572

Sec. 2115.16. Upon the filing of the inventory required by 6573
section 2115.02 of the Revised Code, the probate court ~~forthwith~~ 6574
shall set a day, not later than one month after the day the 6575
inventory was filed, for a hearing on the inventory. 6576

The executor or administrator may serve notice of the 6577
hearing, or may cause the notice to be served, upon any person who 6578
is interested in the estate. The probate court, after notice to 6579
the executor or administrator, either upon the motion of any 6580
interested party for good cause shown or at its own instance, may 6581
order that notice of the hearing is to be served upon persons the 6582
court designates. 6583

For good cause, the hearing may be continued for the time 6584
that the court considers reasonable. Exceptions to the inventory 6585

or to the allowance for support provided by section 2106.13 of the Revised Code may be filed at any time prior to five days before the date set for the hearing or the date to which the hearing has been continued by any person interested in the estate or in any of the property included in the inventory, but the time limit for the filing of exceptions shall not apply in case of fraud or concealment of assets. When exceptions are filed, notice of them and the time of the hearing on them ~~forthwith~~ shall be given to the executor or administrator and ~~his~~ the attorney of the executor or administrator by certified mail or by personal service, unless the notice is waived. At the hearing, the executor or administrator and any witness may be examined under oath. The court shall enter its finding on the journal and tax the costs as may be equitable.

Sec. 2115.17. When the inventory required by section 2115.02 of the Revised Code has been approved by the probate court, the appraisement of the real ~~estate~~ property as set forth ~~therein~~ in the inventory shall be conclusive for all purposes except estate tax, unless a reappraisal is ordered by the court.

Sec. 2117.01. No part of the assets of a deceased shall be retained by an executor or administrator in satisfaction of ~~his~~ the executor's or the administrator's own claim, until it has been proved to and allowed by the probate court. ~~Such~~ That debt is not entitled to preference over others of the same class.

Sec. 2117.02. An executor or administrator within three months after the date of ~~his~~ appointment shall present any claim ~~he~~ the executor or administrator has against the estate to the probate court for allowance. The claim shall not be paid unless allowed by the court. When an executor or administrator presents a claim amounting to five hundred dollars or more, the court shall

fix a day not less than four nor more than six weeks from its 6616
presentation, when the testimony touching it shall be heard. The 6617
court ~~forthwith~~ shall issue an order directed to the executor or 6618
administrator requiring ~~him~~ the executor or administrator to give 6619
notice in writing to all the heirs, legatees, or devisees of the 6620
decedent interested in the estate, and to the creditors named in 6621
the order. The notice shall contain a statement of the amount 6622
claimed, designate the time fixed for hearing the testimony, and 6623
be served upon the persons named in the order at least twenty days 6624
before the time for hearing. If any persons mentioned in the order 6625
are not residents of the county, service of notice may be made 6626
upon them by publication for three consecutive weeks in a 6627
newspaper published or circulating in the county, or as the court 6628
may direct. All persons named in the order shall be parties to the 6629
proceeding, and any other person having an interest in the estate 6630
may be made a party. 6631

Sec. 2117.03. At any time after the presentation by an 6632
executor or administrator of a claim ~~which he~~ that the executor or 6633
administrator owns against the estate ~~he~~ the executor or 6634
administrator represents to the probate court for allowance, the 6635
court on its own motion, or on motion by any interested party, may 6636
appoint an attorney to represent the estate, who shall receive 6637
~~such~~ the compensation from the estate ~~as~~ that may be fixed by the 6638
court. The court shall ~~thereupon~~ require the executor or 6639
administrator to make available to ~~such~~ the attorney, for use in 6640
connection with the proceeding, all documents belonging to the 6641
estate relating to the subject matter of ~~such~~ the claim. 6642

Sec. 2117.04. Upon the hearing as to the allowance of an 6643
executor's or administrator's claim against the estate ~~he~~ the 6644
executor or administrator represents, an appeal may be taken from 6645
a final order or judgment of the probate court upon a matter of 6646

law by any person affected by the order or judgment. 6647

Sec. 2117.08. When a claim is presented against the estate of 6648
a deceased person, the executor or administrator may require 6649
satisfactory written proof in support of it and also the affidavit 6650
of the claimant that ~~such~~ the claim is justly due, that no 6651
payments have been made ~~thereon~~ on the claim, and that there are 6652
no counterclaims against it to ~~his~~ the claimant's knowledge. ~~Such~~ 6653
The affidavit shall set forth any security held for the payment of 6654
~~said~~ the claim and, if the claim is not due, the date of maturity. 6655
If ~~said~~ the claim arises out of tort, or if preference in payment 6656
is claimed, the facts in connection with the alleged tort or 6657
showing the right to ~~such~~ that preference shall be briefly set 6658
forth. 6659

Sec. 2117.09. If an executor or administrator doubts the 6660
justice of any claim presented against the estate ~~he~~ the executor 6661
or administrator represents, ~~he~~ the executor or administrator may 6662
enter into an agreement in writing with the claimant to refer the 6663
matter in controversy to three disinterested persons, who ~~must~~ 6664
shall be approved by the probate judge. 6665

Upon filing the agreement of reference in the probate court 6666
of the county in which the letters testamentary or of 6667
administration were issued, the judge shall docket the cause and 6668
make an order referring the matter in controversy to the referees 6669
selected. 6670

The referees ~~thereupon must~~ shall proceed to hear and 6671
determine the matter and make their report to the court. The 6672
referees shall have the same powers and be entitled to the same 6673
compensation and the same proceedings shall be followed as if the 6674
reference were made under the provisions for arbitrations under a 6675
rule of the court of common pleas. The court may set aside the 6676

report of the referees, appoint others in their places, or confirm 6677
~~such the~~ report and adjudge costs as in actions against executors 6678
and administrators. The judgment of the court ~~thereupon~~ shall be 6679
valid and effectual. 6680

Sec. 2117.10. The failure of the holder of a valid lien upon 6681
any of the assets of an estate to present ~~his~~ the lienholder's 6682
claim upon the indebtedness secured by ~~such the~~ lien, as provided 6683
in ~~Chapter 2117. of the Revised Code~~ this chapter, shall not 6684
affect ~~such the~~ lien if the same is evidenced by a document 6685
admitted to public record, or is evidenced by actual possession of 6686
the real or personal property ~~which that~~ is subject to ~~such the~~ 6687
lien. 6688

Sec. 2117.13. If a devisee, legatee, heir, creditor, or other 6689
interested party files in the probate court a written requisition 6690
on the executor or administrator to reject a claim presented for 6691
allowance against the estate ~~he~~ the executor or administrator 6692
represents, whether the claim has been allowed or not, but which 6693
claim has not been paid in full, and enters into a sufficient bond 6694
running to ~~such the~~ executor or administrator, the amount, terms, 6695
and surety of which are to be approved by the probate judge, the 6696
claim shall be rejected by the executor or administrator. The 6697
notice of rejection shall inform the claimant of the filing of the 6698
requisition and of the name of the party filing the same. The 6699
condition of the bond shall be to pay all costs and expenses of 6700
contesting ~~such the~~ claim, including ~~such any~~ reasonable fee ~~as~~ 6701
that the court allows to the attorney for the executor or 6702
administrator, in case the claim finally is allowed in whole, and 6703
if ~~such the~~ claim is allowed only in part, to pay ~~such that~~ part 6704
of the expenses ~~as that~~ the court may determine, including ~~such~~ 6705
any reasonable fee ~~as that~~ the court may allow to the attorney for 6706
the executor or administrator. 6707

Sec. 2117.15. An executor or administrator may proceed to pay the debts due from the estate in accordance with Chapters 2113. to 2125. of the Revised Code. If it appears at any time that the estate is insolvent, the executor or administrator may report that fact to the court, and apply for any order that ~~he~~ the executor or administrator considers necessary because of the insolvency. In case of insolvency, a creditor who has been paid according to law shall not be required to make any refund.

Sec. 2117.17. (A) The probate court on its own motion may, and on motion of the executor or administrator shall, assign all claims against the estate that have been presented and any other known valid debts of the estate for hearing on a day certain. ~~Forthwith upon such~~ Upon the assignment, and in no case less than ten days before the date fixed for hearing or ~~such a~~ longer period ~~as that~~ the court may order, the executor or administrator shall cause written notice of the hearing to be served upon the following persons who have not waived the notice in writing or otherwise voluntarily entered their appearance:

~~(A)(1)~~ If it appears that the estate is fully solvent, ~~such~~ the notice shall be given to the surviving spouse and all other persons having an interest in the estate as devisees, legatees, heirs, and distributees.

~~(B)(2)~~ If it appears probable that there will not be sufficient assets to pay all of the valid debts of the estate in full, then ~~such~~ the notice also shall be given to all creditors and claimants whose claims have been rejected and whose rights have not been finally determined by judgment, reference, or lapse of time.

(B) The notice required by this section shall state that a hearing concerning the debts has been scheduled, shall set forth

the time and place of the hearing, and shall state that the action 6738
of the executor or administrator in allowing and classifying 6739
claims will be confirmed at ~~such~~ the hearing unless cause to the 6740
contrary is shown. The notice shall be served personally or by 6741
certified mail in the manner specified for service of notice of 6742
the rejection of a claim under section 2117.11 of the Revised 6743
Code. Proof of service of the notice to the satisfaction of the 6744
court, by affidavit or otherwise, and all waivers of service shall 6745
be filed in court at the time of the hearing. At any time before 6746
hearing, any interested person may file exceptions in writing to 6747
the allowance or classification of any specific claim. The court 6748
may cause or permit other interested persons to be served with 6749
notice and witnesses to be subpoenaed as may be required to 6750
present the issues fully. 6751

(C) The court, upon the hearing, shall determine whether the 6752
executor or administrator acted properly in allowing and 6753
classifying each claim and shall make an order confirming or 6754
disapproving ~~such~~ that action. 6755

(D) An order of the court disapproving the allowance of a 6756
claim shall have the same effect as a rejection of the claim on 6757
the date on which the claimant is served with notice of the 6758
court's order. Notice of the court's order shall be served 6759
personally or by certified mail in the manner specified for 6760
service of notice of the rejection of a claim under section 6761
2117.11 of the Revised Code. An order of the court confirming the 6762
allowance or classification of a claim shall constitute a final 6763
order and shall have the same effect as a judgment at law or 6764
decree in equity, and shall be final as to all persons having 6765
notice of the hearing and as to claimants subsequently presenting 6766
their claims, though without notice of ~~such~~ the hearing. In the 6767
absence of fraud, the allowance and classification of a claim and 6768
the subsequent payment of it in good faith shall not be subject to 6769

question upon exceptions to the executor's or administrator's 6770
accounts. The confirmation of a claim by the court shall not 6771
preclude the executor or administrator from thereafter rejecting 6772
the claim on discovery of error in ~~his~~ the executor's or 6773
administrator's previous action or on requisition as provided in 6774
sections 2117.13 and 2117.14 of the Revised Code. 6775

Sec. 2117.18. Taxes, penalties, and interest placed on a 6776
duplicate or added by the county auditor or the tax commissioner 6777
because of a failure to make a return or because of a false or 6778
incomplete return for taxation shall be a debt of a decedent and 6779
have the same priority and be paid as other taxes. ~~Such~~ Those 6780
taxes, penalties, and interest shall be collectible out of the 6781
property of the estate either before or after distribution, by any 6782
means provided for collecting other taxes. No distribution or 6783
payment of inferior debts or claims shall defeat ~~such that~~ 6784
collection~~+~~, but ~~no such~~ the tax, penalty, or interest ~~can~~ shall 6785
not be added before notice to the executor or administrator, and 6786
before an opportunity is given ~~him~~ to the executor or 6787
administrator to be heard. All taxes omitted by the deceased ~~must~~ 6788
shall be charged on the tax lists and duplicate in ~~his~~ the 6789
deceased's name. 6790

In all ~~such~~ additions to the personal tax lists and duplicate 6791
under this section, each succeeding tax year shall be considered 6792
as beginning at the time of the completion of the annual 6793
settlement of the duplicate for the previous year with the county 6794
treasurer. 6795

Sec. 2117.30. (A) No suit shall be brought against an 6796
executor or administrator by a creditor of the decedent or by any 6797
other party interested in the estate until after five months from 6798
the time of the appointment of the executor or administrator, or 6799
the expiration of the further time allowed by the probate court 6800

for the collection of the assets of the estate, except in the 6801
following cases: 6802

~~(A)~~(1) On claims rejected in whole or in part; 6803

~~(B)~~(2) For the enforcement of a lien against or involving 6804
title to specific property; 6805

~~(C)~~(3) For the recovery of a claim that would not be affected 6806
by the insolvency of the estate; 6807

~~(D)~~(4) On account of fraud, conversion, or concealment of 6808
assets; 6809

~~(E)~~(5) Any other action as to which a different rule is 6810
prescribed by statute. 6811

(B) When an executor or administrator dies, resigns, or is 6812
removed without having fully administered the estate of the 6813
deceased, the time between ~~his~~ the executor's or administrator's 6814
death, resignation, or removal and the appointment of a successor 6815
shall be excluded in computing the five months or longer period 6816
provided in division (A) of this section. In any event, ~~his~~ the 6817
executor's or administrator's successor shall not be held to 6818
answer the suit until after the expiration of four months from the 6819
date of the successor's appointment, or a further time allowed ~~him~~ 6820
the executor or administrator by the court for the collection of 6821
the assets of the estate. 6822

Sec. 2117.31. When two or more persons are indebted in a 6823
joint contract, or upon a judgment founded on ~~such~~ the joint 6824
contract, and either of them dies, ~~his~~ the decedent's estate shall 6825
be liable ~~therefor~~ for the debt as if the contract had been joint 6826
and several, or as if the judgment had been against ~~himself~~ the 6827
decedent alone. This section shall not affect the rights of a 6828
surety, when certified as such, in a judgment rendered jointly 6829
against ~~him~~ the surety and ~~his~~ the surety's principal. 6830

Sec. 2117.34. No execution against the assets of an estate 6831
shall issue upon a judgment against an executor or administrator 6832
unless upon the order of the probate court ~~which that~~ appointed 6833
~~him~~ the executor or administrator. If an account has been rendered 6834
by ~~such the~~ executor or administrator and settled by the court, 6835
~~such the~~ execution shall issue only for the sum that appeared, on 6836
settlement of ~~such the~~ account, to be a just proportion of the 6837
assets applicable to the judgment. The order of the court allowing 6838
~~such the~~ execution shall fix the amount for which the ~~same~~ 6839
execution shall issue. 6840

Sec. 2117.35. All executions against executors and 6841
administrators for debts due from the deceased shall run against 6842
the ~~goods and~~ assets of the estate of the deceased in ~~their hands~~ 6843
the possession or under the control of the executors and 6844
administrators. 6845

Sec. 2117.36. No real ~~estate~~ property of a deceased person 6846
~~which that~~ has been aliened or encumbered by the decedent's heirs 6847
prior to the issuing of letters testamentary or of administration 6848
shall be liable while in the ~~hands~~ possession or under the control 6849
of a bona fide purchaser for value or to the prejudice of a bona 6850
fide lessee or encumbrancer for value for debts of the deceased 6851
person unless letters testamentary or of administration are 6852
granted within four years from the date of death of ~~such the~~ 6853
deceased person. No real ~~estate~~ property of a deceased person 6854
~~which that~~ has been aliened or encumbered by the decedent's heirs 6855
or devisees after the ~~issue~~ issuance of letters testamentary or of 6856
administration shall be liable while in the ~~hands~~ possession or 6857
under the control of a bona fide purchaser for value or to the 6858
prejudice of a bona fide lessee or encumbrancer for value for 6859
debts of a deceased person unless suit is brought to subject ~~such~~ 6860

the real estate property to the payment of ~~such~~ those debts prior 6861
to the settlement of the executor's or administrator's final 6862
account or what purports to be ~~his~~ the executor's or 6863
administrator's final account; provided that if ~~such~~ the final 6864
account is not filed and settled within four years after the 6865
granting of letters testamentary or of administration, but 6866
excluding for ~~the~~ these purposes ~~hereof~~ the time that any action 6867
is pending against the executors or administrators for the 6868
establishment or collection of any claim against the deceased, 6869
~~such~~ the real estate property so aliened shall not be liable for 6870
the debts of the deceased unless suit is brought to subject ~~such~~ 6871
the real estate thereto property to those debts within ~~such~~ that 6872
four-year period. The heir or devisee aliening ~~such~~ the real 6873
~~estate~~ property shall be liable for ~~the~~ its value ~~thereof~~, with 6874
legal interest from the time of alienation, to the creditors of 6875
the deceased in the manner and within the limitations provided by 6876
law. This section does not enlarge or extend the right of the 6877
creditors of any deceased person against ~~his~~ the deceased person's 6878
real estate property, ~~or~~ repeal any limitations contained in other 6879
sections of the Revised Code, or apply to mortgages or liens of 6880
record at the time of the death of ~~such~~ the deceased person. 6881

