

As Passed by the House

129th General Assembly

Regular Session

2011-2012

Am. Sub. S. B. No. 124

Senator Bacon

Cosponsors: Senators Wagoner, Brown, Hughes, Kearney, Coley, Hite,

Lehner, Obhof, Sawyer, Seitz, Wilson

Representatives Blair, Brenner, Bubp, Combs, Hayes, Letson, Pelanda,

Pillich, Slaby, Stautberg Speaker Batchelder

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A B I L L

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3101.10, 3101.13, 3101.14, 3313.85, and 5111.113;	70
to enact new sections 2113.17 and 2113.26; and to	71
repeal sections 2101.36, 2113.02, 2113.17,	72
2113.24, 2113.26, 2113.27, 2113.28, 2113.29,	73
2113.57, and 2113.63 of the Revised Code to make	74
changes 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
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2151.13, 2335.34, 3101.02, 3101.03, 3101.10, 3101.13, 3101.14, 125
3313.85, and 5111.113 be amended and new sections 2113.17 and 126
2113.26 of the 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 ~~cases~~ 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~~ 240
the commissioner's duties, may summon and enforce the attendance 241
of witnesses, may compel the production of books and papers, and 242
may grant adjournments the same as the court, and, when the court 243
directs, ~~such~~ the commissioner shall require the witnesses 244
severally to subscribe ~~their~~ the witnesses' testimony. 245

All process and orders issued by ~~such~~ the commissioner, shall 246
be directed to the sheriff ~~and~~, shall be served, and return 247
thereof of the process and orders shall be made, as if issued by 248
the probate judge. 249

The court shall allow ~~such~~ the commissioner ~~such~~ those fees 250
~~as~~ that are allowed to other officers for similar services, ~~which~~ 251
and the court shall tax those fees ~~shall be taxed~~ with the costs. 252

Sec. 2101.08. The probate judge may appoint ~~a stenographic~~ 253
~~reporter~~ court reporters and fix ~~his~~ their compensation in the 254
manner provided for the court of common pleas in sections 2301.18 255
to 2301.26, ~~inclusive~~, of the Revised Code. 256

Sec. 2101.09. When required by the probate judge, sheriffs, 257
coroners, and constables shall attend ~~his~~ the judge's court and 258
shall serve and return process directed and delivered to them by 259
~~such~~ the judge. No ~~such~~ officer of that type shall neglect or 260
refuse to serve and return ~~such~~ any process as required by this 261
section. If ~~such~~ an officer does neglect or refuse to serve and 262
return ~~such~~ process as required by this section, the judge shall 263
issue a summons specifying the cause for amercement, directed to 264
the officer, ~~therein~~ named in the summons, commanding ~~him~~ the 265
named officer to summon the officer guilty of ~~such~~ the misconduct 266
to appear within two days after the service of summons and show 267

cause why ~~he~~ the latter officer should not be amerced. In addition 268
to a fine, as provided by section 2101.99 of the Revised Code, 269
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 363
assessor shall take an oath of office before entering on the 364
duties of the person's appointment. 365

(c) A probate court assessor must meet the qualifications for 366
an assessor established by section 3107.014 of the Revised Code. 367

(d) A probate court assessor shall perform additional duties, 368
including duties of an investigator under division (A)(2) of this 369
section, when the probate judge assigns additional duties to the 370
assessor. 371

(e) For purposes of divisions (A)(4), (B), and (C) of this 372
section, a person designated as a probate court assessor shall be 373
considered an appointee of the probate court at any time that the 374
person is performing assessor duties. 375

(4) Each appointee of the probate judge may administer oaths 376
in all cases when necessary, in the discharge of official duties. 377

(B)(1)(a) Subject to the appropriation made by the board of 378
county commissioners pursuant to this division, each appointee of 379
a probate judge under division (A) of this section shall receive 380
such compensation and expenses as the judge determines and shall 381
serve during the pleasure of the judge. The compensation of each 382
appointee shall be paid in semimonthly installments by the county 383
treasurer from the county treasury, upon the warrants of the 384
county auditor, certified to by the judge. 385

(b) Except as otherwise provided in the Revised Code, the 386
total compensation paid to all appointees of the probate judge in 387
any calendar year shall not exceed the total fees earned by the 388
probate court during the preceding calendar year, unless the board 389
of county commissioners approves otherwise. 390