Sec. 2117.37. If a claim is contingent at the time of a 6882
decedent's death and a cause of action subsequently accrues on the 6883
claim, it shall be presented to the executor or administrator, in 6884
the same manner as other claims, before the expiration of ~~one year~~ 6885
six months after the date of death of the decedent, or before the 6886
expiration of two months after the cause of action accrues, 6887
whichever is later, except as provided in section 2117.39 of the 6888
Revised Code. The executor or administrator shall allow or reject 6889
the claim in the same manner as other claims are allowed or 6890
rejected. If the claim is allowed, the executor or administrator 6891
shall proceed to pay it. If the claim is rejected, the claimant 6892

shall commence an action on the claim within two months after the 6893
rejection or be forever barred from maintaining an action on the 6894
claim. 6895

Sec. 2117.41. A claimant whose cause of action accrues as 6896
provided in section 2117.37 of the Revised Code may bring suit to 6897
recover ~~thereon~~ on the claim against the heirs, next of kin, 6898
surviving spouse as next of kin, devisees, and legatees under the 6899
decedent's will, each of whom shall be liable to the claimant in 6900
an amount not exceeding the value of the real and personal ~~estate~~ 6901
property that ~~he~~ the person received under the will or on 6902
distribution of the estate. If, by the will of the deceased, any 6903
part of the estate or any one or more of the devisees and legatees 6904
is made exclusively liable for the debt, in exoneration of the 6905
residue of the estate or of the other devisees or legatees, the 6906
terms of the will shall be complied with in that respect and the 6907
persons and estate so exempt by the will shall be liable for only 6908
so much of the debt ~~as~~ that cannot be recovered from those first 6909
chargeable ~~therewith~~ with the debt. 6910

No ~~such~~ suit shall be maintained under this section unless 6911
commenced within six months next after the time when the cause of 6912
action first accrues, except in case the suit is for the balance 6913
due after a payment by the executor or administrator, in which 6914
case suit shall be brought within two months after the final 6915
payment by the executor or administrator. If the person entitled 6916
to bring ~~such~~ the suit is under legal disability, ~~he~~ the person 6917
may bring ~~such~~ the action within one year after ~~his~~ the person's 6918
disability is removed. 6919

If any of ~~such~~ those heirs, next of kin, surviving spouse as 6920
next of kin, devisees, or legatees dies without having paid ~~his~~ 6921
the person's just proportion of ~~such~~ the debt, ~~his~~ the executors 6922
or administrators of that deceased person's estate shall be liable 6923

~~therefor~~ for that proportion to the extent ~~he~~ the deceased person 6924
would have been if living. 6925

Sec. 2117.42. If, in the cases specified in section 2117.41 6926
of the Revised Code, more than one person is liable for the debt, 6927
the creditor shall proceed by one action to recover ~~such the~~ debt 6928
against all so liable, or as many of them ~~as~~ who are within the 6929
reach of process. ~~Thereupon, by~~ By the verdict of a jury if either 6930
party requires it, the court ~~must~~ shall determine what sum is due 6931
to the plaintiff. ~~They~~ The jury also, according to the equities of 6932
the case, shall decide how much each of the defendants is liable 6933
to pay toward the satisfaction of the debt and the court shall 6934
render judgment accordingly. 6935

No suit shall be dismissed or debarred for not making all the 6936
persons defendants who might have been included as ~~such~~ 6937
defendants. In any stage of the cause the court may award process 6938
to bring in other parties and allow amendments necessary to charge 6939
them, as defendants, upon ~~such the~~ terms ~~as~~ that it ~~deems~~ 6940
considers reasonable. 6941

If any of the persons who were originally liable for the debt 6942
is insolvent or unable to pay ~~his~~ the person's proportion, or is 6943
beyond the reach of process, the others nevertheless shall be 6944
liable to the creditor for the whole amount of ~~his~~ the debt; 6945
except that no one shall be compelled to pay more than the amount 6946
received by ~~him~~ the person from the decedent's estate. 6947

If, in consequence of insolvency, absence, or other cause, 6948
any of the persons liable for ~~such the~~ debt fails to pay ~~his~~ the 6949
person's just proportion to the creditor, ~~he~~ the person shall be 6950
liable to indemnify all who, by reason of ~~such~~ that person's 6951
failure ~~on his part~~, have paid more than their just proportion of 6952
the debt, such indemnity to be recovered by all of them jointly or 6953
in separate actions, by any one or more of them for ~~his~~ or their 6954

respective parts ~~respectively~~, at their election. 6955

Sec. 2119.01. When a person owning property in this state has 6956
disappeared and has not been heard from, after diligent inquiry 6957
and for at least three months, under circumstances that afford 6958
reasonable ground to believe that ~~he~~ the person is dead, cannot 6959
return, or refuses to return to ~~his~~ the person's home, and ~~his~~ the 6960
person's estate requires attention, supervision, and care, or is 6961
needed for the maintenance of ~~his~~ the person's dependents, the 6962
probate court ~~may~~, on application of the spouse or of one of the 6963
next of kin, may appoint a trustee to take possession and charge 6964
of the property of ~~such~~ the person, other than the property with 6965
respect to which ~~such~~ the person has made provision by written 6966
instrument designating an agent or attorney in fact. ~~Such~~ The 6967
application shall be filed in the county in which ~~such~~ the person 6968
last resided or if ~~his~~ the person's last known residence was 6969
~~without~~ outside this state, ~~such~~ the application may be filed in 6970
any county in which ~~any such~~ that property is situated. 6971

Sec. 2119.02. The probate court, before appointing a trustee 6972
for an absentee, shall cause notice of the filing of the 6973
application under section 2119.01 of the Revised Code and of the 6974
time and place of hearing ~~thereon~~ on the application to be 6975
published once a week for four consecutive weeks in ~~some a~~ 6976
newspaper of general circulation in the county and shall cause 6977
copies of ~~such~~ the notice to be mailed to the spouse and next of 6978
kin of the absentee residing within the state, ~~excepting~~ except 6979
the applicant, and to the absentee residing at ~~his~~ the absentee's 6980
last known address. The court may order notice to be given to ~~such~~ 6981
any other persons in ~~such~~ the manner ~~as~~ that it ~~deems~~ considers 6982
best. 6983

Sec. 2119.03. (A) The trustee appointed under section 2119.01 6984

of the Revised Code may proceed without order of the probate court 6985
to do the following: 6986

~~(A) To take~~ (1) Take possession of the property of the 6987
absentee wherever situated within the state; 6988

~~(B) To collect~~ (2) Collect all debts due to the absentee; 6989

~~(C) To retain~~ (3) Retain and invest the estate in accordance 6990
with Chapters 2113. to 2125. of the Revised Code. 6991

(B) The trustee may pay ~~such~~ that part or all of the income 6992
or principal of the estate as the court, from time to time, may 6993
direct for the maintenance and support of the absentee's 6994
dependents and, under the order of the court, may bring and defend 6995
suits on behalf of the absentee, compromise claims in favor of and 6996
against the absentee, and pay ~~such~~ any debts of the absentee ~~as~~ 6997
that the court finds necessary for the protection of ~~his~~ the 6998
absentee's dependents, including insurance premiums, orders for an 6999
award of spousal support, and other obligations. The court may 7000
make ~~such~~ any other orders ~~as~~ that it ~~deems~~ considers proper for 7001
the care and custody of the property and its proceeds. 7002

Sec. 2119.04. In order to provide money for the payments 7003
authorized by section 2119.03 of the Revised Code, proceedings may 7004
be had for the mortgaging, leasing, or sale of the real ~~estate~~ 7005
property of an absentee in the same manner as provided by sections 7006
2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code, for sales of 7007
real ~~estate~~ property by executors and administrators. The probate 7008
court, upon notice to the spouse and ~~such~~ any other persons and in 7009
~~such~~ the manner ~~as~~ that the court directs, may order all or any 7010
part of the personal ~~estate~~ property to be sold. 7011

Sec. 2119.05. If at any time the absentee returns and makes 7012
application to the probate court for the termination of the trust 7013
established under section 2119.01 of the Revised Code, the court 7014

shall, on notice to the trustee and other interested parties, 7015
order the trustee to file ~~his~~ a final account and on settlement 7016
~~thereof~~ of the account shall terminate the trust and order all 7017
remaining property returned. If an executor, administrator, or 7018
guardian is appointed for the estate of ~~such~~ the absentee, the 7019
court shall ~~thereupon~~ order the trustee to file ~~his~~ a final 7020
account and on settlement ~~thereof~~ of the account shall terminate 7021
the trust and order all of the property remaining in the ~~hands~~ 7022
possession or under the control of the trustee to be delivered to 7023
the fiduciary entitled ~~thereto~~ to the property. 7024

Sec. 2121.01. (A) Except as provided in division (B) of this 7025
section, a presumption of the death of a person arises upon either 7026
of the following: 7027

(1) When the person has disappeared and been continuously 7028
absent from ~~his~~ the person's place of last domicile for a 7029
five-year period without being heard from during the period; 7030

(2) When the person has disappeared and been continuously 7031
absent from ~~his~~ the person's place of last domicile without being 7032
heard from and was at the beginning of ~~his~~ the person's absence 7033
exposed to a specific peril of death, even though the absence has 7034
continued for less than a five-year period. 7035

(B) When a person who is on active duty in the armed services 7036
of the United States has been officially determined to be absent 7037
in a status of "missing" or "missing in action," a presumption of 7038
death arises when the head of the federal department concerned has 7039
made a finding of death pursuant to the "Federal Missing Persons 7040
Act," 80 Stat. 625 (1966), 37 U.S.C.A. 551, as amended and 7041
hereafter amended. 7042

Sec. 2121.02. (A) When ~~such~~ a presumption of death arises 7043
under section 2121.01 of the Revised Code with respect to a person 7044

who at the time of disappearance was domiciled in this state, the 7045
attorney general of this state or any person entitled under the 7046
~~last~~ will of ~~such~~ the presumed decedent or under Chapter 2105. of 7047
the Revised Code to any share in the presumed decedent's property 7048
within this state, or any person or entity who, under the terms of 7049
any contract, beneficiary designation, trust, or otherwise, may be 7050
entitled to any property, right, or interest by reason of the 7051
death of the presumed decedent, may file a complaint setting forth 7052
the facts ~~which~~ that raise the presumption of death in the probate 7053
court of the county of the presumed decedent's last residence. 7054

(B) When a presumption of death arises pursuant to section 7055
2121.01 of the Revised Code with respect to a person who at the 7056
time of the person's disappearance was domiciled at a place other 7057
than within the state, and the presumed decedent owns real 7058
property within this state, the complaint may be filed in the 7059
county where any part of the real property of the presumed 7060
decedent is located by any of the persons or entities referred to 7061
in division (A) of this section, or by any domiciliary executor or 7062
administrator of the decedent. A foreign fiduciary shall include 7063
with the complaint an exemplified copy of the domiciliary 7064
proceedings pursuant to which the foreign fiduciary was appointed. 7065

(C) In the case of a presumed decedent who was domiciled in 7066
this state, the complainant shall name as parties defendant the 7067
presumed decedent and each of the following that do not join in 7068
the complaint: 7069

(1) The presumed decedent's surviving spouse, if any; 7070

(2) All persons known to the complainant who are entitled 7071
under the presumed decedent's ~~last~~ will and all persons who are 7072
entitled under Chapter 2105. of the Revised Code to any share of 7073
the presumed decedent's property; 7074

(3) All persons or entities known to the complainant who have 7075

or would have by reason of the presumed decedent's death any right 7076
or interest under any contract, beneficiary designation, trust, or 7077
otherwise; 7078

(4) All contract obligors known to the complainant whose 7079
rights or obligations would be affected by a determination that 7080
the presumed decedent is in fact dead. 7081

(D) In the case of a presumed decedent who was not domiciled 7082
in this state but who owned real ~~estate~~ property in this state, 7083
the complainant shall name as parties defendant each of the 7084
following that do not join in the complaint: 7085

(1) The presumed decedent's surviving spouse, if any; 7086

(2) All persons known to the complainant who are entitled 7087
under the presumed decedent's ~~last~~ will and all persons who are 7088
entitled under Chapter 2105. of the Revised Code to any share of 7089
the presumed decedent's real property within this state. 7090

(E) All parties defendant, other than the presumed decedent, 7091
shall be served with summons in the same manner as provided by the 7092
Rules of Civil Procedure. 7093

(F) The complainant shall cause to be advertised once a week 7094
for four consecutive weeks in a newspaper published in the county, 7095
the fact that the complaint has been filed together with a notice 7096
that on a day certain, ~~which~~ that shall be at least four weeks 7097
after the last appearance of the advertisement, or after the final 7098
publication where any defendant is being served by publication, 7099
whichever is later, the probate court will hear evidence relevant 7100
to the allegations of the complaint. 7101

(G) No guardian ad litem, trustee for the suit, or other 7102
representative shall be required to be appointed to represent the 7103
presumed decedent in the proceeding. 7104

Sec. 2121.05. (A) Except as provided otherwise in ~~Chapter~~ 7105

~~2121. of the Revised Code~~ this chapter, all of the proceedings for 7106
the probate of the decedent's ~~last~~ will, if any, and all the 7107
proceedings, domiciliary or ancillary, for the administration of 7108
the decedent's estate that are set forth in the Revised Code for 7109
use upon the death of a decedent, shall upon the signing of the 7110
decree of presumed death be instituted and carried on in the same 7111
manner as if the presumed decedent were in fact dead. All acts 7112
pursuant to these proceedings shall be as valid as if the presumed 7113
decedent were in fact dead. 7114

(B) Following the decree the court may make ~~such~~ any 7115
supplementary orders ~~as that~~ in its discretion are necessary to 7116
consummate any right or interest arising by reason of the death of 7117
the presumed decedent under any contract, trust, or other 7118
nonprobate property interest of any person or entity who was a 7119
party to the proceedings. The court may condition the granting of 7120
~~any such that~~ that order by requiring any person or entity who would 7121
benefit ~~thereby~~ by the order to furnish bond for a three-year 7122
period after the decree in the form and amount, with or without 7123
sureties, as the court shall order. If any supplementary order is 7124
directed to the holder of assets of the presumed decedent ~~which~~ 7125
that were created by the decree of presumed death, the court, at 7126
the request of the party defendant to whom the order is directed, 7127
shall condition the granting of ~~any such that~~ that order by requiring 7128
any person or entity who would benefit ~~thereby~~ by the order to 7129
furnish a suretyship bond for a three-year period after the decree 7130
in the amount of the assets so created by the decree with interest 7131
for the period of the bond at the rate specified in the order. 7132

(C) The term "assets of the presumed decedent ~~which that~~ were 7133
created by the decree of presumed death" as used in division (B) 7134
of this section and division (D) of section 2121.08 of the Revised 7135
Code, means those potential assets of the presumed decedent in 7136
which the presumed decedent had a contractual or other right, 7137

contingent upon the presumed decedent's death, to have ~~such~~ those 7138
assets paid to ~~his~~ the presumed decedent's designee and the decree 7139
of presumed death would fulfill the contingency. Only that portion 7140
of the proceeds of life insurance policies on the life of the 7141
presumed decedent that exceeds any net cash surrender value of 7142
~~such~~ the policies on the date of the decree is within the 7143
definition of the term "assets of the presumed decedent ~~which~~ that 7144
were created by the decree of presumed death." 7145

(D) The bond shall provide that, if within the three-year 7146
period after the decree is entered by the court it is established 7147
that the presumed decedent is alive, ~~such~~ the person or entity 7148
shall on the subsequent order of the court refund or return any 7149
sums, with interest as provided in the court order, or property 7150
received by virtue of ~~such~~ the order, to the presumed decedent or 7151
to the person or entity who, by reason of the erroneous finding of 7152
death of the presumed decedent, made ~~such~~ the payment or delivered 7153
~~such~~ the property. The bond shall be further conditioned on 7154
returning the fair value of the property if the same shall have 7155
been sold or otherwise disposed of in the interim. 7156

(E) If the person or entity who would benefit by an order, as 7157
provided in division (B) of this section, fails to provide a bond 7158
for the amount of the assets of the presumed decedent ~~which~~ that 7159
were created by the decree, with interest as specified in the 7160
order, the holder shall hold those assets for the three-year 7161
period they would have been bonded. In that event, the holder 7162
shall pay interest at the same rate specified in the order as a 7163
condition of the bond and the interest shall accumulate and be 7164
held throughout that period. 7165

(F) Nothing in this section shall preclude ~~such~~ the person or 7166
entity from selling, encumbering, or otherwise disposing of any 7167
property so received and any purchaser, transferee, or mortgagee 7168
acquires good title to ~~such~~ the property free and clear of any 7169

claim of the presumed decedent. 7170

Sec. 2121.06. Upon the signing of the decree establishing the 7171
death of the presumed decedent, the real ~~estate~~ property of the 7172
presumed decedent passes and ~~devolves~~ devolves as in the case of 7173
actual death, and the persons entitled by will, or under Chapter 7174
2105. of the Revised Code, may enter and take possession. Persons 7175
taking the real ~~estate~~ property may sell or mortgage it and the 7176
purchaser or mortgagee takes a good title, free and discharged of 7177
any interest or claim of the presumed decedent. The persons taking 7178
~~such~~ the real ~~estate~~ property shall not sell, convey, or mortgage 7179
any part ~~thereof~~ of the property within the three-year period 7180
specified in section 2121.08 of the Revised Code without first 7181
giving bond in an amount to be fixed by the probate court and with 7182
sureties to be approved by the court. In the discretion of the 7183
court the bond may be taken without sureties. ~~Such~~ The bond shall 7184
be conditioned to account for and pay over to the presumed 7185
decedent, in case within the three-year period after the decree is 7186
entered by the court it is established that the presumed decedent 7187
is still alive, the value of the real ~~estate~~ property sold or 7188
conveyed, or in the case of the making of a mortgage, to pay the 7189
amount of the mortgage and interest ~~thereon~~ on the mortgage, or in 7190
case of a foreclosure of ~~such~~ that mortgage, to account for and 7191
pay over the value of the real ~~estate~~ property mortgaged. 7192
7193

Sec. 2121.08. (A) The probate court may at any time within a 7194
three-year period from the date of the decree establishing the 7195
death of a presumed decedent, upon proof satisfactory to the court 7196
that the presumed decedent is in fact alive, vacate the decree 7197
establishing the presumption of ~~his~~ death. After the decree has 7198
been vacated all the powers of the executor or administrator of 7199
the presumed decedent cease, but all proceedings had and steps 7200

taken with respect to the administration of the estate of the 7201
presumed decedent prior to the vacating of ~~such the~~ decree remain 7202
valid. The executor or administrator of the estate of ~~such the~~ 7203
presumed decedent who is found to be alive shall settle ~~his the~~ 7204
account of ~~his the executor's or administrator's~~ administration 7205
down to the time of the vacating of the decree and shall transfer 7206
all assets remaining in ~~his hands~~ the possession or under the 7207
control of the executor or administrator to the person ~~as whose~~ 7208
for whom the executor or administrator ~~he has acted~~ is acting, or 7209
to ~~such that~~ person's authorized agent or attorney. 7210

(B) The title of any person to any money, property, right, or 7211
interest as surviving spouse, next of kin, heir, legatee, devisee, 7212
co-owner with right of survivorship, beneficiary or other 7213
contractual payee, successor to a trust interest, or otherwise of 7214
the presumed decedent shall be subject to this section, and upon 7215
vacating of ~~such the~~ decree as provided in this section any 7216
property, money, right, or interest, or ~~the its~~ fair value ~~thereof~~ 7217
if the same shall have been sold or otherwise disposed of, may be 7218
recovered from the person who had received ~~any such that~~ property, 7219
money, right, or interest. 7220

(C) Except as provided in division (D) of this section, in 7221
any action against a beneficiary for the recovery of property or 7222
the value ~~thereof~~ of the property, or upon the bond given as 7223
condition for delivery of money, other personal property, or sale 7224
or encumbrance of real property, the beneficiary may set off as 7225
against ~~such that~~ claim, an allowance for services rendered in 7226
maintaining or preserving the property, and for any moneys or 7227
other considerations made or given by the beneficiary for the 7228
preservation, care, or maintenance of the property during the 7229
period of absence of the person erroneously presumed to be dead, 7230
and the reasonable value of any part of the property used for 7231
support by those whom the person erroneously presumed to be dead 7232

had a legal obligation to support during ~~his~~ the person's absence. 7233

(D) There shall be no set off as against those assets defined 7234
in division (C) of section 2121.05 of the Revised Code to be 7235
assets of the presumed decedent ~~which~~ that were created by the 7236
decree of presumed death. Those assets created by the erroneous 7237
decree of presumed death shall be returned with interest to the 7238
person entitled ~~thereto~~ to them. 7239

(E) Any net cash surrender value on any policies of life 7240
insurance on the life of a person erroneously presumed to be dead 7241
are subject to the set off provision in division (C) of this 7242
section. The person erroneously presumed to be dead, or persons 7243
claiming under ~~him~~ the person erroneously presumed to be dead, may 7244
recover whatever remains of cash values from the person to whom 7245
paid. ~~Such~~ The claimants have no recourse against the insurance 7246
company ~~which~~ that made ~~such~~ the payments, and it is discharged 7247
from liability on the policies affected. 7248

Sec. 2121.09. After vacation of the decree of the presumption 7249
of death has been established, as provided by section 2121.08 of 7250
the Revised Code, the person erroneously presumed to be dead ~~may~~, 7251
on motion filed of record stating the facts, may be substituted as 7252
plaintiff or petitioner in all actions or proceedings brought by 7253
the executor or administrator, whether prosecuted to judgment or 7254
decree or otherwise. ~~Such~~ That person ~~may~~, in all actions or 7255
proceedings previously brought against the executor or 7256
administrator, may be substituted as defendant or respondent, on 7257
motion filed by ~~him~~ the person or on ~~his~~ the person's behalf, but 7258
shall not be compelled to go to trial in less than three months 7259
from the time of filing of ~~such~~ the motion. Judgments or decrees 7260
recovered against the executor or administrator, before the 7261
vacation of the decree, may be opened on application made by the 7262
person erroneously presumed to be dead within three months after 7263

the vacating of the decree, provided it is supported by an 7264
affidavit alleging the existence of facts ~~which~~ that would be a 7265
valid defense. If the application is not made within the three 7266
months or is made but the supporting alleged facts are adjudged an 7267
insufficient defense, the judgment or decree is conclusive to all 7268
intents, saving the defendant's right to review as in other cases 7269
on appeal. 7270

Sec. 2123.02. In a situation described in section 2123.01 of 7271
the Revised Code, the executor or administrator may file in the 7272
probate court of the county where the estate is being administered 7273
a ~~petition~~ complaint signed by ~~such the~~ executor or administrator 7274
or ~~his~~ the executor's or administrator's attorney, which ~~petition~~ 7275
complaint shall be verified. The surviving spouse and the legatees 7276
and devisees, or the heirs and distributees of the decedent, 7277
including those whose names are unknown, shall be made parties 7278
defendant. The ~~petition~~ complaint shall contain a concise 7279
statement of the pertinent facts and shall conclude with a prayer, 7280
for the determination of the heirs and distributees of ~~such the~~ 7281
decedent or of the devisees or legatees not named in the will and 7282
their respective interests in the estate. 7283

Sec. 2123.03. Upon the filing of the ~~petition~~ complaint 7284
mentioned in section 2123.02 of the Revised Code, the same 7285
proceedings, pleadings, and rule days as in civil actions in the 7286
court of common pleas shall apply. All parties defendant who are 7287
known to be residents of the state and whose ~~place~~ places of 7288
residence ~~is~~ are known shall be served with summons, as provided 7289
for the service of summons in civil actions in ~~such~~ that court. 7290

Sec. 2123.05. At the time assigned for the hearing of a 7291
proceeding set forth under section 2123.01 of the Revised Code, or 7292
at any time to which ~~said~~ the hearing may be adjourned, the 7293

probate court may hear proof taken by commission, or by witnesses 7294
produced in open court, of the facts set forth in the ~~petition~~ 7295
complaint, and shall, if satisfied from the evidence, find and 7296
adjudge who are or were the heirs or next of kin of the decedent, 7297
and entitled by the laws of this state to inherit the estate of 7298
the deceased, or the devisees or legatees named or unnamed in the 7299
will, ~~which~~. The finding and adjudication shall be entered on the 7300
journal of the court, which entry, or a certified copy ~~thereof~~ of 7301
the entry, shall be prima facie evidence of the facts ~~therein~~ 7302
found. 7303

Sec. 2123.06. Whenever it is necessary for any person other 7304
than an executor or administrator to determine who are or were the 7305
heirs at law of a deceased person, on the ~~petition~~ complaint of 7306
any interested party and proceedings ~~like~~ similar to those set 7307
forth in sections 2123.01 to 2123.05, ~~inclusive~~, of the Revised 7308
Code, the probate court may make a determination ~~thereof~~ of who 7309
are or were the heirs at law of the deceased person. 7310

Sec. 2127.011. (A) In addition to the other methods provided 7311
by law or in the will and unless expressly prohibited by the will, 7312
an executor or administrator may sell at public or private sale, 7313
grant options to sell, exchange, re-exchange, or otherwise dispose 7314
of any parcel of real ~~estate~~ property belonging to the estate at 7315
any time at prices and upon terms ~~as~~ that are consistent with this 7316
section and may execute and deliver deeds and other instruments of 7317
conveyance if all of the following conditions are met: 7318

(1) The surviving spouse, all of the legatees and devisees in 7319
the case of testacy, and all of the heirs in the case of 7320
intestacy, give written consent to a power of sale for a 7321
particular parcel of real ~~estate~~ property or to a power of sale 7322
for all the real ~~estate~~ property belonging to the estate. Each 7323
consent to a power of sale provided for in this section shall be 7324

filed in the probate court. 7325

(2) Any sale under a power of sale authorized pursuant to 7326
this section shall be made at a price of at least eighty per cent 7327
of the appraised value, as set forth in an approved inventory. 7328

(3) No power of sale provided for in this section is 7329
effective if the surviving spouse, or any legatee, devisee, or 7330
heir is a minor. No person may give the consent of the minor that 7331
is required by this section. 7332

(B) A surviving spouse who is the executor or administrator 7333
may sell real ~~estate~~ property to ~~himself~~ self pursuant to this 7334
section. 7335

Sec. 2127.02. As soon as an executor or administrator 7336
ascertains that the personal property in ~~his hands~~ the possession 7337
or under the control of the executor or administrator is 7338
insufficient to pay all the debts of the decedent, together with 7339
the allowance for support to the surviving spouse, minor children, 7340
or surviving spouse and minor children of the decedent as provided 7341
in section 2106.13 of the Revised Code, and the costs of 7342
administering the estate, ~~he~~ the executor or administrator shall 7343
commence a civil action in the probate court for authority to sell 7344
the decedent's real property. 7345

Sec. 2127.04. (A) With the consent of all persons entitled to 7346
share in an estate upon distribution, the executor, administrator, 7347
or administrator with the will annexed may, and upon the request 7348
of these persons shall, commence an action in the probate court 7349
for authority to sell any part or all of the decedent's real 7350
~~estate~~ property, even though the real ~~estate~~ property is not 7351
required to be sold to pay debts or legacies. A guardian may make 7352
a request under this division, or give consent, on behalf of the 7353
guardian's ward. 7354

(B) An executor, administrator, or administrator with the will annexed may commence an action in the probate court, on the executor or administrator's own motion, to sell any part or all of the decedent's real ~~estate~~ property, even though the real ~~estate~~ property is not required to be sold to pay debts or legacies. The court shall not issue an order of sale in the action unless one of the categories specified in divisions (B)(1)(a), (b), and (c), (B)(2)(a), (b), and (c), and (B)(3) of this section applies:

(1)(a) At least fifty per cent of all the persons interested in the real ~~estate~~ property proposed to be sold have consented to the sale.

(b) Prior to the issuance of the order, no written objection is filed with the court by any person or persons who hold aggregate interests in the interest of the decedent in the real ~~estate~~ property proposed to be sold, that total in excess of twenty-five per cent.

(c) The court determines that the sale is in the best interest of the decedent's estate.

(2)(a) No person's interest in the interest of the decedent in the real ~~estate~~ property proposed to be sold exceeds ten per cent.

(b) Prior to the issuance of the order, no written objection is filed with the court by any person or persons who hold aggregate interests in the interest of the decedent in the real ~~estate~~ property proposed to be sold, that total in excess of twenty-five per cent.

(c) The court determines that the sale is in the best interest of the decedent's estate.

(3) The real ~~estate~~ property proposed to be sold escheats to the state under division (K) of section 2105.06 of the Revised Code.

(C) Notwithstanding any provision of the Revised Code, an executor, administrator, or administrator with the will annexed shall commence an action in the probate court to sell any part or all of the decedent's real estate property if any person who is entitled to inherit all or part of the real estate property cannot be found after a due and diligent search. The court shall not issue an order of sale in the action unless the sale is in the best interest of the person who cannot be found and in the best interest of the decedent's estate.

If a sale is ordered under this division, the costs of its administration shall be taken from the proceeds of the sale.

(D) A surviving spouse who is an executor or administrator of the decedent spouse's estate is not disqualified, by reason of being executor or administrator, as a person to whom a parcel of real estate property may be sold pursuant to this section.

Sec. 2127.05. Whenever necessary for the education, support, or the payment of the just debts of the ward, or for the discharge of liens on the real estate property of the ward, ~~or whenever~~ whenever the real estate property of the ward is suffering unavoidable waste, or a better investment of its value can be made, or whenever it appears that a sale of the real estate property will be for the benefit of the ward or ~~his~~ the ward's children, the guardian of the person and estate or of the estate only of a minor, person unable to manage ~~his~~ the person's property because of mental illness or deficiency, habitual drunkard, confined person, or other person under disability may commence a civil action in the probate court for authority to sell all or any part of the real estate property of the ward. If it appears to the advantage of the ward to lay out all or any part of the ~~land~~ real property in town lots, application for ~~such~~ that authority may also be made in the action.

When the same person is guardian for two or more wards whose
real estate property is owned by them jointly or in common, the
actions may be joined, and in one complaint the guardian may ask
for the sale of the interest of all or any number of ~~his~~ the
guardian's wards in the real estate property. If different persons
are guardians of wards interested jointly or in common in the same
real estate property, they may join as parties plaintiff in the
same action. On the hearing, in either case, the court may
authorize the sale of the interest of one or more of the wards.

Sec. 2127.06. If the fiduciary who brings an action under
section 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code, dies,
resigns, or is removed, or ~~his~~ the fiduciary's powers cease at any
time before the real estate property sold is conveyed, a successor
fiduciary may be substituted as a party to the action and may
convey ~~land~~ real property, whether sold before or after ~~his~~ the
successor fiduciary's appointment. ~~He~~ The successor fiduciary may
also be required to give an additional bond.

Sec. 2127.07. Any interest in real estate property, whether
legal or equitable, ~~which~~ that the deceased had a right to sell or
dispose of at the time of ~~his~~ the deceased's death, or of
which the ward was seized at the time the action was brought,
including coal, iron ore, limestone, fireclay, or other mineral
upon or under ~~such~~ the real estate property, or the right to mine
them, may be sold by an executor, administrator, or guardian under
sections 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code. This
section does not give an executor or administrator with the will
annexed authority to sell real estate property for the payment of
legacies, other than as charged by the testator or by operation of
law. This section does not give a guardian authority to sell an
equitable estate in real estate property placed by deed of trust,
beyond the power of the ward to sell, convey, or assign.

Sec. 2127.08. When the interest of a decedent or ward in real estate property is fractional and undivided, the action for authority to sell ~~such the~~ real estate property shall include only ~~such the~~ undivided fractional interest, except that the executor, administrator, or guardian, ~~or~~ the owner of any other fractional interest, or any lien holder may, by pleading filed in the cause setting forth all interests in the property and liens ~~thereon on~~ the property, require that the action include the entire interest in the property, and the owner of ~~said the~~ interests and liens shall receive ~~his~~ the owner's respective share of the proceeds of sale after payment has been made of the expenses of sale including reasonable attorney fees for services in the case, ~~which.~~ Those fees ~~must~~ shall be paid to the plaintiff's attorney unless the court awards some part ~~thereof~~ of the fees to other counsel for services in the case for the common benefit of all the parties, having regard to the interest of the parties, the benefit each may derive from the sale, and the equities of the case. The fees of the executor, administrator, or guardian shall be a charge only against ~~such the~~ portion of the proceeds of sale as that represents the interests of the decedent or ward.

Sec. 2127.09. An action by an executor, administrator, or guardian to obtain authority to sell real estate property shall be brought in the county in which ~~he~~ the executor, administrator, or guardian was appointed or in which the real estate property subject to sale or any part ~~thereof~~ of the property is situated. If the action is brought in a county other than that in which the real estate property or a part ~~thereof~~ of the property is situated, a certified transcript of the record of all proceedings had ~~therein~~ in that county shall be filed with and recorded by the probate court of each county in which ~~such the~~ real estate property or any part ~~thereof~~ of the property is situated.

Sec. 2127.10. An action to obtain authority to sell real estate property shall be commenced by the executor, administrator, or guardian by filing a complaint with the probate court.

The complaint shall contain a description of the real estate property proposed to be sold and its value, as near as can be ascertained, a statement of the nature of the interest of the decedent or ward in the real estate property, a recital of all mortgages and liens upon and adverse interests in the real estate property, the facts showing the reason or necessity for the sale, and any additional facts necessary to constitute the cause of action under the section of the Revised Code on which the action is predicated.