(2) The probate judge annually shall submit a written request 391
for an appropriation to the board of county commissioners that 392
shall set forth estimated administrative expenses of the court, 393
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~~ shall not be personally liable for the default, 430
malfeasance, or nonfeasance of any ~~such~~ appointee, ~~but, if a bond~~ 431
~~is required of the appointee, the liability of the judge is~~ 432
~~limited to the amount by which the loss resulting from the~~ 433
~~default, malfeasance, or nonfeasance exceeds the amount of the~~ 434
~~bond.~~ 435

All bonds required to be given in the probate court, on being 436
accepted and approved by the probate judge, shall be filed in the 437
judge's office. 438

Sec. 2101.13. When a probate judge, whether elected or 439
appointed, enters upon the discharge of ~~his~~ the judge's official 440
duties, ~~he~~ the judge shall make, in the books and other 441
record-keeping materials of ~~his~~ the judge's office, the proper 442
records, entries, and indexes omitted by ~~his~~ the judge's 443
predecessors in office. When made, the entries shall have the same 444
validity and effect as though they had been made at the proper 445
time and by the officer whose duty it was to make them, and the 446
judge shall sign all entries and records made by ~~him~~ the judge as 447
though the entries, proceedings, and records had been commenced, 448
prosecuted, determined, and made by or before ~~him~~ the judge. 449

Sec. 2101.15. In each case, examination, or proceeding, the 450
probate judge shall file an itemized account of fees received or 451
charged by ~~him~~ the judge. On the first day of January, in each 452
year, ~~he~~ the judge shall file with the county auditor an account, 453

certified by ~~such~~ the judge, of all fees received by ~~him~~ the judge 454
during the preceding year. No judge shall fail to perform the 455
duties imposed in this section. At the instance of any person, ~~an~~ 456
~~action shall be instituted and prosecuted by~~ the prosecuting 457
attorney shall institute and prosecute an action against ~~any such~~ 458
the defaulting judge. 459

Sec. 2101.16. (A) Except as provided in section 2101.164 of 460
the Revised Code, the fees enumerated in this division shall be 461
charged and collected, if possible, by the probate judge and shall 462
be in full for all services rendered in the respective 463
proceedings: 464

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

(8) Birth record, application to correct		481
.....	\$ 5.00	482
(9) Bond, application for new or additional		483
.....	\$ 5.00	484
(10) Bond, application for release of surety or reduction of		485
.....	\$ 5.00	486
(11) Bond, receipt for securities deposited in lieu of		487
.....	\$ 5.00	488
(12) Certified copy of journal entry, record, or proceeding, per page, minimum fee one dollar		489
.....	\$ 1.00	490
(13) Citation and issuing citation, application for		491
.....	\$ 5.00	492
(14) Change of name, petition for		493
.....	\$ 20.00	494
(15) Claim, application of administrator or executor for allowance of administrator's or executor's own		495
.....	\$ 10.00	496
(16) Claim, application to compromise or settle		497
.....	\$ 10.00	498
(17) Claim, authority to present		499
.....	\$ 10.00	500
(18) Commissioner, appointment of		501
.....	\$ 5.00	502
(19) Compensation for extraordinary services and attorney's fees for fiduciary, application for		503
.....	\$ 5.00	504
(20) Competency, application to procure adjudication of		505
.....	\$ 20.00	506
(21) Complete contract, application to		507
.....	\$ 10.00	508
(22) Concealment of assets, citation for		509

.....	\$ 10.00	510
(23) Construction of will, petition <u>complaint</u> for		511
.....	\$ 20.00	512
(24) Continue decedent's business, application to		513
.....	\$ 10.00	514
Monthly reports of operation		515
.....	\$ 5.00	516
(25) Declaratory judgment, petition <u>complaint</u> for		517
.....	\$ 20.00	518
(26) Deposit of will		519
.....	\$ 5.00	520
(27) Designation of heir		521
.....	\$ 20.00	522
(28) Distribution in kind, application, assent, and order for		523
.....	\$ 5.00	524
(29) Distribution under section 2109.36 of the Revised Code, application for an order of		525
.....	\$ 7.00	526
(30) Docketing and indexing proceedings, including the filing and noting of all necessary documents, maximum fee, fifteen dollars		527
.....	\$ 15.00	528
(31) Exceptions to any proceeding named in this section, contest of appointment or		529
.....	\$ 10.00	530
(32) Election of surviving partner to purchase assets of partnership, proceedings relating to		531
.....	\$ 10.00	532
(33) Election of surviving spouse under will		533
.....	\$ 5.00	534
(34) Fiduciary, including an assignee or trustee of an insolvent debtor or any guardian or conservator		535