Sec. 2127.11. When the actual market value of a decedent's or ward's real estate property to be sold is less than three thousand dollars, and the court so finds, it may by summary order authorize the sale and conveyance of the ~~land~~ real property at private sale, on ~~such the~~ terms as that it ~~deems~~ considers proper, and in ~~such a~~ that proceeding, all requirements of sections 2127.01 to 2127.43 of the Revised Code, as to service of summons, appraisal, and additional bond, shall be waived.

Sec. 2127.12. In an action by an executor or administrator to obtain authority to sell real estate property, the following persons shall be made parties defendant:

(A) The surviving spouse;

(B) The heirs, devisees, or persons entitled to the next estate of inheritance from the decedent in the real estate property and having an interest in it, but their spouses need not be made parties defendant;

(C) All mortgagees and other lienholders whose claims affect

the real estate property or any part of it; 7508

(D) If the interest subject to sale is equitable, all persons 7509
holding legal title to the interest or any part of it, and those 7510
who are entitled to the purchase money for it, other than 7511
creditors; 7512

(E) If a fraudulent transfer is sought to be set aside, all 7513
persons holding or claiming under the transfer; 7514

(F) All other persons having an interest in the real estate 7515
property. 7516

Sec. 2127.13. In an action by a guardian to obtain authority 7517
to sell the real estate property of ~~his~~ the guardian's ward the 7518
following persons shall be made parties defendant: 7519

(A) The ward; 7520

(B) The spouse of the ward; 7521

(C) All persons entitled to the next estate of inheritance 7522
from the ward in ~~such~~ the real estate property who are known to 7523
reside in Ohio, but their spouses need not be made parties 7524
defendant; 7525

(D) All lienholders whose claims affect ~~such~~ the real estate 7526
property or any part ~~thereof~~ of the property; 7527

(E) If the interest subject to ~~such~~ the sale is equitable, 7528
all persons holding legal title ~~thereto~~ to the real property or 7529
any part ~~thereof~~ of the property; 7530

(F) All other persons having an interest in ~~such~~ the real 7531
~~estate~~ property, other than creditors. 7532

Sec. 2127.14. Service of summons, actual or constructive, in 7533
an action to sell the real estate property of a decedent or a ward 7534
shall be had as in other civil actions, but if any competent 7535

person in interest enters appearance or consents in writing to the 7536
sale, service on ~~such that~~ person shall not be necessary. If all 7537
parties consent in writing to the sale, an order ~~therefor~~ for the 7538
sale may issue forthwith. 7539

Sec. 2127.15. All pleadings and proceedings in an action to 7540
obtain authority to sell the real ~~estate~~ property of a decedent or 7541
a ward in the probate court shall be the same as in other civil 7542
actions, except as otherwise provided in sections 2127.01 to 7543
2127.43 of the Revised Code. 7544

Sec. 2127.16. In a sale of real ~~estate~~ property by an 7545
executor, administrator, or guardian, ~~such the~~ real ~~estate~~ 7546
property shall be sold free of all right and expectancy of dower 7547
~~therein in the property~~, but out of the proceeds of the sale, in 7548
lieu of dower, the court shall allow to the person having any 7549
dower interest in the property ~~such a~~ sum in money ~~as that~~ is the 7550
just and reasonable value of ~~such the~~ dower, unless the answer of 7551
~~such the~~ person waives ~~such that~~ allowance. 7552

Sec. 2127.17. In an action to obtain authority to sell real 7553
~~estate~~ property, if a party in ~~his~~ the party's answer objects to 7554
an order for the sale of real ~~estate~~ property by an executor, 7555
administrator, or guardian, and on hearing it appears to the court 7556
that either the complaint or the objection is unreasonable, it may 7557
award costs to the party prevailing on that issue. 7558

Sec. 2127.18. Upon the hearing of an action to obtain 7559
authority to sell real ~~estate~~ property by an executor, 7560
administrator, or guardian, if satisfied that all necessary 7561
parties defendant are properly before the court, and that the 7562
demand for relief ought to be granted, the court may determine the 7563
equities among the parties and the priorities of lien of the 7564

several lien holders on the real estate property, and order a 7565
distribution of the money arising from the sale in accordance with 7566
its determination. The court may in the same cause order 7567
contributions among all parties in interest. 7568

Sec. 2127.19. When an action to obtain authority to sell real 7569
estate property is determined by the probate court, the probate 7570
judge shall make the necessary order for an entry of release and 7571
satisfaction of all mortgages and other liens upon the real estate 7572
property except ~~such the~~ mortgage ~~as that~~ is assumed by the 7573
purchaser. The executor, administrator, or guardian shall 7574
~~thereupon~~ enter ~~such the~~ release and satisfaction, together with a 7575
memorandum of the title of the case, the character of the 7576
proceedings, and the volume and page of record where recorded, 7577
upon the record of ~~such the~~ mortgage, judgment, or other lien in 7578
the office where it appears as matter of record. If the executor, 7579
administrator, or guardian fails to enter ~~such the~~ release and 7580
satisfaction, the court ~~may~~, on the application of an interested 7581
party, may enter ~~such the~~ release and satisfaction and tax in ~~his~~ 7582
the executor's, administrator's, or guardian's cost bill the fee 7583
provided by law for entering ~~such the~~ release and satisfaction, 7584
and a fee of twenty-five cents to the court. 7585

Sec. 2127.21. If a guardian's complaint in an action to 7586
obtain authority to sell real estate property seeks to have ~~land~~ 7587
real property laid out in town lots, and the court finds it to the 7588
advantage of the ward, it shall authorize the survey and platting 7589
of the ~~land~~ real property as provided by law. Upon subsequent 7590
return of the survey and plat, the court, if it approves it, shall 7591
authorize the guardian on behalf of ~~his~~ the guardian's ward to 7592
sign, seal, and acknowledge the plat in that behalf for record. 7593

Sec. 2127.22. If an appraisement of the real estate property 7594

is contained in the inventory required of an executor or 7595
administrator by section 2115.02 of the Revised Code, and of a 7596
guardian by section 2111.14 of the Revised Code, the probate court 7597
may order a sale in accordance with the appraisement, or order a 7598
new appraisement. If a new appraisement is not ordered, the value 7599
set forth in the inventory shall be the appraised value of the 7600
real estate property. If the court orders a new appraisement, the 7601
value returned shall be the appraised value of the real estate 7602
property. 7603

If the interest of the deceased or ward in the real estate 7604
property is fractional and undivided, and if a party requests and 7605
the court orders the entire interest in the real estate property 7606
to be sold, a new appraisement of the entire interest in the real 7607
estate property shall be ordered. 7608

If the relief requested is granted and new appraisement is 7609
ordered, the court shall appoint one, or on request of the 7610
executor, administrator, or guardian, not exceeding three 7611
judicious and disinterested persons of the vicinity, not next of 7612
kin of the complainant, to appraise the real estate property in 7613
whole and in parcels at its true value in money. ~~Where~~ If the real 7614
estate property lies in two or more counties the court may appoint 7615
appraisers in any or all of the counties in which the real estate 7616
property or a part of it is situated. 7617

Sec. 2127.23. The appraisers appointed under section 2127.22 7618
of the Revised Code shall agree to truly and impartially appraise 7619
the real estate property at its fair cash value upon actual view 7620
and to perform the duties required of them by the order of the 7621
court. The appraisement shall be signed by the appraisers, and the 7622
officer to whom it is issued shall make return of it to the court 7623
for confirmation. 7624

Sec. 2127.24. ~~When~~ If a person appointed by the court under 7625
section 2127.22 of the Revised Code as an appraiser fails to 7626
discharge ~~his~~ the person's duties, the probate judge on ~~his~~ the 7627
judge's own motion or on the motion of the executor, 7628
administrator, or guardian may appoint another appraiser. 7629

Sec. 2127.27. Upon the return and approval of the 7630
appraisement provided for by section 2127.22 of the Revised Code, 7631
the court shall require the executor, administrator, or guardian 7632
to execute a bond with two or more personal sureties, or one or 7633
more corporate sureties, whose qualifications shall be those 7634
provided by section 2109.17 of the Revised Code. ~~Such~~ The bond 7635
shall be payable to the state in an amount ~~which~~ that the court 7636
~~deems~~ considers sufficient, having regard to the amount of real 7637
~~estate~~ property to be sold, its appraised value, the amount of the 7638
original bond given by the executor, administrator, or guardian, 7639
and the distribution to be made of the proceeds arising from the 7640
sale, ~~and such~~. The bond shall be conditioned for the faithful 7641
discharge of ~~his~~ the executor's, administrator's, or guardian's 7642
duties and the payment of, and accounting for, all moneys arising 7643
from ~~such~~ the sale according to law. ~~Such~~ The bond shall be 7644
additional to that given by the executor, administrator, or 7645
guardian at the time of ~~his~~ appointment. If the court finds the 7646
amount of the original bond given by the executor, administrator, 7647
or guardian is sufficient, having regard for the amount of real 7648
~~estate~~ property to be sold, its appraised value, and the 7649
distribution to be made of the proceeds arising from the sale, the 7650
giving of additional bond may be dispensed with by order of the 7651
court. ~~Such~~ The bond shall be given in the court from which the 7652
executor, administrator, or guardian ~~received his appointment~~ was 7653
appointed. 7654

If the action to obtain authority to sell real estate 7655

property is pending in another court, the latter shall proceed no 7656
further until there is filed ~~therein~~ in that court a certificate 7657
from the court ~~wherein~~ in which the executor, administrator, or 7658
guardian ~~received his appointment~~ was appointed, under its seal, 7659
that ~~such~~ the bond has been given or that the original bond is 7660
sufficient. This section does not prevent the court in an action 7661
to sell real ~~estate~~ property from ordering the sale of ~~such that~~ 7662
real ~~estate~~ property without bond in cases where the testator had 7663
provided by ~~his~~ the testator's will that the executor need not 7664
give bond. 7665

Sec. 2127.28. The probate court may, after notice to all 7666
parties in interest, allow a real estate commission in an action 7667
to sell real ~~estate~~ property by an executor, administrator, or 7668
guardian, but an allowance shall be passed upon by the court prior 7669
to the sale. 7670

The court may allow payment for certificate or abstract of 7671
title or policy of title insurance in connection with the sale of 7672
any ~~land~~ real property by an executor, administrator, or guardian. 7673

Sec. 2127.29. When the bond required by section 2127.27 of 7674
the Revised Code is filed and approved by the court, it shall 7675
order the sale of the real ~~estate~~ property included in the 7676
complaint set forth in section 2127.10 of the Revised Code, or the 7677
part of the real ~~estate~~ property it ~~deems~~ considers necessary for 7678
the interest of all parties concerned. If the complaint alleges 7679
that it is necessary to sell part of the real ~~estate~~ property, and 7680
that by the partial sale the residue of the ~~estate~~ real property, 7681
or a specific part of it, would be greatly injured, the court, if 7682
it so finds, may order a sale of the whole ~~estate~~ real property. 7683

Sec. 2127.30. If the order of sale set forth in section 7684
2127.29 of the Revised Code includes real ~~estate~~ property in which 7685

the ward or the estate has an equitable interest only, the court 7686
may make an order for the appraisement and sale of ~~such~~ that 7687
equitable estate free from dower, for the indemnity of the estate 7688
against any claim for purchase money, and for payment of the value 7689
of ~~such~~ the dower in money, as the court ~~deems~~ considers 7690
equitable, having regard for the rights of all parties in 7691
interest. 7692

Sec. 2127.32. The real ~~estate~~ property included in the 7693
court's order of sale, as provided in section 2127.29 of the 7694
Revised Code, shall be sold either in whole or in parcels at 7695
public auction at the door of the courthouse in the county in 7696
which the order of sale was granted, or at another place, as the 7697
court directs, and the order shall fix the place, day, and hour of 7698
sale. If it appears to be more for the interest of the ward or the 7699
estate to sell the real ~~estate~~ property at private sale, the court 7700
may authorize the complainant to sell it either in whole or in 7701
parcels. If an order for private sale is issued, it shall be 7702
returned by the complainant. Upon motion and showing of a person 7703
interested in the proceeds of the sale, filed after thirty days 7704
from the date of the order, the court may require the complainant 7705
to return the order, if the premises have not been sold. ~~Thereupon~~ 7706
Upon return of the order, the court may order the real ~~estate~~ 7707
property to be sold at public sale. 7708

If upon showing of any person interested, the court finds 7709
that it will be to the interest of the ward or the estate, it may 7710
order a reappraisement and sale in parcels. 7711

If the sale is to be public, the executor, administrator, or 7712
guardian ~~must~~ shall give notice of the time and place of the sale 7713
by advertisement at least three weeks successively in a newspaper 7714
published in the county where the ~~lands are~~ real property is 7715
situated. 7716

Sec. 2127.33. ~~Where~~ If the sale authorized by a court as 7717
provided in section 2127.32 of the Revised Code is private, the 7718
real ~~estate~~ property shall not be sold for less than the appraised 7719
value. ~~When~~ If the sale is at public auction, the real ~~estate~~ 7720
property if improved shall not be sold for less than two thirds of 7721
the appraised value, or if not improved, for less than one half of 7722
the appraised value. In private sales if no sale has been effected 7723
after one bona fide effort to sell under this section, or if in 7724
public sales the ~~land~~ real property remains unsold for want of 7725
bidders when offered pursuant to advertisement, the court may fix 7726
the price for which ~~such~~ the real ~~estate~~ property may be sold or 7727
may set aside the appraisal and order a new appraisal. If 7728
~~such~~ the new appraisal does not exceed five hundred dollars, 7729
and upon the first offer ~~thereunder~~ under the new appraisal at 7730
public sale there are no bids, then upon the motion of any party 7731
interested the court may order the real ~~estate~~ property to be 7732
readvertised and sold at public auction to the highest bidder. 7733

Sec. 2127.34. The order for the sale of real ~~estate~~ property, 7734
granted by the probate court in an action by an executor, 7735
administrator, or guardian, shall prescribe the terms of the sale, 7736
and payment of the purchase money, either in whole or in part, for 7737
cash, or on deferred payments. In the sales by executors or 7738
administrators, deferred payments shall not exceed two years with 7739
interest. 7740

Sec. 2127.35. An executor, administrator, or guardian shall 7741
make return of ~~his~~ the executor's, administrator's, or guardian's 7742
proceedings under the order for the sale of real ~~estate~~ property 7743
granted by the probate court. The court, after careful 7744
examination, if satisfied that the sale has in all respects been 7745
legally made, shall confirm the sale, and order the executor, 7746

administrator, or guardian to make a deed to the purchaser. 7747

The deed shall be received in all courts as prima-facie 7748
evidence that the executor, administrator, or guardian in all 7749
respects observed the direction of the court, and complied with 7750
the requirements of the law, ~~and~~ shall convey the interest in the 7751
real ~~estate~~ property directed to be sold by the court, and shall 7752
vest title to the interest in the purchaser as if conveyed by the 7753
deceased in ~~his~~ the deceased's lifetime, or by the ward free from 7754
disability, and by the owners of the remaining interests in the 7755
real ~~estate~~ property. 7756

Sec. 2127.36. The order for the sale of real ~~estate~~ property 7757
granted in an action by an executor, administrator, or guardian 7758
shall require that before the delivery of the deed the deferred 7759
installments of the purchase money be secured by mortgage on the 7760
real ~~estate~~ property sold, and mortgage notes bearing interest at 7761
a rate approved by the probate court. If after the sale is made, 7762
and before delivery of the deed, the purchaser offers to pay the 7763
full amount of the purchase money in cash, the court may order 7764
that it be accepted, if for the best interest of the estate or the 7765
ward, and direct its distribution. 7766

The court in ~~such an~~ that order may also direct the sale, 7767
without recourse, of any or all of the notes taken for deferred 7768
payments, if for the best interest of the estate or the ward, at 7769
not less than their face value with accrued interest, and direct 7770
the distribution of the proceeds. 7771

Sec. 2127.37. ~~When~~ If an action to sell real ~~estate~~ property 7772
is prosecuted by an executor or administrator ~~he, the executor or~~ 7773
administrator shall be allowed the compensation provided by law, 7774
by the probate court from which ~~his~~ the executor's or 7775
administrator's letters issued. ~~When such~~ If that action is by a 7776

guardian, ~~his~~ the guardian's duties and obligations ~~therein in the~~ 7777
action shall be considered by the court appointing ~~him~~ the 7778
guardian in awarding ~~such the~~ compensation ~~as that~~ the court ~~deems~~ 7779
considers reasonable. 7780

Sec. 2127.38. The sale price of real estate property sold 7781
following an action by an executor, administrator, or guardian 7782
shall be applied and distributed as follows: 7783

(A) To discharge the costs and expenses of the sale, 7784
including reasonable fees to be fixed by the probate court for 7785
services performed by attorneys for the fiduciary in connection 7786
with the sale, and compensation, if any, to the fiduciary for ~~his~~ 7787
services in connection with the sale as the court may fix, which 7788
costs, expenses, fees, and compensation shall be paid prior to any 7789
liens upon the real estate property sold and notwithstanding the 7790
purchase of the real estate property by a lien holder; 7791