accountable to the probate court, appointment of		
.....	\$ 35.00	536
(35) Foreign will, application to record		537
.....	\$ 10.00	538
Record of foreign will, additional, per page		539
.....	\$ 1.00	540
(36) Forms when supplied by the probate court, not to exceed		541
.....	\$ 10.00	542
(37) Heirship, petition <u>complaint</u> to determine		543
.....	\$ 20.00	544
(38) Injunction proceedings		545
.....	\$ 20.00	546
(39) Improve real estate <u>property</u> , petition to		547
.....	\$ 20.00	548
(40) Inventory with appraisement		549
.....	\$ 10.00	550
(41) Inventory without appraisement		551
.....	\$ 7.00	552
(42) Investment or expenditure of funds, application for		553
.....	\$ 10.00	554
(43) Invest in real estate <u>property</u> , application to		555
.....	\$ 10.00	556
(44) Lease for oil, gas, coal, or other mineral, petition to		557
.....	\$ 20.00	558
(45) Lease or lease and improve real estate <u>property</u> , petition to		559
.....	\$ 20.00	560
(46) Marriage license		561
.....	\$ 10.00	562
Certified abstract of each marriage		563
.....	\$ 2.00	564

(47) Minor or incompetent person, etc., disposal of estate under twenty-five thousand dollars of	\$ 10.00	565 566
(48) Mortgage or mortgage and repair or improve real estate <u>property</u> , petition <u>complaint</u> to	\$ 20.00	567 568
(49) Newly discovered assets, report of	\$ 7.00	569 570
(50) Nonresident executor or administrator to bar creditors' claims, proceedings by	\$ 20.00	571 572
(51) Power of attorney or revocation of power, bonding company	\$ 10.00	573 574
(52) Presumption of death, petition to establish	\$ 20.00	575 576
(53) Probating will Proof of notice to beneficiaries	\$ 15.00 \$ 5.00	577 578 579 580
(54) Purchase personal property, application of surviving spouse to	\$ 10.00	581 582
(55) Purchase real estate <u>property</u> at appraised value, petition of surviving spouse to	\$ 20.00	583 584
(56) Receipts in addition to advertising charges, application and order to record Record of those receipts, additional, per page	\$ 5.00 \$ 1.00	585 586 587 588
(57) Record in excess of fifteen hundred words in any proceeding in the probate court, per page		589

.....	\$ 1.00	590
(58) Release of estate by mortgagee or other lienholder		591
.....	\$ 5.00	592
(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		593
.....	\$ 60.00	594
(60) Removal of fiduciary, application for		595
.....	\$ 10.00	596
(61) Requalification of executor or administrator		597
.....	\$ 10.00	598
(62) Resignation of fiduciary		599
.....	\$ 5.00	600
(63) Sale bill, public sale of personal property		601
.....	\$ 10.00	602
(64) Sale of personal property and report, application for		603
.....	\$ 10.00	604
(65) Sale of real estate <u>property</u> , petition for		605
.....	\$ 25.00	606
(66) Terminate guardianship, petition to		607
.....	\$ 10.00	608
(67) Transfer of real estate <u>property</u> , application, entry, and certificate for		609
.....	\$ 7.00	610
(68) Unclaimed money, application to invest		611
.....	\$ 7.00	612
(69) Vacate approval of account or order of distribution, motion to		613
.....	\$ 10.00	614
(70) Writ of execution		615
.....	\$ 5.00	616
(71) Writ of possession		617