(B) To the payment of taxes, interest, penalties, and 7792
assessments then due against the real estate property, and to the 7793
payment of mortgages and judgments against the ward or deceased 7794
person, according to their respective priorities of lien, so far 7795
as they operated as a lien on the real estate property of the 7796
deceased at the time of the sale, or on the estate of the ward at 7797
the time of the sale, ~~which that~~ shall be apportioned and 7798
determined by the court, or on reference to a master, or 7799
otherwise; 7800

(C)(1) In the case of an executor or administrator, the 7801
remaining proceeds of sale shall be applied as follows: 7802

~~(1)~~(a) To the payment of legacies with which the real estate 7803
property of the deceased was charged, if the action is to sell 7804
real estate property to pay legacies; 7805

~~(2)~~(b) To discharge the claims and debts of the estate in the 7806

order provided by law. 7807

(2) Whether the executor or administrator was appointed in 7808
this state or elsewhere, the surplus of the proceeds of sale ~~must~~ 7809
shall be considered for all purposes as real ~~estate~~ property, and 7810
be disposed of accordingly. 7811

Sec. 2127.39. ~~When~~ If an action to sell real ~~estate~~ property 7812
is brought by an executor or administrator with the will annexed, 7813
if in the ~~last~~ will of the deceased there is a disposition of ~~his~~ 7814
the decedent's estate for the payment of debts, or a provision 7815
that may require or induce the probate court to marshal the assets 7816
differently from the way the law otherwise would prescribe, ~~such~~ 7817
those devises, or parts of the will, shall be set forth in the 7818
complaint, and a copy of the will exhibited to the court, 7819
whereupon the court shall marshal the proceeds of the sale 7820
accordingly, so far as it can be done consistently with the rights 7821
of creditors. 7822

Sec. 2127.40. When an action is brought by an executor or 7823
administrator to sell real ~~estate~~ property to pay debts, the real 7824
~~estate~~ property subject to sale shall include all rights and 7825
interests in ~~lands, tenements, and hereditaments~~ real property 7826
transferred by the decedent in ~~his~~ the decedent's lifetime with 7827
intent to defraud ~~his~~ the decedent's creditors, except that ~~lands~~ 7828
real property fraudulently transferred cannot be taken from any 7829
person who purchased them for a valuable consideration, in good 7830
faith, and without knowledge of the fraud. No claim to ~~such lands~~ 7831
that real property shall be made unless within four years next 7832
after the decease of the grantor. 7833

If real ~~estate~~ property fraudulently transferred is to be 7834
included in ~~such an~~ that action, the executor or administrator, 7835
either before or at the same time, may commence a civil action in 7836

the court of common pleas in the county in which the real estate 7837
property is situated to recover possession of it, or, in ~~his~~ the 7838
action for its sale, ~~he~~ the executor or administrator may allege 7839
the fraud and have the fraudulent transfer avoided. But when the 7840
real estate property is included in the complaint before the 7841
recovery of possession by the executor or administrator, the 7842
action shall be brought in the court of common pleas in the county 7843
in which the real estate property is situated. 7844

Sec. 2127.41. If, after the institution of proceedings for 7845
the partition of the real property of a decedent, it is found that 7846
the assets in the ~~hands~~ possession or under the control of the 7847
executor or administrator probably are insufficient to pay the 7848
debts of the estate, together with the allowance for support of 7849
the surviving spouse, minor children, or surviving spouse and 7850
minor children as provided in section 2106.13 of the Revised Code, 7851
the expenses of administration, and the legacies that are a charge 7852
upon the real property, the executor or administrator shall make a 7853
written statement to the probate court of the assets, 7854
indebtedness, expenses, and legacies, and the court ~~forthwith~~ 7855
shall ascertain the amount necessary to pay the debts, expenses, 7856
and legacies and give a certificate of the amount to the executor 7857
or administrator. 7858

The executor or administrator then shall present the 7859
certificate to the court in which the proceedings for partition 7860
are or have been pending, and, on ~~his~~ the motion of the executor 7861
or administrator, the court shall order the amount named in the 7862
certificate to be paid over to the executor or administrator out 7863
of the proceeds of the sale of the premises, if thereafter they 7864
are sold or already have been sold. This section does not prohibit 7865
an executor or administrator from proceeding to sell real property 7866
belonging to the estate for the payment of debts or legacies, 7867
although it has been sold on partition or otherwise, or the 7868

proceeds of the sale have been fully distributed. 7869

Sec. 2127.42. Wards living out of this state and owning ~~lands~~ real property within it are entitled to the benefit of sections 7870
2127.01 to 2127.43 of the Revised Code. Complaints for the sale of real estate property by guardians of ~~such those~~ wards shall be 7871
filed in the county in which the ~~land~~ real property is situated, 7872
or if situated in two or more counties, then in one of the 7873
counties in which a part of it is situated. Additional security 7874
shall be required from ~~such the~~ guardians, ~~when deemed if~~ considered necessary by the probate court of the county in which 7875
the complaints are filed. 7876
7877
7878
7879

Sec. 2127.43. ~~Chapter 2127. of the Revised Code~~ This chapter 7880
extends to an action brought by the trustee of a nonresident minor 7881
or mentally ill or deficient person to sell the real ~~estate~~ property of the ward. 7882
7883

Sec. 2129.02. ~~When~~ If letters of administration or letters 7884
testamentary have been granted in any state other than this state, 7885
in any territory or possession of the United States, or in any 7886
foreign country, as to the estate of a deceased resident of that 7887
state, territory, possession, or country, and ~~when~~ if no ancillary 7888
administration proceedings have been commenced in this state, the 7889
person to whom the letters of appointment were granted may file an 7890
authenticated copy of them in the probate court of any county of 7891
this state in which is located real ~~estate~~ property of the 7892
decendent. 7893

The claim of any creditor of ~~such a~~ that decedent shall be 7894
subject to section 2117.06 of the Revised Code. The person filing 7895
~~such those~~ letters in the probate court may accelerate the bar 7896
against claims against the estate established by that section, by 7897
giving written notice to a potential claimant that identifies the 7898

decedent by name, states the date of the death of the decedent, 7899
identifies the court, states its mailing address, and informs the 7900
potential claimant that any claims ~~he~~ the potential claimant may 7901
have against the estate are required to be presented to the court 7902
within the earlier of thirty days after receipt of the notice by 7903
the potential claimant or ~~one year~~ six months after the date of 7904
the death of the decedent. A claim of that potential claimant that 7905
is not presented to the court within the earlier of thirty days 7906
after receipt of the notice by the potential claimant or ~~one year~~ 7907
six months after the date of the death of the decedent is forever 7908
barred as a possible lien upon the real ~~estate~~ property of the 7909
decedent in this state. If, at the expiration of that period, any 7910
such claim has been filed and remains unpaid after reasonable 7911
notice of the claim to the nonresident executor or administrator, 7912
ancillary administration proceedings as to the estate may be had 7913
forthwith. 7914

Sec. 2129.05. Authenticated copies of wills, executed and 7915
proved according to the laws of any state or territory of the 7916
United States, relative to property in this state, may be admitted 7917
to record in the probate court of a county where a part of ~~such~~ 7918
that property is situated. ~~Such~~ The authenticated copies, so 7919
recorded, shall be as valid as wills made in this state. 7920

When such a will, or authenticated copy, is admitted to 7921
record, a copy ~~thereof~~ of the will or of the authenticated copy, 7922
with the copy of the order to record it annexed ~~thereto~~ to that 7923
copy, certified by the probate judge under the seal of ~~his~~ the 7924
probate court, may be filed and recorded in the office of the 7925
probate judge of any other county where a part of ~~such~~ the 7926
property is situated, and it shall be as effectual as the 7927
authenticated copy of ~~such~~ the will would be if approved and 7928
admitted to record by the court. 7929

Sec. 2129.08. (A) After an authenticated copy of the will of 7930
a nonresident decedent has been allowed and admitted to record as 7931
provided in this chapter, and after there has been filed in the 7932
probate court a complete exemplification of the record of the 7933
grant of the domiciliary letters of appointment and of any other 7934
records of the court of domiciliary administration that the court 7935
requires, the court shall appoint as the ancillary administrator 7936
the person named in the will, or nominated in accordance with any 7937
power of nomination conferred in the will, as general executor of 7938
the decedent's estate or as executor of the portion of the 7939
decedent's estate located in this state, provided that the person 7940
makes application and qualifies under division (B)(2) of section 7941
2109.21 of the Revised Code and in all other respects as required 7942
by law. If the testator in the will naming or providing for the 7943
nomination of that executor orders or requests that bond not be 7944
given by ~~him~~ that executor, bond shall not be required unless, for 7945
sufficient reason, the court requires it. 7946

(B) If a nonresident decedent died intestate, or failed to 7947
designate in ~~his~~ the nonresident decedent's will any person 7948
qualified to act as ancillary administrator or to confer in the 7949
will a power to nominate a person as an executor as described in 7950
division (A) of this section, or if the will of a nonresident 7951
decedent conferred ~~such a~~ that power but no person qualified to 7952
act as ancillary administrator was nominated, the court shall 7953
appoint in ~~such~~ that capacity ~~some~~ a suitable person who is a 7954
resident of the county including, but not limited to, a creditor 7955
of the estate. 7956

(C) An ancillary administrator, acting as to the estate of a 7957
testate decedent that is located in this state, may sell and 7958
convey the real and personal property by virtue of the will as 7959
executors or administrators with the will annexed may do. 7960

(D) No person shall be appointed as an ancillary administrator of the estate of a nonresident presumed decedent that is located in this state, except after Chapter 2121. of the Revised Code, relative to the appointment of an ancillary administrator, has been complied with.

Sec. 2129.11. If no domiciliary administration has been commenced, the ancillary administrator shall proceed with the administration in ~~Ohio~~ this state as though the decedent had been a resident of ~~Ohio~~ this state at the time of ~~his~~ the decedent's death.

Sec. 2129.13. If an ancillary administrator finds that the personal property of the nonresident decedent in ~~Ohio~~ this state is not sufficient to pay the expenses of administration, public rates and taxes, and other valid claims ~~which~~ that have been presented, ~~he~~ the ancillary administrator shall proceed to sell as much of the real estate property of the decedent located in this state ~~as~~ that is necessary to pay ~~such~~ those debts. The procedure shall be the same as in sales of real estate property in administration proceedings relating to the estates of resident decedents under sections 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code.

Sec. 2129.14. A domiciliary executor or administrator of a nonresident decedent may file in the probate court by which the ancillary administrator was appointed information showing that it will be necessary to sell ~~Ohio~~ real estate property of the decedent located in this state to pay debts and legacies, and the court may thereupon authorize the ancillary administrator to sell ~~such~~ any part or all of ~~such~~ the real estate ~~as~~ property that is necessary. The ancillary administrator shall proceed to sell ~~such~~ the real estate property in the manner provided by section 2129.13

of the Revised Code. 7991

Sec. 2129.15. Within five months after ~~his~~ appointment, the 7992
ancillary administrator of a nonresident decedent shall forward to 7993
the domiciliary administrator, if any, of ~~such~~ the decedent, if 7994
the name and address of ~~such~~ the domiciliary administrator are 7995
known, a certificate showing all assets of the estate in this 7996
state and all debts and liabilities including estimated expenses 7997
of administration. If the name and address of ~~such~~ the domiciliary 7998
administrator are not known, ~~such~~ the certificate shall be 7999
forwarded to the next of kin of the deceased whose names and 8000
addresses are known and to the court having jurisdiction in estate 8001
matters in the county in which the decedent resided at the time of 8002
~~his~~ death. 8003

Sec. 2129.17. An ancillary administrator shall file in the 8004
probate court of every county in ~~Ohio~~ this state in which real 8005
estate property of the nonresident decedent is located a certified 8006
copy of the records in the court of ~~his~~ the ancillary 8007
administrator's appointment ~~which~~ that affect the title to ~~such~~ 8008
that real estate property. 8009

Sec. 2129.18. Whenever property of a nonresident decedent as 8010
to whose estate ancillary administration proceedings are being had 8011
in ~~Ohio~~ this state passes by the laws of intestate succession or 8012
under a will to a beneficiary not named ~~therein~~ in the will, 8013
proceedings may be had to determine the persons entitled to ~~such~~ 8014
that property in the same manner as in the estates of resident 8015
decedents under sections 2123.01 to 2123.07, ~~inclusive~~, of the 8016
Revised Code. The ancillary administrator shall file a certified 8017
copy of ~~such~~ the finding in the probate court in every county in 8018
~~Ohio~~ this state in which real estate property of the decedent is 8019
located. ~~Such~~ The administrator shall procure and file in the 8020

court for the information of the court a certified copy of any 8021
determination of heirship relative to ~~such~~ the decedent's estate 8022
made in the state of the domiciliary administration. 8023

Sec. 2129.19. Prior to filing ~~his~~ the ancillary 8024
administrator's final account, an ancillary administrator shall 8025
file in the probate court an application for a certificate of 8026
transfer as to the real ~~estate~~ property of the nonresident 8027
decedent situated in ~~Ohio~~ this state, in the same manner as in the 8028
administration of the estates of resident decedents under section 8029
2113.61 of the Revised Code. 8030

Sec. 2129.23. When the expense of the ancillary 8031
administration of a nonresident decedent's estate, including ~~such~~ 8032
any attorney's fee ~~as~~ that is allowed by the probate court, all 8033
public charges and taxes, and all claims of creditors presented as 8034
provided in section 2129.12 of the Revised Code, have been paid, 8035
any residue of the personal ~~estate~~ property and the proceeds of 8036
any real ~~estate~~ property sold for the payment of debts shall be 8037
distributed by the ancillary administrator as follows: 8038

(A) With the approval of the court ~~such~~, the residue may be 8039
delivered to the domiciliary administrator or executor. 8040

(B) If the court so orders, ~~such~~ the residue shall be 8041
delivered to the persons entitled ~~thereto~~ to it. 8042

Sec. 2129.25. When an executor or administrator is appointed 8043
in any other state, territory, or foreign country for the estate 8044
of a person dying out of this state, and no executor or 8045
administrator ~~thereon~~ for the estate is appointed in this state, 8046
the foreign executor or administrator may file an authenticated 8047
copy of ~~his~~ the foreign executor's or administrator's appointment 8048
in the probate court of any county in which there is real ~~estate~~ 8049
property of the deceased, together with an authenticated copy of 8050

the will. After filing ~~such~~ those copies, ~~he~~ the foreign executor
or administrator may be authorized, under an order of the court,
to sell real estate property for the payment of debts or legacies
and charges of administration, in the manner prescribed in
sections 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code.

Sec. 2129.26. ~~When~~ If it appears to the probate court
granting the order of sale set forth in section 2129.25 of the
Revised Code that the foreign executor or administrator is bound
with sufficient surety in the state or country in which ~~he~~ the
foreign executor or administrator was appointed to account for the
proceeds of ~~such~~ the sale, for the payment of debts or legacies,
and for charges of administration, and an authenticated copy of
~~such~~ the bond is filed in court, no further bond for that purpose
shall be required of ~~him~~ the foreign executor or administrator.
~~When~~ If the court finds that ~~such~~ the bond is insufficient, before
making ~~such~~ the sale, ~~such~~ the foreign executor or administrator
~~must~~ shall give bond to this state with two or more sufficient
sureties, conditioned to account for and dispose of ~~such~~ the
proceeds of the sale for the payment of the debts or legacies of
the deceased and the charges of administration according to the
laws of the state or country in which ~~he~~ the foreign executor or
administrator was appointed.

~~When such~~ If the foreign executor or administrator is
authorized by order of the court to sell more than is necessary
for the payment of debts, legacies, and charges of administration,
before making the sale, ~~he~~ the foreign executor or administrator
shall give bond with two or more sufficient sureties to this
state, conditioned to account before the court for all the
proceeds of the sale that remain and to dispose of ~~such~~ the
proceeds after payment of ~~such~~ the debts, legacies, and charges.