.....	\$ 5.00	618
(72) Wrongful death, application and settlement of claim		619
for		
.....	\$ 20.00	620
(73) Year's allowance, petition to review		621
.....	\$ 7.00	622
(74) Guardian's report, filing and review of		623
.....	\$ 5.00	624
(B)(1) In relation to an application for the appointment of a		625
guardian or the review of a report of a guardian under section		626
2111.49 of the Revised Code, the probate court, pursuant to court		627
order or in accordance with a court rule, may direct that the		628
applicant or the estate pay any or all of the expenses of an		629
investigation conducted pursuant to section 2111.041 or division		630
(A)(2) of section 2111.49 of the Revised Code. If the		631
investigation is conducted by a public employee or investigator		632
who is paid by the county, the fees for the investigation shall be		633
paid into the county treasury. If the court finds that an alleged		634
incompetent or a ward is indigent, the court may waive the costs,		635
fees, and expenses of an investigation.		636
(2) In relation to the appointment or functioning of a		637
guardian for a minor or the guardianship of a minor, the probate		638
court may direct that the applicant or the estate pay any or all		639
of the expenses of an investigation conducted pursuant to section		640
2111.042 of the Revised Code. If the investigation is conducted by		641
a public employee or investigator who is paid by the county, the		642
fees for the investigation shall be paid into the county treasury.		643
If the court finds that the guardian or applicant is indigent, the		644
court may waive the costs, fees, and expenses of an investigation.		645
(C) Thirty dollars of the thirty-five-dollar fee collected		646
pursuant to division (A)(34) of this section and twenty dollars of		647
the sixty-dollar fee collected pursuant to division (A)(59) of		648

this section shall be deposited by the county treasurer in the 649
indigent guardianship fund created pursuant to section 2111.51 of 650
the Revised Code. 651

(D) The fees of witnesses, jurors, sheriffs, coroners, and 652
constables for services rendered in the probate court or by order 653
of the probate judge shall be the same as provided for ~~like~~ 654
similar services in the court of common pleas. 655

(E) The probate court, by rule, may require an advance 656
deposit for costs, not to exceed one hundred twenty-five dollars, 657
at the time application is made for an appointment as executor or 658
administrator or at the time a will is presented for probate. 659

(F) The probate court, by rule, shall establish a reasonable 660
fee, not to exceed fifty dollars, for the filing of a petition for 661
the release of information regarding an adopted person's name by 662
birth and the identity of the adopted person's biological parents 663
and biological siblings pursuant to section 3107.41 of the Revised 664
Code, all proceedings relative to the petition, the entry of an 665
order relative to the petition, and all services required to be 666
performed in connection with the petition. The probate court may 667
use a reasonable portion of a fee charged under authority of this 668
division to reimburse any agency, as defined in section 3107.39 of 669
the Revised Code, for any services it renders in performing a task 670
described in section 3107.41 of the Revised Code relative to or in 671
connection with the petition for which the fee was charged. 672

(G)(1) Thirty dollars of the fifty-dollar fee collected 673
pursuant to division (A)(3) of this section shall be deposited 674
into the "putative father registry fund," which is hereby created 675
in the state treasury. The department of job and family services 676
shall use the money in the fund to fund the department's costs of 677
performing its duties related to the putative father registry 678
established under section 3107.062 of the Revised Code. 679

(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 of the Revised Code.

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

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

(3) If the court determines that the funds in the fund described in division (A)(2) of this section are more than sufficient to satisfy the purpose for which the additional fee described in division (A)(1) of this section was imposed, the

court may declare a surplus in the fund and expend those surplus 711
funds for other appropriate technological expenses of the court. 712

(B)(1) The probate judge may determine that, for the 713
efficient operation of ~~his~~ the probate court, additional funds are 714
required to computerize the office of the clerk of the court and, 715
upon that determination, may charge a fee, not to exceed ten 716
dollars, or authorize and direct a deputy clerk of the probate 717
court to charge a fee, not to exceed ten dollars, in addition to 718
the fees specified in divisions (A)(1), (3), (4), (6), (14) to 719
(17), (20) to (25), (27), (30) to (32), (34), (35), (37) to (48), 720
(50) to (55), (59) to (61), (63) to (66), (69), and (72) of 721
section 2101.16 of the Revised Code, the fee adopted pursuant to 722
division (F) of that section, and the fee charged in connection 723
with the docketing and indexing of an appeal. Subject to division 724
(B)(2) of this section, all moneys collected under this division 725
shall be paid to the county treasurer to be disbursed, upon an 726
order of the probate judge and subject to appropriation by the 727
board of county commissioners, in an amount no greater than the 728
actual cost to the probate court of procuring and maintaining 729
computer systems for the office of the clerk of the court. 730