Sec. 2129.28. If a trustee is named in a foreign will ~~which~~ 8081

that creates a trust relating to ~~lands~~ real property situated in 8082
this state, ~~such~~ the trustee may execute the trust upon giving 8083
bond to the state in ~~such~~ the sum and with ~~such~~ the sureties ~~as~~ 8084
that the probate court of the county in which ~~such lands~~ the real 8085
property or a part ~~thereof~~ are of the real property is situated 8086
approves, conditioned to discharge with fidelity the trust reposed 8087
in ~~him~~ the trustee. If the testator in the will naming the trustee 8088
orders or requests that bond ~~be~~ not be given by ~~him~~ the trustee, 8089
bond shall not be required, unless for sufficient cause the court 8090
requires it. 8091

Sec. 2129.29. If a trustee has been appointed under a foreign 8092
will ~~which~~ that creates a trust relating to ~~lands~~ real property 8093
situated in this state by a foreign court according to the laws of 8094
the foreign jurisdiction, ~~he~~ the trustee may execute the trust 8095
upon giving bond as provided in section 2129.28 of the Revised 8096
Code, and after satisfying the probate court of the county in 8097
which ~~such lands~~ the real property or a part of ~~them~~ are it is 8098
situated, by an authenticated record of ~~his~~ appointment, that ~~he~~ 8099
the person or entity has been appointed trustee to execute the 8100
trust. 8101

Sec. 2129.30. ~~When~~ If necessary, the probate court of the 8102
county where the property affected by the trust is situated, on 8103
application by petition of the parties interested, may appoint a 8104
trustee to carry into effect a trust created by a foreign will. 8105
~~Such~~ The trustee, before entering upon ~~his~~ the trust, ~~must~~ shall 8106
give bond with ~~such~~ the security and in ~~such~~ the amount ~~as~~ that 8107
the court directs. 8108

Sec. 2131.08. (A) Subject to sections 1746.14, 1747.09, and 8109
2131.09 of the Revised Code, no interest in real or personal 8110
property shall be good unless it must vest, if at all, not later 8111

than twenty-one years after a life or lives in being at the 8112
creation of the interest. All estates given in tail, by deed or 8113
will, in ~~lands or tenements~~ real property lying within this state 8114
shall be and remain an absolute estate in fee simple to the issue 8115
of the first donee in tail. It is the intention by the adoption of 8116
this section to make effective in this state what is generally 8117
known as the common law rule against perpetuities, except as set 8118
forth in divisions (B) and (C) of this section. 8119

(B) For the purposes of this section and subject to sections 8120
1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the 8121
creation of an interest in real or personal property subject to a 8122
power reserved by the grantor to revoke or terminate the interest 8123
shall be the time at which the reserved power expires by reason of 8124
the death of the grantor, by release of the power, or otherwise. 8125

(C) Any interest in real or personal property that would 8126
violate the rule against perpetuities, under division (A) of this 8127
section, shall be reformed, within the limits of the rule, to 8128
approximate most closely the intention of the creator of the 8129
interest. In determining whether an interest would violate the 8130
rule and in reforming an interest, the period of perpetuities 8131
shall be measured by actual rather than possible events. 8132

(D) Divisions (B) and (C) of this section shall be effective 8133
with respect to interests in real or personal property created by 8134
wills of decedents dying after December 31, 1967, with respect to 8135
interests in real or personal property created by inter vivos 8136
instruments executed after December 31, 1967, and with respect to 8137
interests in real or personal property created by inter vivos 8138
instruments executed on or before December 31, 1967, that by 8139
reason of division (B) of this section will be treated as 8140
interests created after December 31, 1967. Divisions (B) and (C) 8141
of this section shall be effective with respect to interests in 8142
real or personal property created by the exercise of a power of 8143

appointment if divisions (B) and (C) of this section apply to the 8144
instrument that exercises the power, whether or not divisions (B) 8145
and (C) of this section apply to the instrument that creates the 8146
power. 8147

Sec. 2131.11. ~~When~~ If an investment share certificate, share 8148
account, deposit, or stock deposit is made, in any bank, building 8149
and loan or savings and loan association, credit union, or society 8150
for savings, payable to the owner during ~~his~~ the owner's lifetime, 8151
and to another on ~~his~~ the owner's death, ~~such the~~ investment share 8152
certificate, share account, deposit, or stock deposit ~~or,~~ any part 8153
~~thereof of that certificate, account, or deposit,~~ or any interest 8154
or dividend ~~thereon~~ on the certificate, account, or deposit, may 8155
be paid to the owner during ~~his~~ the owner's lifetime, and on ~~his~~ 8156
the owner's death ~~such the~~ investment share certificate, share 8157
account, deposit, or stock deposit ~~or,~~ any part ~~thereof of that~~ 8158
certificate, account, or deposit, or any interest or dividend 8159
~~thereon on the certificate, account, or deposit,~~ may be paid to 8160
the designated beneficiary, and the receipt of acquittance of the 8161
person paid is a sufficient release and discharge of the bank, 8162
building and loan or savings and loan association, credit union, 8163
or society for savings for any payment so made. 8164

Sec. 2133.04. (A) A declarant may revoke a declaration at any 8165
time and in any manner. The revocation shall be effective when the 8166
declarant expresses ~~his~~ an intention to revoke the declaration, 8167
except that, if the declarant made ~~his~~ the declarant's attending 8168
physician aware of the declaration, the revocation shall be 8169
effective upon its communication to the attending physician of the 8170
declarant by the declarant ~~himself,~~ a witness to the revocation, 8171
or other health care personnel to whom the revocation is 8172
communicated by ~~such a~~ that witness. Absent actual knowledge to 8173
the contrary, the attending physician of a declarant and other 8174

health care personnel who are informed of the revocation of a 8175
declaration by an alleged witness may rely on the information and 8176
act in accordance with the revocation. 8177

(B) Upon the communication as described in division (A) of 8178
this section to the attending physician of a declarant of the fact 8179
that ~~his~~ the declaration has been revoked, the attending physician 8180
or other health care personnel acting under the direction of the 8181
attending physician shall make the fact a part of the declarant's 8182
medical record. 8183

Sec. 2133.05. (A) If the attending physician of a declarant 8184
and one other physician who examines the declarant determine that 8185
~~he~~ the declarant is in a terminal condition or in a permanently 8186
unconscious state, whichever is addressed in the declaration, if 8187
the attending physician additionally determines that the declarant 8188
no longer is able to make informed decisions regarding the 8189
administration of life-sustaining treatment for ~~himself~~ the 8190
declarant and that there is no reasonable possibility that the 8191
declarant will regain the capacity to make those informed 8192
decisions for ~~himself~~ the declarant, and if the attending 8193
physician is aware of the existence of the declarant's 8194
declaration, then the attending physician shall do all of the 8195
following: 8196

(1) Record the determinations, together with the terms of the 8197
declaration or any copy of the declaration acquired as described 8198
in division (C) of section 2133.02 of the Revised Code, in the 8199
declarant's medical record; 8200

(2)(a) Make a good faith effort, and use reasonable 8201
diligence, to notify either of the following of the 8202
determinations: 8203

(i) If the declarant designated in ~~his~~ the declarant's 8204
declaration one or more persons to be notified at any time that 8205

life-sustaining treatment would be withheld or withdrawn pursuant 8206
to the declaration, that person or those persons; 8207

(ii) If division (A)(2)(a)(i) of this section is not 8208
applicable, the appropriate individual or individuals, in 8209
accordance with the following descending order of priority: if 8210
any, the guardian of the declarant, but this division does not 8211
permit or require, and shall not be construed as permitting or 8212
requiring, the appointment of a guardian for the declarant; the 8213
declarant's spouse; the declarant's adult children who are 8214
available within a reasonable period of time for consultation with 8215
the declarant's attending physician; the declarant's parents; or 8216
an adult sibling of the declarant or, if there is more than one 8217
adult sibling, a majority of the declarant's adult siblings who 8218
are available within a reasonable period of time for ~~such~~ the 8219
consultation. 8220

(b) The attending physician shall record in the declarant's 8221
medical record the names of the individual or individuals notified 8222
pursuant to division (A)(2)(a) of this section and the manner of 8223
notification. 8224

(c) If, despite making a good faith effort, and despite using 8225
reasonable diligence, to notify the appropriate individual or 8226
individuals described in division (A)(2)(a) of this section, the 8227
attending physician cannot notify the individual or individuals of 8228
the determinations because the individual or individuals are 8229
deceased, cannot be located, or cannot be notified for some other 8230
reason, then the requirements of divisions (A)(2)(a) and (b) and 8231
(3) of this section and, except as provided in division (B)(1)(b) 8232
of this section, the provisions of division (B) of this section 8233
shall not apply in connection with the declarant and ~~his~~ the 8234
declarant's declaration. However, the attending physician shall 8235
record in the declarant's medical record information pertaining to 8236
the reason for the failure to provide the requisite notices and 8237

information pertaining to the nature of the good faith effort and 8238
reasonable diligence used. 8239

(3) Afford time for the individual or individuals notified in 8240
accordance with division (A)(2) of this section to object in the 8241
manner described in division (B)(1)(a) of this section. 8242

(B)(1)(a) Within forty-eight hours after receipt of a notice 8243
pursuant to division (A)(2) of this section, any individual so 8244
notified shall advise the attending physician of the declarant 8245
whether ~~he~~ the individual objects on a basis specified in division 8246
(B)(2)(c) of this section. If an objection as described in that 8247
division is communicated to the attending physician, then, within 8248
two business days after the communication, the individual shall 8249
file a complaint as described in division (B)(2) of this section 8250
in the probate court of the county in which the declarant is 8251
located. If the individual fails to so file a complaint, ~~his~~ the 8252
individual's objections as described in division (B)(2)(c) of this 8253
section shall be considered to be void. 8254

(b) Within forty-eight hours after a person described in 8255
division (A)(2)(a)(i) of this section or a priority individual or 8256
any member of a priority class of individuals described in 8257
division (A)(2)(a)(ii) of this section receives a notice pursuant 8258
to division (A)(2) of this section or within forty-eight hours 8259
after information pertaining to an unnotified person described in 8260
division (A)(2)(a)(i) of this section or an unnotified priority 8261
individual or unnotified priority class of individuals described 8262
in division (A)(2)(a)(ii) of this section is recorded in a 8263
declarant's medical record pursuant to division (A)(2)(c) of this 8264
section, either of the following shall advise the attending 8265
physician of the declarant whether ~~he or they object~~ there is an 8266
objection on a basis specified in division (B)(2)(c) of this 8267
section: 8268

(i) If a person described in division (A)(2)(a)(i) of this 8269

section was notified pursuant to division (A)(2) of this section 8270
or was the subject of a recordation under division (A)(2)(c) of 8271
this section, then the objection shall be communicated by the 8272
individual or a majority of the individuals in either of the first 8273
two classes of individuals that pertain to the declarant in the 8274
descending order of priority set forth in division (A)(2)(a)(ii) 8275
of this section. 8276

(ii) If an individual or individuals in the descending order 8277
of priority set forth in division (A)(2)(a)(ii) of this section 8278
were notified pursuant to division (A)(2) of this section or were 8279
the subject of a recordation under division (A)(2)(c) of this 8280
section, then the objection shall be communicated by the 8281
individual or a majority of the individuals in the next class of 8282
individuals that pertains to the declarant in the descending order 8283
of priority set forth in division (A)(2)(a)(ii) of this section. 8284

If an objection as described in division (B)(2)(c) of this 8285
section is communicated to the attending physician in accordance 8286
with division (B)(1)(b)(i) or (ii) of this section, then, within 8287
two business days after the communication, the objecting 8288
individual or majority shall file a complaint as described in 8289
division (B)(2) of this section in the probate court of the county 8290
in which the declarant is located. If the objecting individual or 8291
majority fails to file a complaint, ~~his or their~~ the objections as 8292
described in division (B)(2)(c) of this section shall be 8293
considered to be void. 8294

(2) A complaint of an individual that is filed in accordance 8295
with division (B)(1)(a) of this section or of an individual or 8296
majority of individuals that is filed in accordance with division 8297
(B)(1)(b) of this section shall satisfy all of the following: 8298

(a) Name any health care facility in which the declarant is 8299
confined; 8300

(b) Name the declarant, ~~his~~ the declarant's attending 8301
physician, and the consulting physician associated with the 8302
determination that the declarant is in a terminal condition or in 8303
a permanently unconscious state, whichever is addressed in the 8304
declaration; 8305

(c) Indicate whether the plaintiff or plaintiffs object on 8306
one or more of the following bases: 8307

(i) To the attending physician's and consulting physician's 8308
determinations that the declarant is in a terminal condition or in 8309
a permanently unconscious state, whichever is addressed in the 8310
declaration; 8311

(ii) To the attending physician's determination that the 8312
declarant no longer is able to make informed decisions regarding 8313
the administration of life-sustaining treatment; 8314

(iii) To the attending physician's determination that there 8315
is no reasonable possibility that the declarant will regain the 8316
capacity to make informed decisions regarding the administration 8317
of life-sustaining treatment; 8318

(iv) That the course of action proposed to be undertaken by 8319
the attending physician is not authorized by the declarant's 8320
declaration; 8321

(v) That the declaration was executed when the declarant was 8322
not of sound mind or was under or subject to duress, fraud, or 8323
undue influence; 8324

(vi) That the declaration otherwise does not substantially 8325
comply with this chapter. 8326

(d) Request the probate court to issue one of the following 8327
types of orders: 8328

(i) An order to the attending physician to reevaluate, in 8329
light of the court proceedings, the determination that the 8330

declarant is in a terminal condition or in a permanently 8331
unconscious state, whichever is addressed in the declaration, the 8332
determination that the declarant no longer is able to make 8333
informed decisions regarding the administration of life-sustaining 8334
treatment, the determination that there is no reasonable 8335
possibility that the declarant will regain the capacity to make 8336
those informed decisions, or the course of action proposed to be 8337
undertaken; 8338

(ii) An order invalidating the declaration because it was 8339
executed when the declarant was not of sound mind or was under or 8340
subject to duress, fraud, or undue influence, or because it 8341
otherwise does not substantially comply with this chapter; 8342

(e) Be accompanied by an affidavit of the plaintiff or 8343
plaintiffs that includes averments relative to whether ~~he~~ the 8344
plaintiff is an individual or ~~they~~ the plaintiffs are individuals 8345
as described in division (A)(2)(a)(i) or (ii) of this section and 8346
to the factual basis for ~~his~~ the plaintiff's or ~~their~~ the 8347
plaintiffs' objections; 8348

(f) Name any individuals who were notified by the attending 8349
physician in accordance with division (A)(2)(a) of this section 8350
and who are not joining in the complaint as plaintiffs; 8351

(g) Name, in the caption of the complaint, as defendants the 8352
attending physician of the declarant, the consulting physician 8353
associated with the determination that the declarant is in a 8354
terminal condition or in a permanently unconscious state, 8355
whichever is addressed in the declaration, any health care 8356
facility in which the declarant is confined, and any individuals 8357
who were notified by the attending physician in accordance with 8358
division (A)(2)(a) of this section and who are not joining in the 8359
complaint as plaintiffs. 8360

(3) Notwithstanding any contrary provision of the Revised 8361

Code or of the Rules of Civil Procedure, the state and persons 8362
other than an objecting individual as described in division 8363
(B)(1)(a) of this section, other than an objecting individual or 8364
majority of individuals as described in division (B)(2)(b)(i) or 8365
(ii) of this section, and other than persons described in division 8366
(B)(2)(g) of this section are prohibited from commencing a civil 8367
action under this section and from joining or being joined as 8368
parties to an action commenced under this section, including 8369
joining by way of intervention. 8370

(4)(a) A probate court in which a complaint as described in 8371
division (B)(2) of this section is filed within the period 8372
specified in division (B)(1)(a) or (b) of this section shall 8373
conduct a hearing on the complaint after a copy of the complaint 8374
and a notice of the hearing have been served upon the defendants. 8375
The clerk of the probate court in which the complaint is filed 8376
shall cause the complaint and the notice of the hearing to be so 8377
served in accordance with the Rules of Civil Procedure, which 8378
service shall be made, if possible, within three days after the 8379
filing of the complaint. The hearing shall be conducted at the 8380
earliest possible time, but no later than the third business day 8381
after ~~such~~ the service has been completed. Immediately following 8382
the hearing, the court shall enter on its journal its 8383
determination whether a requested order will be issued. 8384

(b) If the declarant's declaration authorized the use or 8385
continuation of life-sustaining treatment should ~~he~~ the declarant 8386
be in a terminal condition or in a permanently unconscious state 8387
and if the plaintiff or plaintiffs requested a reevaluation order 8388
to the attending physician of the declarant as described in 8389
division (B)(2)(d)(i) of this section, the court shall issue the 8390
reevaluation order only if it finds that the plaintiff or 8391
plaintiffs have established a factual basis for the objection or 8392
objections involved by clear and convincing evidence, to a 8393

reasonable degree of medical certainty, and in accordance with 8394
reasonable medical standards. 8395

(c) If the declarant's declaration authorized the withholding 8396
or withdrawal of life-sustaining treatment should ~~he~~ the declarant 8397
be in a terminal condition or in a permanently unconscious state 8398
and if the plaintiff or plaintiffs requested a reevaluation order 8399
to the attending physician of the declarant as described in 8400
division (B)(2)(d)(i) of this section, the court shall issue the 8401
reevaluation order only if it finds that the plaintiff or 8402
plaintiffs have established a factual basis for the objection or 8403
objections involved by a preponderance of the evidence, to a 8404
reasonable degree of medical certainty, and in accordance with 8405
reasonable medical standards. 8406