(2) If the probate judge makes the determination described in 731
division (B)(1) of this section, the board of county commissioners 732
may issue one or more general obligation bonds for the purpose of 733
procuring and maintaining the computer systems for the office of 734
the clerk of the probate court. In addition to the purposes stated 735
in division (B)(1) of this section for which the moneys collected 736
under that division may be expended, the moneys additionally may 737
be expended to pay debt charges on and financing costs related to 738
any general obligation bonds issued pursuant to this division as 739
they become due. General obligation bonds issued pursuant to this 740
division are Chapter 133. securities. 741

Sec. 2101.19. (A) No probate judge or ~~his~~ probate judge's 742
deputy clerk shall sell or offer for sale for more than one dollar 743
any merchandise to be used in connection with any license, order, 744
or document issued by the probate court, or make any charge in 745
connection with the issuance of any license, order, or document 746
except that specifically provided by law. 747

(B) All moneys obtained from the sale of merchandise to be 748
used in connection with any license, order, or document issued by 749
a probate court shall be paid by the probate judge or the deputy 750
clerk of the court into the county treasury. The moneys shall be 751
credited to a fund to be known as the probate court conduct of 752
business fund. The moneys so credited shall be used solely for the 753
conduct of the business of the probate court. 754

(C) Upon receipt of an order of the probate judge for the 755
payment of moneys from the fund for the conduct of the business of 756
the court, the county auditor shall draw a warrant on the county 757
treasurer for the amount of money specified in the order, but not 758
exceeding the balance of the moneys in the fund, which warrant 759
shall be made payable to the probate judge or another person 760
designated in the order. 761

Sec. 2101.20. When the aggregate amount of fees and 762
allowances collected by the probate judge in any calendar year 763
exceeds by more than ten per cent the amount necessary to pay the 764
salaries of ~~said the~~ the judge and the employees of the probate court, 765
including court constables, for the same calendar year, ~~such the~~ 766
judge may, by an order entered on ~~his~~ the judge's journal, provide 767
for a discount of all the fees and allowances ~~he the judge~~ is 768
required to charge and collect for the use of the county by fixing 769
a per cent of discount ~~which that~~ that shall be applied to all the 770
earnings of ~~said the~~ the office for the ensuing year and shall 771
constitute the legal fees of ~~said the~~ the office for ~~said that~~ that year. 772

Sec. 2101.22. The probate judge shall issue any process, 773
notices, commissions, rules, and orders that are necessary to 774
carry into effect the powers granted to ~~him~~ the judge. 775

Sec. 2101.23. The probate judge may keep order in ~~his~~ the 776
judge's court and has authority throughout the state to compel 777
performance of any duty incumbent upon any fiduciary appointed by 778
or accounting to ~~him~~ the judge. The probate judge may punish any 779
contempt of ~~his~~ the judge's authority as ~~such~~ that contempt might 780
be punished in the court of common pleas. 781

If a person neglects or refuses to perform an order or 782
judgment of a probate court, other than for the payment of money, 783
~~he shall be~~ the person is guilty of a contempt of court, and the 784
judge shall issue a summons directing ~~such~~ the person to appear 785
before the court, within two days from the service ~~thereof,~~ of the 786
summons and show cause why ~~he~~ the person should not be punished 787
for contempt. If it appears to the judge that ~~such~~ the person is 788
~~secreting himself~~ attempting to avoid the process of the court, or 789
is about to leave the county for that purpose, the judge may issue 790
an attachment instead of the summons, commanding the officer, to 791
whom it is directed, to bring ~~such~~ the person before ~~such~~ the 792
judge to answer for contempt. If no sufficient excuse is shown, 793
~~such~~ the person shall be punished for contempt. 794

Sec. 2101.24. (A)(1) Except as otherwise provided by law, the 795
probate court has exclusive jurisdiction: 796

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

of the probate court.	803
(b) To grant and revoke letters testamentary and of administration;	804 805
(c) To direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates;	806 807 808
(d) To appoint the attorney general to serve as the administrator of an estate pursuant to section 2113.06 of the Revised Code;	809 810 811
(e) To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;	812 813 814
(f) To grant marriage licenses;	815
(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;	816 817 818 819 820
(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;	821 822 823
(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;	824 825 826 827
(j) To authorize the completion of real estate <u>property</u> contracts on petition of executors and administrators;	828 829
(k) To construe wills;	830
(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the	831 832