(d) If the plaintiff or plaintiffs requested an invalidation 8407
order as described in division (B)(2)(d)(ii) of this section, the 8408
court shall issue the order only if it finds that the plaintiff or 8409
plaintiffs have established a factual basis for the objection or 8410
objections involved by clear and convincing evidence. 8411

(e) If the court issues a reevaluation order to the 8412
declarant's attending physician pursuant to division (B)(4)(b) or 8413
(c) of this section, then the attending physician shall make the 8414
requisite reevaluation. If, after doing so, the attending 8415
physician again determines that the declarant is in a terminal 8416
condition or in a permanently unconscious state, that the 8417
declarant no longer is able to make informed decisions regarding 8418
the administration of life-sustaining treatment, that there is no 8419
reasonable possibility that the declarant will regain the capacity 8420
to make those informed decisions, or that ~~he~~ the attending 8421
physician would undertake the same proposed course of action, then 8422
~~he~~ the attending physician shall notify the court in writing of 8423
the determination and comply with the provisions of section 8424
2133.10 of the Revised Code. 8425

Sec. 2133.06. (A) As long as a qualified patient is able to 8426
make informed decisions regarding the administration of 8427
life-sustaining treatment, ~~he~~ the qualified patient may continue 8428
to do so. 8429

(B) Life-sustaining treatment shall not be withheld or 8430
withdrawn from a declarant pursuant to a declaration if ~~she~~ the 8431
declarant is pregnant and if the withholding or withdrawal of the 8432
treatment would terminate the pregnancy, unless the declarant's 8433
attending physician and one other physician who has examined the 8434
declarant determine, to a reasonable degree of medical certainty 8435
and in accordance with reasonable medical standards, that the 8436
fetus would not be born alive. 8437

Sec. 2133.08. (A)(1) If written consent to the withholding or 8438
withdrawal of life-sustaining treatment, witnessed by two 8439
individuals who satisfy the witness eligibility criteria set forth 8440
in division (B)(1) of section 2133.02 of the Revised Code, is 8441
given by the appropriate individual or individuals as specified in 8442
division (B) of this section to the attending physician of a 8443
patient who is an adult, and if all of the following apply in 8444
connection with the patient, then, subject to section 2133.09 of 8445
the Revised Code, ~~his~~ the patient's attending physician may 8446
withhold or withdraw the life-sustaining treatment: 8447

(a) The attending physician and one other physician who 8448
examines the patient determine, in good faith, to a reasonable 8449
degree of medical certainty, and in accordance with reasonable 8450
medical standards, that the patient is in a terminal condition or 8451
the patient currently is and for at least the immediately 8452
preceding twelve months has been in a permanently unconscious 8453
state, and the attending physician additionally determines, in 8454
good faith, to a reasonable degree of medical certainty, and in 8455
accordance with reasonable medical standards, that the patient no 8456

longer is able to make informed decisions regarding the 8457
administration of life-sustaining treatment and that there is no 8458
reasonable possibility that the patient will regain the capacity 8459
to make those informed decisions. 8460

(b) The patient does not have a declaration that addresses 8461
~~his~~ the patient's intent should ~~he~~ the patient be determined to be 8462
in a terminal condition or in a permanently unconscious state, 8463
whichever applies, or a durable power of attorney for health care, 8464
or has a document that purports to be such a declaration or 8465
durable power of attorney for health care but that document is not 8466
legally effective. 8467

(c) The consent of the appropriate individual or individuals 8468
is given after consultation with the patient's attending physician 8469
and after receipt of information from the patient's attending 8470
physician or a consulting physician that is sufficient to satisfy 8471
the requirements of informed consent. 8472

(d) The appropriate individual or individuals who give a 8473
consent are of sound mind and voluntarily give the consent. 8474

(e) If a consent would be given under division (B)(3) of this 8475
section, the attending physician made a good faith effort, and 8476
used reasonable diligence, to notify the patient's adult children 8477
who are available within a reasonable period of time for 8478
consultation as described in division (A)(1)(c) of this section. 8479

(2) The consulting physician under division (A)(1)(a) of this 8480
section associated with a patient allegedly in a permanently 8481
unconscious state shall be a physician who, by virtue of advanced 8482
education or training, of a practice limited to particular 8483
diseases, illnesses, injuries, therapies, or branches of medicine 8484
or surgery or osteopathic medicine and surgery, of certification 8485
as a specialist in a particular branch of medicine or surgery or 8486
osteopathic medicine and surgery, or of experience acquired in the 8487

practice of medicine or surgery or osteopathic medicine and 8488
surgery, is qualified to determine whether the patient currently 8489
is and for at least the immediately preceding twelve months has 8490
been in a permanently unconscious state. 8491

(B) For purposes of division (A) of this section, a consent 8492
to withhold or withdraw life-sustaining treatment may be given by 8493
the appropriate individual or individuals, in accordance with the 8494
following descending order of priority: 8495

(1) If any, the guardian of the patient. This division does 8496
not permit or require, and shall not be construed as permitting or 8497
requiring, the appointment of a guardian for the patient. 8498

(2) The patient's spouse; 8499

(3) An adult child of the patient or, if there is more than 8500
one adult child, a majority of the patient's adult children who 8501
are available within a reasonable period of time for consultation 8502
with the patient's attending physician; 8503

(4) The patient's parents; 8504

(5) An adult sibling of the patient or, if there is more than 8505
one adult sibling, a majority of the patient's adult siblings who 8506
are available within a reasonable period of time for ~~such~~ that 8507
consultation; 8508

(6) The nearest adult who is not described in divisions 8509
(B)(1) to (5) of this section, who is related to the patient by 8510
blood or adoption, and who is available within a reasonable period 8511
of time for ~~such~~ that consultation. 8512

(C) If an appropriate individual or class of individuals 8513
entitled to decide under division (B) of this section whether or 8514
not to consent to the withholding or withdrawal of life-sustaining 8515
treatment for a patient is not available within a reasonable 8516
period of time for ~~such~~ the consultation and competent to so 8517

decide, or declines to so decide, then the next priority 8518
individual or class of individuals specified in that division is 8519
authorized to make the decision. However, an equal division in a 8520
priority class of individuals under that division does not 8521
authorize the next class of individuals specified in that division 8522
to make the decision. If an equal division in a priority class of 8523
individuals under that division occurs, no written consent to the 8524
withholding or withdrawal of life-sustaining treatment from the 8525
patient can be given pursuant to this section. 8526

(D)(1) A decision to consent pursuant to this section to the 8527
use or continuation, or the withholding or withdrawal, of 8528
life-sustaining treatment for a patient shall be made in good 8529
faith. 8530

(2) Except as provided in division (D)(4) of this section, if 8531
the patient previously expressed ~~his~~ an intention with respect to 8532
the use or continuation, or the withholding or withdrawal, of 8533
life-sustaining treatment should ~~he~~ the patient subsequently be in 8534
a terminal condition or in a permanently unconscious state, 8535
whichever applies, and no longer able to make informed decisions 8536
regarding the administration of life-sustaining treatment, a 8537
consent given pursuant to this section shall be valid only if it 8538
is consistent with that previously expressed intention. 8539

(3) Except as provided in division (D)(4) of this section, if 8540
the patient did not previously express ~~his~~ an intention with 8541
respect to the use or continuation, or the withholding or 8542
withdrawal, of life-sustaining treatment should ~~he~~ the patient 8543
subsequently be in a terminal condition or in a permanently 8544
unconscious state, whichever applies, and no longer able to make 8545
informed decisions regarding the administration of life-sustaining 8546
treatment, a consent given pursuant to this section shall be valid 8547
only if it is consistent with the type of informed consent 8548
decision that the patient would have made if ~~he~~ the patient 8549

previously had expressed ~~his~~ an intention with respect to the use 8550
or continuation, or the withholding or withdrawal, of 8551
life-sustaining treatment should ~~he~~ the patient subsequently be in 8552
a terminal condition or in a permanently unconscious state, 8553
whichever applies, and no longer able to make informed decisions 8554
regarding the administration of life-sustaining treatment, as 8555
inferred from the lifestyle and character of the patient, and from 8556
any other evidence of the desires of the patient, prior to ~~his~~ the 8557
patient's becoming no longer able to make informed decisions 8558
regarding the administration of life-sustaining treatment. The 8559
Rules of Evidence shall not be binding for purposes of this 8560
division. 8561

(4)(a) The attending physician of the patient, and other 8562
health care personnel acting under the direction of the attending 8563
physician, who do not have actual knowledge of a previously 8564
expressed intention as described in division (D)(2) of this 8565
section or who do not have actual knowledge that the patient would 8566
have made a different type of informed consent decision under the 8567
circumstances described in division (D)(3) of this section, may 8568
rely on a consent given in accordance with this section unless a 8569
probate court decides differently under division (E) of this 8570
section. 8571

(b) The immunity conferred by division (C)(1) of section 8572
2133.11 of the Revised Code is not forfeited by an individual who 8573
gives a consent to the use or continuation, or the withholding or 8574
withdrawal, of life-sustaining treatment for a patient under 8575
division (B) of this section if the individual gives the consent 8576
in good faith and without actual knowledge, at the time of giving 8577
the consent, of either a contrary previously expressed intention 8578
of the patient, or a previously expressed intention of the 8579
patient, as described in division (D)(2) of this section, that is 8580
revealed to the individual subsequent to the time of giving the 8581

consent. 8582

(E)(1) Within forty-eight hours after a priority individual 8583
or class of individuals gives a consent pursuant to this section 8584
to the use or continuation, or the withholding or withdrawal, of 8585
life-sustaining treatment and communicates the consent to the 8586
patient's attending physician, any individual described in 8587
divisions (B)(1) to (5) of this section who objects to the 8588
application of this section to the patient shall advise the 8589
attending physician of the grounds for the objection. If an 8590
objection is so communicated to the attending physician, then, 8591
within two business days after that communication, the objecting 8592
individual shall file a complaint against the priority individual 8593
or class of individuals, the patient's attending physician, and 8594
the consulting physician associated with the determination that 8595
the patient is in a terminal condition or that the patient 8596
currently is and for at least the immediately preceding twelve 8597
months has been in a permanently unconscious state, in the probate 8598
court of the county in which the patient is located for the 8599
issuance of an order reversing the consent of the priority 8600
individual or class of individuals. If the objecting individual 8601
fails to so file a complaint, ~~his~~ the individual's objections 8602
shall be considered to be void. 8603

A probate court in which a complaint is filed in accordance 8604
with this division shall conduct a hearing on the complaint after 8605
a copy of the complaint and a notice of the hearing have been 8606
served upon the defendants. The clerk of the probate court in 8607
which the complaint is filed shall cause the complaint and the 8608
notice of the hearing to be so served in accordance with the Rules 8609
of Civil Procedure, which service shall be made, if possible, 8610
within three days after the filing of the complaint. The hearing 8611
shall be conducted at the earliest possible time, but no later 8612
than the third business day after ~~such~~ the service has been 8613

completed. Immediately following the hearing, the court shall 8614
enter on its journal its determination whether the decision of the 8615
priority individual or class of individuals to consent to the use 8616
or continuation, or the withholding or withdrawal, of 8617
life-sustaining treatment in connection with the patient will be 8618
confirmed or reversed. 8619

(2) If the decision of the priority individual or class of 8620
individuals was to consent to the use or continuation of 8621
life-sustaining treatment in connection with the patient, the 8622
court only may reverse that consent if the objecting individual 8623
establishes, by clear and convincing evidence and, if applicable, 8624
to a reasonable degree of medical certainty and in accordance with 8625
reasonable medical standards, one or more of the following: 8626

(a) The patient is able to make informed decisions regarding 8627
the administration of life-sustaining treatment. 8628

(b) The patient has a legally effective declaration that 8629
addresses ~~his~~ the patient's intent should ~~he~~ the patient be 8630
determined to be in a terminal condition or in a permanently 8631
unconscious state, whichever applies, or a legally effective 8632
durable power of attorney for health care. 8633

(c) The decision to use or continue life-sustaining treatment 8634
is not consistent with the previously expressed intention of the 8635
patient as described in division (D)(2) of this section. 8636

(d) The decision to use or continue life-sustaining treatment 8637
is not consistent with the type of informed consent decision that 8638
the patient would have made if ~~he~~ the patient previously had 8639
expressed ~~his~~ an intention with respect to the use or 8640
continuation, or the withholding or withdrawal, of life-sustaining 8641
treatment should ~~he~~ the patient subsequently be in a terminal 8642
condition or in a permanently unconscious state, whichever 8643
applies, and no longer able to make informed decisions regarding 8644

the administration of life-sustaining treatment as described in 8645
division (D)(3) of this section. 8646

(e) The decision of the priority individual or class of 8647
individuals was not made after consultation with the patient's 8648
attending physician and after receipt of information from the 8649
patient's attending physician or a consulting physician that is 8650
sufficient to satisfy the requirements of informed consent. 8651

(f) The priority individual, or any member of the priority 8652
class of individuals, who made the decision to use or continue 8653
life-sustaining treatment was not of sound mind or did not 8654
voluntarily make the decision. 8655

(g) If the decision of a priority class of individuals under 8656
division (B)(3) of this section is involved, the patient's 8657
attending physician did not make a good faith effort, and use 8658
reasonable diligence, to notify the patient's adult children who 8659
were available within a reasonable period of time for consultation 8660
as described in division (A)(1)(c) of this section. 8661

(h) The decision of the priority individual or class of 8662
individuals otherwise was made in a manner that does not comply 8663
with this section. 8664

(3) If the decision of the priority individual or class of 8665
individuals was to consent to the withholding or withdrawal of 8666
life-sustaining treatment in connection with the patient, the 8667
court only may reverse that consent if the objecting individual 8668
establishes, by a preponderance of the evidence and, if 8669
applicable, to a reasonable degree of medical certainty and in 8670
accordance with reasonable medical standards, one or more of the 8671
following: 8672

(a) The patient is not in a terminal condition, the patient 8673
is not in a permanently unconscious state, or the patient has not 8674
been in a permanently unconscious state for at least the 8675

immediately preceding twelve months. 8676

(b) The patient is able to make informed decisions regarding 8677
the administration of life-sustaining treatment. 8678

(c) There is a reasonable possibility that the patient will 8679
regain the capacity to make informed decisions regarding the 8680
administration of life-sustaining treatment. 8681

(d) The patient has a legally effective declaration that 8682
addresses ~~his~~ the patient's intent should ~~he~~ the patient be 8683
determined to be in a terminal condition or in a permanently 8684
unconscious state, whichever applies, or a legally effective 8685
durable power of attorney for health care. 8686

(e) The decision to withhold or withdraw life-sustaining 8687
treatment is not consistent with the previously expressed 8688
intention of the patient as described in division (D)(2) of this 8689
section. 8690

(f) The decision to withhold or withdraw life-sustaining 8691
treatment is not consistent with the type of informed consent 8692
decision that the patient would have made if ~~he~~ the patient 8693
previously had expressed ~~his~~ an intention with respect to the use 8694
or continuation, or the withholding or withdrawal, of 8695
life-sustaining treatment should ~~he~~ the patient subsequently be in 8696
a terminal condition or in a permanently unconscious state, 8697
whichever applies, and no longer able to make informed decisions 8698
regarding the administration of life-sustaining treatment as 8699
described in division (D)(3) of this section. 8700

(g) The decision of the priority individual or class of 8701
individuals was not made after consultation with the patient's 8702
attending physician and after receipt of information from the 8703
patient's attending physician or a consulting physician that is 8704
sufficient to satisfy the requirements of informed consent. 8705

(h) The priority individual, or any member of the priority 8706

class of individuals, who made the decision to withhold or 8707
withdraw life-sustaining treatment was not of sound mind or did 8708
not voluntarily make the decision. 8709

(i) If the decision of a priority class of individuals under 8710
division (B)(3) of this section is involved, the patient's 8711
attending physician did not make a good faith effort, and use 8712
reasonable diligence, to notify the patient's adult children who 8713
were available within a reasonable period of time for consultation 8714
as described in division (A)(1)(c) of this section. 8715

(j) The decision of the priority individual or class of 8716
individuals otherwise was made in a manner that does not comply 8717
with this section. 8718

(4) Notwithstanding any contrary provision of the Revised 8719
Code or of the Rules of Civil Procedure, the state and persons 8720
other than individuals described in divisions (B)(1) to (5) of 8721
this section are prohibited from filing a complaint under division 8722
(E) of this section and from joining or being joined as parties to 8723
a hearing conducted under division (E) of this section, including 8724
joining by way of intervention. 8725

(F) A valid consent given in accordance with this section 8726
supersedes any general consent to treatment form signed by or on 8727
behalf of the patient prior to, upon, or after ~~his~~ the patient's 8728
admission to a health care facility to the extent there is a 8729
conflict between the consent and the form. 8730