Revised Code;	833
(m) To direct and control the conduct of fiduciaries and settle their accounts;	834 835
(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;	836 837
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	838 839
(p) To hear and determine actions to contest the validity of wills;	840 841
(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;	842 843 844
(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;	845 846 847 848 849
(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	850 851
(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	852 853
(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;	854 855 856
(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;	857 858 859
(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;	860 861 862

(x) To hear and determine complaints that pertain to the use 863
or continuation, or the withholding or withdrawal, of 864
life-sustaining treatment in connection with certain patients 865
allegedly in a terminal condition or in a permanently unconscious 866
state pursuant to division (E) of section 2133.08 of the Revised 867
Code, in accordance with that division; 868

(y) To hear and determine applications that pertain to the 869
withholding or withdrawal of nutrition and hydration from certain 870
patients allegedly in a permanently unconscious state pursuant to 871
section 2133.09 of the Revised Code, in accordance with that 872
section; 873

(z) To hear and determine applications of attending 874
physicians in accordance with division (B) of section 2133.15 of 875
the Revised Code; 876

(aa) To hear and determine actions relative to the use or 877
continuation of comfort care in connection with certain principals 878
under durable powers of attorney for health care, declarants under 879
declarations, or patients in accordance with division (E) of 880
either section 1337.16 or 2133.12 of the Revised Code; 881

(bb) To hear and determine applications for an order 882
relieving an estate from administration under section 2113.03 of 883
the Revised Code; 884

(cc) To hear and determine applications for an order granting 885
a summary release from administration under section 2113.031 of 886
the Revised Code; 887

(dd) To hear and determine actions relating to the exercise 888
of the right of disposition, in accordance with section 2108.90 of 889
the Revised Code; 890

(ee) To hear and determine actions relating to the 891
disinterment and reinterment of human remains under section 517.23 892
of the Revised Code. 893

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

(a) Another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court.

(b) No section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.

(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:

(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;

(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.

(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.

(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.

(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.

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

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

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

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

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

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

Sec. 2101.30. Whenever a jury is required in the probate

court, the probate judge shall ~~forthwith~~ notify the commissioners 955
of jurors, who shall cause to be drawn from the jury wheel, or to 956
be drawn by use of the automation data processing equipment and 957
procedures described in section 2313.07 of the Revised Code, the 958
names of sixteen persons as ~~jurymen~~ jurypersons. Additional names 959
may be drawn if required. The clerk of the court of common pleas 960
or one of ~~his~~ the clerk's deputies shall make a list of ~~such~~ those 961
names in the order drawn and certify ~~it~~ the list to the probate 962
court, and ~~such~~ the court shall issue a venire commanding the 963
persons whose names were drawn to appear on the day and at the 964
hour set for trial. The probate court shall deliver the venire to 965
the sheriff, who shall serve it within five days ~~thereafter~~ of 966
delivery and make prompt return of ~~such~~ the service. 967

Sec. 2101.34. If the judges of the court of common pleas are 968
absent from the county or are under a disability, the probate 969
judge of the county may enter judgments by confession in cases 970
pending in the court of common pleas of ~~his~~ the judge's county. 971

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

the court of common pleas or a probate judge so designated resides 986
outside the county in which ~~he~~ the designated judge is called upon 987
to act, ~~he~~ the designated judge shall receive ~~such~~ the 988
compensation ~~as~~ that is provided for judges of the court of common 989
pleas designated by the chief justice to hold court outside their 990
respective counties. The record of ~~such~~ the cases shall be made 991
and preserved in the proper records of the probate court by the 992
deputy clerk ~~thereof~~ of the probate court. 993

Sec. 2101.38. Letters testamentary, of administration, or of 994
guardianship shall not be issued to a person after ~~his~~ the 995
person's election to the office of probate judge and before the 996
expiration of ~~his~~ the person's term. If a probate judge is 997
interested, as heir, legatee, devisee, or other manner in an 998
estate ~~which~~ that would otherwise be settled in the probate court 999
of the county where ~~he~~ the judge resides, ~~such~~ the estate, and all 1000
of the accounts of guardians in which the judge is interested, 1001
shall be settled by the court of common pleas of the county. In 1002
~~such~~ those matters and cases in which the judge is interested, the 1003
judge shall certify the original papers ~~shall be by him forthwith~~ 1004
~~certified~~ to the court of common pleas. In other matters and 1005
proceedings in a probate court in which the judge ~~thereof~~ of the 1006
probate court is interested or in which ~~he~~ the judge is required 1007
to be a witness to a will, ~~such~~ the judge shall, upon the motion 1008
of a party interested in the proceedings, or upon ~~his~~ the judge's 1009
own motion, certify the matters and proceedings to the court of 1010
common pleas and ~~forthwith~~ file with the clerk of the court of 1011
common pleas all original papers connected ~~therewith~~ with those 1012
matters and proceedings. 1013

When a matter or proceeding is so certified, a judge of the 1014
court of common pleas, ~~at chambers, by a judge thereof, or in open~~ 1015
~~court~~ shall hear and determine ~~it~~ the matter or proceeding in 1016
chambers or in open court as though ~~such~~ the court had original 1017

jurisdiction of the subject matter. Upon final decision of the 1018
questions involved in ~~such~~ the matter or proceedings, the final 1019
settlement of the estate in which the judge is interested as 1020
executor, administrator, or guardian, or when ~~his~~ the judge's 1021
interest ~~therein~~ in the estate ceases, the clerk shall deliver the 1022
original papers to the probate court ~~from which they came~~ in which 1023
the original papers were filed and make and file ~~therein~~ in that 1024
court an authenticated transcript of the orders, judgments, and 1025
proceedings of the court of common pleas. ~~Thereupon the~~ The 1026
probate judge shall record ~~such~~ the orders, judgments, and 1027
proceedings in the proper records. 1028

Sec. 2101.41. No probate judge shall practice law, be 1029
associated with another as partner in the practice of law in a 1030
court or tribunal of this state, prepare a complaint or answer, 1031
make out an account required for the settlement of an estate 1032
committed to the care or management of another, or appear as 1033
attorney before a court or judicial tribunal. Whoever violates 1034
this section shall forfeit ~~his~~ the office of probate judge. 1035

The deputy clerk of a probate court may engage in the 1036
practice of law if ~~his~~ the deputy's practice is not related in any 1037
way to probate law or practice. The deputy may engage in the 1038
practice of law only with the continued consent and approval of 1039
all of the judges of the probate court. 1040

A ~~referee~~ magistrate appointed solely to conduct hearings 1041
under Chapters 5122. and 5123. of the Revised Code may engage in 1042
the practice of law, including probate law, except that ~~he~~ the 1043
magistrate shall not practice law under ~~these~~ those chapters other 1044
than as a ~~referee~~ magistrate and shall not knowingly accept any 1045
business arising out of or otherwise connected with a proceeding 1046
in which ~~he~~ the magistrate served as a ~~referee~~ magistrate under 1047
~~these~~ those chapters. 1048

The prosecuting attorney shall file ~~his~~ the prosecuting attorney's information against a judge or deputy clerk who practices law in violation of this section in the court of common pleas, and proceed as upon indictment.

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

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

Each elector joining in a petition for the submission of ~~said~~ the question of combining the probate court with the court of common pleas shall sign ~~such~~ the petition in the elector's own handwriting, unless the elector cannot write and the elector's signature is made by mark, and shall ~~add thereto~~ include in the

petition the township, precinct, or ward of which the elector is a 1080
resident. ~~Such~~ The petition may consist of as many parts as are 1081
convenient. One of the signers to each separate paper shall swear 1082
before ~~some~~ an officer who is qualified to administer the oath 1083
that the petition is bona fide to the best of the signer's 1084
knowledge and belief. ~~Such~~ The oath shall be a part of or attached 1085
to ~~such~~ the paper. The judge upon receipt of ~~such~~ the petition 1086
shall deposit it with the clerk of the court of common pleas. 1087

No signature shall be taken from or added to ~~such~~ the 1088
petition after it has been filed with the judge. When deposited 1089
~~such~~ the petition shall be preserved and open to public 1090
inspection, and, if it is in conformity with this section, it 1091
shall be valid, unless an objection ~~thereto~~ to the petition is 1092
made in writing by an elector of the county within five days after 1093
the filing ~~thereof~~ of the petition. ~~Such~~ The objections, or any 1094
other questions arising in the course of the submission of the 1095
question of combining ~~said courts~~ the probate court with the court 1096
of common pleas, shall be considered and determined by the judge, 1097
and the judge's decision shall be final. 1098