(G) Life-sustaining treatment shall not be withheld or 8731
withdrawn from a patient pursuant to a consent given in accordance 8732
with this section if ~~she~~ the patient is pregnant and if the 8733
withholding or withdrawal of the treatment would terminate the 8734
pregnancy, unless the patient's attending physician and one other 8735
physician who has examined the patient determine, to a reasonable 8736
degree of medical certainty and in accordance with reasonable 8737

medical standards, that the fetus would not be born alive. 8738

Sec. 2133.09. (A) The attending physician of a patient who is 8739
an adult and who currently is and for at least the immediately 8740
preceding twelve months has been in a permanently unconscious 8741
state may withhold or withdraw nutrition and hydration in 8742
connection with the patient only if all of the following apply: 8743

(1) Written consent to the withholding or withdrawal of 8744
life-sustaining treatment in connection with the patient has been 8745
given by an appropriate individual or individuals in accordance 8746
with section 2133.08 of the Revised Code, and divisions (A)(1)(a) 8747
to (e) and (2) of that section have been satisfied. 8748

(2) A probate court has not reversed the consent to the 8749
withholding or withdrawal of life-sustaining treatment in 8750
connection with the patient pursuant to division (E) of section 8751
2133.08 of the Revised Code. 8752

(3) The attending physician of the patient and one other 8753
physician as described in division (A)(2) of section 2133.08 of 8754
the Revised Code who examines the patient determine, in good 8755
faith, to a reasonable degree of medical certainty, and in 8756
accordance with reasonable medical standards, that nutrition and 8757
hydration will not or no longer will provide comfort or alleviate 8758
pain in connection with the patient. 8759

(4) Written consent to the withholding or withdrawal of 8760
nutrition and hydration in connection with the patient, witnessed 8761
by two individuals who satisfy the witness eligibility criteria 8762
set forth in division (B)(1) of section 2133.02 of the Revised 8763
Code, is given to the attending physician of the patient by an 8764
appropriate individual or individuals as specified in division (B) 8765
of section 2133.08 of the Revised Code. 8766

(5) The written consent to the withholding or withdrawal of 8767

the nutrition and hydration in connection with the patient is 8768
given in accordance with division (B) of this section. 8769

(6) The probate court of the county in which the patient is 8770
located issues an order to withhold or withdraw the nutrition and 8771
hydration in connection with the patient pursuant to division (C) 8772
of this section. 8773

(B)(1) A decision to consent pursuant to this section to the 8774
withholding or withdrawal of nutrition and hydration in connection 8775
with a patient shall be made in good faith. 8776

(2) Except as provided in division (B)(4) of this section, if 8777
the patient previously expressed ~~his~~ an intention with respect to 8778
the use or continuation, or the withholding or withdrawal, of 8779
nutrition and hydration should ~~he~~ the patient subsequently be in a 8780
permanently unconscious state and no longer able to make informed 8781
decisions regarding the administration of nutrition and hydration, 8782
a consent given pursuant to this section shall be valid only if it 8783
is consistent with that previously expressed intention. 8784

(3) Except as provided in division (B)(4) of this section, if 8785
the patient did not previously express ~~his~~ an intention with 8786
respect to the use or continuation, or the withholding or 8787
withdrawal, of nutrition and ~~hydration~~ hydration should ~~he~~ the 8788
patient subsequently be in a permanently unconscious state and no 8789
longer able to make informed decisions regarding the 8790
administration of nutrition and hydration, a consent given 8791
pursuant to this section shall be valid only if it is consistent 8792
with the type of informed consent decision that the patient would 8793
have made if ~~he~~ the patient previously had expressed ~~his~~ an 8794
intention with respect to the use or continuation, or the 8795
withholding or withdrawal, of nutrition and hydration should ~~he~~ 8796
the patient subsequently be in a permanently unconscious state and 8797
no longer able to make informed decisions regarding the 8798
administration of nutrition and hydration, as inferred from the 8799

lifestyle and character of the patient, and from any other 8800
evidence of the desires of the patient, prior to ~~his~~ the patient's 8801
becoming no longer able to make informed decisions regarding the 8802
administration of nutrition and hydration. The Rules of Evidence 8803
shall not be binding for purposes of this division. 8804

(4)(a) The attending physician of the patient, and other 8805
health care personnel acting under the direction of the attending 8806
physician, who do not have actual knowledge of a previously 8807
expressed intention as described in division (B)(2) of this 8808
section or who do not have actual knowledge that the patient would 8809
have made a different type of informed consent decision under the 8810
circumstances described in division (B)(3) of this section, may 8811
rely on a consent given in accordance with this section unless a 8812
probate court decides differently under division (C) of this 8813
section. 8814

(b) The immunity conferred by division (C)(2) of section 8815
2133.11 of the Revised Code is not forfeited by an individual who 8816
gives a consent to the withholding or withdrawal of nutrition and 8817
hydration in connection with a patient under division (A)(4) of 8818
this section if the individual gives the consent in good faith and 8819
without actual knowledge, at the time of giving the consent, of 8820
either a contrary previously expressed intention of the patient, 8821
or a previously expressed intention of the patient, as described 8822
in ~~divison~~ division (B)(2) of this section, that is revealed to 8823
the individual subsequent to the time of giving the consent. 8824

(C)(1) Prior to the withholding or withdrawal of nutrition 8825
and hydration in connection with a patient pursuant to this 8826
section, the priority individual or class of individuals that 8827
consented to the withholding or withdrawal of the nutrition and 8828
hydration shall apply to the probate court of the county in which 8829
the patient is located for the issuance of an order that 8830
authorizes the attending physician of the patient to commence the 8831

withholding or withdrawal of the nutrition and hydration in 8832
connection with the patient. Upon the filing of the application, 8833
the clerk of the probate court shall schedule a hearing on it and 8834
cause a copy of it and a notice of the hearing to be served in 8835
accordance with the Rules of Civil Procedure upon the applicant, 8836
the attending physician, the consulting physician associated with 8837
the determination that nutrition and hydration will not or no 8838
longer will provide comfort or alleviate pain in connection with 8839
the patient, and the individuals described in divisions (B)(1) to 8840
(5) of section 2133.08 of the Revised Code who are not applicants, 8841
which service shall be made, if possible, within three days after 8842
the filing of the application. The hearing shall be conducted at 8843
the earliest possible time, but no sooner than the thirtieth 8844
business day, and no later than the sixtieth business day, after 8845
~~such~~ the service has been completed. 8846

At the hearing, any individual described in divisions (B)(1) 8847
to (5) of section 2133.08 of the Revised Code who is not an 8848
applicant and who disagrees with the decision of the priority 8849
individual or class of individuals to consent to the withholding 8850
or withdrawal of nutrition and hydration in connection with the 8851
patient shall be permitted to testify and present evidence 8852
relative to the use or continuation of nutrition and hydration in 8853
connection with the patient. Immediately following the hearing, 8854
the court shall enter on its journal its determination whether the 8855
requested order will be issued. 8856

(2) The court shall issue an order that authorizes the 8857
patient's attending physician to commence the withholding or 8858
withdrawal of nutrition and hydration in connection with the 8859
patient only if the applicants establish, by clear and convincing 8860
evidence, to a reasonable degree of medical certainty, and in 8861
accordance with reasonable medical standards, all of the 8862
following: 8863

(a) The patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state. 8864
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(b) The patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment. 8867
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(c) There is no reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment. 8869
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8871

(d) The conditions specified in divisions (A)(1) to (4) of this section have been satisfied. 8872
8873

(e) The decision to withhold or withdraw nutrition and hydration in connection with the patient is consistent with the previously expressed intention of the patient as described in division (B)(2) of this section or is consistent with the type of informed consent decision that the patient would have made if ~~he~~ the patient previously had expressed ~~his~~ an intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should ~~he~~ the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration as described in division (B)(3) of this section. 8874
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(3) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in division (A)(4) of this section or in divisions (B)(1) to (5) of section 2133.08 of the Revised Code and other than the attending physician and consulting physician associated with the determination that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient are prohibited from filing an application under this division and from joining or being joined as parties to a hearing conducted under this division, including 8885
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joining by way of intervention. 8895

(D) A valid consent given in accordance with this section 8896
supersedes any general consent to treatment form signed by or on 8897
behalf of the patient prior to, upon, or after ~~his~~ the patient's 8898
admission to a health care facility to the extent there is a 8899
conflict between the consent and the form. 8900

Sec. 2335.34. On the first Monday of January, each year, the 8901
clerk of each court of common pleas and court of appeals, each 8902
probate judge, and each sheriff shall make two certified lists of 8903
causes in which money has been paid and has remained in the hands 8904
of ~~such that~~ that person or in the hands of a former clerk, probate 8905
judge, or sheriff, for one year next preceding ~~such that~~ that first 8906
Monday of January. ~~Such~~ The lists shall designate the amount of 8907
money and in whose hands it remains. One list shall be set up in a 8908
conspicuous place by ~~such the~~ the officer, in ~~his~~ the officer's 8909
office, for the period of thirty days, and the other list shall be 8910
posted at ~~or on the door~~ a public area of the courthouse or 8911
published on the web site of the court or officer, on the second 8912
Monday of January, for the same period of time. 8913

Sec. 3101.02. Any consent required under section 3101.01 of 8914
the Revised Code shall be personally given before the probate 8915
judge or a deputy clerk of the probate court, or certified under 8916
the hand of the person consenting, by two witnesses, one of whom 8917
~~must~~ shall appear before the judge and make oath that ~~he~~ the 8918
witness saw the person whose name is annexed to the certificate 8919
subscribe it, or heard ~~him~~ the person consenting acknowledge it. 8920

Sec. 3101.03. If the parent or guardian of a minor is a 8921
nonresident of, or is absent from, the county in which the 8922
marriage license is applied for, ~~he~~ the parent or guardian 8923
personally may appear before the official upon whose authority 8924

marriage licenses are issued, in the county in which ~~he~~ the parent 8925
or guardian is at the time domiciled, and give ~~his~~ consent in 8926
writing to ~~such~~ that marriage. The consent ~~must~~ shall be attested 8927
to by two witnesses, certified to by ~~such~~ that official, and 8928
forwarded to the probate judge of the county in which the license 8929
is applied for. The probate judge may administer any oath 8930
required, issue and sign ~~such~~ the license, and affix the seal of 8931
the probate court. 8932

Sec. 3101.10. A minister upon producing to the secretary of 8933
state, credentials of ~~his~~ the minister's being a regularly 8934
ordained or licensed minister of any religious society or 8935
congregation, shall be entitled to receive from the secretary of 8936
state a license authorizing ~~him~~ the minister to solemnize 8937
marriages in this state so long as ~~he~~ the minister continues as a 8938
regular minister in ~~such~~ that society or congregation. A minister 8939
shall produce for inspection ~~his~~ the minister's license to 8940
solemnize marriages upon demand of any party to a marriage at 8941
which ~~he~~ the minister officiates or proposes to officiate or upon 8942
demand of any probate judge. 8943

Sec. 3101.13. Except as otherwise provided in this section, a 8944
certificate of every marriage solemnized shall be transmitted by 8945
the authorized person solemnizing the marriage, within thirty days 8946
after the solemnization, to the probate judge of the county in 8947
which the marriage license was issued. If, in accordance with 8948
section 2101.27 of the Revised Code, a probate judge solemnizes a 8949
marriage and if the probate judge issued the marriage license to 8950
the husband and wife, ~~he~~ the probate judge shall file a 8951
certificate of that solemnized marriage in ~~his~~ the probate judge's 8952
office within thirty days after the solemnization. All ~~such~~ of the 8953
transmitted and filed certificates shall be consecutively numbered 8954
and recorded in the order in which they are received. 8955

Sec. 3101.14. Every marriage license shall have printed upon 8956
it in prominent type the notice that, unless the person 8957
solemnizing the marriage returns a certificate of the solemnized 8958
marriage to the probate court that issued the marriage license 8959
within thirty days after performing the ceremony, or, if the 8960
person solemnizing the marriage is a probate judge who is acting 8961
in accordance with section 2101.27 of the Revised Code and who 8962
issued the marriage license to the husband and wife, unless ~~such a~~ 8963
~~that~~ probate judge files a certificate of the solemnized marriage 8964
in ~~his~~ the probate judge's office within thirty days after the 8965
solemnization, ~~he the person or probate judge~~ is guilty of a minor 8966
misdemeanor and, upon conviction, may be punished by a fine of 8967
fifty dollars. An envelope suitable for returning the certificate 8968
of marriage, and addressed to the proper probate court, shall be 8969
given with each license, except that this requirement does not 8970
apply if a marriage is to be solemnized by a probate judge who is 8971
acting in accordance with section 2101.27 of the Revised Code and 8972
who issued the marriage license to the husband and wife. 8973

Sec. 3313.85. If the board of education of any city, exempted 8974
village, or local school district or the governing board of any 8975
educational service center ~~fails to perform the duties imposed~~ 8976
~~upon it or~~ fails to fill a vacancy in ~~such~~ that board within a 8977
period of thirty days after ~~such~~ the vacancy occurs, the probate 8978
court of the county in which ~~such~~ the district or service center 8979
is located, upon being advised and satisfied of ~~such~~ that failure, 8980
shall act as ~~such~~ that board and ~~perform all duties imposed upon~~ 8981
~~such board~~ to fill any vacancy as promptly as possible. 8982

8983

Sec. 5111.113. (A) As used in this section: 8984

(1) "Adult care facility" has the same meaning as in section 8985

3722.01 of the Revised Code. 8986

(2) "Commissioner" means a person appointed by a probate 8987
court under division ~~(B)~~(E) of section 2113.03 of the Revised Code 8988
to act as a commissioner. 8989

(3) "Home" has the same meaning as in section 3721.10 of the 8990
Revised Code. 8991

(4) "Personal needs allowance account" means an account or 8992
petty cash fund that holds the money of a resident of an adult 8993
care facility or home and that the facility or home manages for 8994
the resident. 8995

(B) Except as provided in divisions (C) and (D) of this 8996
section, the owner or operator of an adult care facility or home 8997
shall transfer to the department of job and family services the 8998
money in the personal needs allowance account of a resident of the 8999
facility or home who was a recipient of the medical assistance 9000
program no earlier than sixty days but not later than ninety days 9001
after the resident dies. The adult care facility or home shall 9002
transfer the money even though the owner or operator of the 9003
facility or home has not been issued letters testamentary or 9004
letters of administration concerning the resident's estate. 9005

(C) If funeral or burial expenses for a resident of an adult 9006
care facility or home who has died have not been paid and the only 9007
resource the resident had that could be used to pay for the 9008
expenses is the money in the resident's personal needs allowance 9009
account, or all other resources of the resident are inadequate to 9010
pay the full cost of the expenses, the money in the resident's 9011
personal needs allowance account shall be used to pay for the 9012
expenses rather than being transferred to the department of job 9013
and family services pursuant to division (B) of this section. 9014

(D) If, not later than sixty days after a resident of an 9015
adult care facility or home dies, letters testamentary or letters 9016

of administration are issued, or an application for release from 9017
administration is filed under section 2113.03 of the Revised Code, 9018
concerning the resident's estate, the owner or operator of the 9019
facility or home shall transfer the money in the resident's 9020
personal needs allowance account to the administrator, executor, 9021
commissioner, or person who filed the application for release from 9022
administration. 9023

(E) The transfer or use of money in a resident's personal 9024
needs allowance account in accordance with division (B), (C), or 9025
(D) of this section discharges and releases the adult care 9026
facility or home, and the owner or operator of the facility or 9027
home, from any claim for the money from any source. 9028

(F) If, sixty-one or more days after a resident of an adult 9029
care facility or home dies, letters testamentary or letters of 9030
administration are issued, or an application for release from 9031
administration under section 2113.03 of the Revised Code is filed, 9032
concerning the resident's estate, the department of job and family 9033
services shall transfer the funds to the administrator, executor, 9034
commissioner, or person who filed the application, unless the 9035
department is entitled to recover the money under the medicaid 9036
estate recovery program instituted under section 5111.11 of the 9037
Revised Code. 9038

Section 2. That existing sections 2101.01, 2101.02, 2101.021, 9039
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5111.113 and sections 2101.36, 2113.02, 2113.17, 2113.24, 2113.26, 9089
2113.27, 2113.28, 2113.29, 2113.57, and 2113.63 of the Revised 9090
Code are hereby repealed. 9091

Section 3. The provisions of this act that relate to the 9092
estates of decedents apply to the estates of decedents who die on 9093
or after the effective date of this act. 9094

Section 4. The General Assembly, applying the principle 9095
stated in division (B) of section 1.52 of the Revised Code that 9096
amendments are to be harmonized if reasonably capable of 9097
simultaneous operation, finds that the following sections, 9098
presented in this act as composites of the sections as amended by 9099
the acts indicated, are the resulting versions of the sections in 9100
effect prior to the effective date of the sections as presented in 9101
this act: 9102

Section 2101.24 of the Revised Code as amended by both Sub. 9103
H.B. 416 and Sub. H.B. 426 of the 126th General Assembly. 9104

Section 2109.44 of the Revised Code as amended by both Am. 9105
Sub. H.B. 538 and Sub. S.B. 129 of the 121st General Assembly. 9106