Sec. 2103.01. ~~In~~ As used in sections 2103.01 to 2103.09, 1099
~~inclusive~~, of the Revised Code, unless the context shows that 1100
another sense ~~was~~ is intended, "property" includes ~~lands,~~ 1101
~~tenements, hereditaments~~ real property, and money, ~~chattels,~~ 1102
choses in action, ~~and~~ evidences of debt, and other personal 1103
property. 1104

Sec. 2105.051. When a person dies, property that ~~he~~ the 1105
person gave during ~~his~~ the person's lifetime to an heir shall be 1106
treated as an advancement against the heir's share of the estate 1107
only if declared in a contemporaneous writing by the decedent, or 1108
acknowledged in writing by the heir to be an advancement. For this 1109
purpose, property advanced is valued as of the time the heir came 1110

into possession or enjoyment of the property, or as of the time of 1111
death of the decedent, whichever occurs first. If the heir does 1112
not survive the decedent, the property shall not be taken into 1113
account in computing the intestate share to be received by the 1114
heir's issue, unless the declaration or acknowledgment provides 1115
otherwise. 1116

Sec. 2105.06. When a person dies intestate having title or 1117
right to any personal property, or to any real ~~estate~~ property or 1118
inheritance, in this state, the personal property shall be 1119
distributed, and the real ~~estate~~ property or inheritance shall 1120
descend and pass in parcenary, except as otherwise provided by 1121
law, in the following course: 1122

(A) If there is no surviving spouse, to the children of the 1123
intestate or their lineal descendants, per stirpes; 1124

(B) If there is a spouse and one or more children of the 1125
decedent or their lineal descendants surviving, and all of the 1126
decedent's children who survive or have lineal descendants 1127
surviving also are children of the surviving spouse, then the 1128
whole to the surviving spouse; 1129

(C) If there is a spouse and one child of the decedent or the 1130
child's lineal descendants surviving and the surviving spouse is 1131
not the natural or adoptive parent of the decedent's child, the 1132
first twenty thousand dollars plus one-half of the balance of the 1133
intestate estate to the spouse and the remainder to the child or 1134
the child's lineal descendants, per stirpes; 1135

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

spouse and the remainder to the children equally, or to the lineal 1142
descendants of any deceased child, per stirpes; 1143

(E) If there are no children or their lineal descendants, 1144
then the whole to the surviving spouse; 1145

(F) If there is no spouse and no children or their lineal 1146
descendants, to the parents of the intestate equally, or to the 1147
surviving parent; 1148

(G) If there is no spouse, no children or their lineal 1149
descendants, and no parent surviving, to the brothers and sisters, 1150
whether of the whole or of the half blood of the intestate, or 1151
their lineal descendants, per stirpes; 1152

(H) If there are no brothers or sisters or their lineal 1153
descendants, one-half to the paternal grandparents of the 1154
intestate equally, or to the survivor of them, and one-half to the 1155
maternal grandparents of the intestate equally, or to the survivor 1156
of them; 1157

(I) If there is no paternal grandparent or no maternal 1158
grandparent, one-half to the lineal descendants of the deceased 1159
grandparents, per stirpes; if there are no such lineal 1160
descendants, then to the surviving grandparents or their lineal 1161
descendants, per stirpes; if there are no surviving grandparents 1162
or their lineal descendants, then to the next of kin of the 1163
intestate, provided there shall be no representation among ~~such~~ 1164
the next of kin; 1165

(J) If there are no next of kin, to stepchildren or their 1166
lineal descendants, per stirpes; 1167

(K) If there are no stepchildren or their lineal descendants, 1168
escheat to the state. 1169

Sec. 2105.10. (A) As used in this section: 1170

(1) "Abandoned" means that a parent of a minor failed without 1171

justifiable cause to communicate with the minor, care for ~~him~~ the 1172
minor, and provide for ~~his~~ the minor's maintenance or support as 1173
required by law or judicial decree for a period of at least one 1174
year immediately prior to the date of the death of the minor. 1175

(2) "Minor" means a person who is less than eighteen years of 1176
age. 1177

(B) Subject to divisions (C), (D), and (E) of this section, a 1178
parent who has abandoned ~~his~~ the parent's minor child who 1179
subsequently dies intestate as a minor shall not inherit the real 1180
or personal property of the deceased child pursuant to section 1181
2105.06 of the Revised Code. If a parent is prohibited by this 1182
division from inheriting from ~~his~~ the parent's deceased child, the 1183
real or personal property of the deceased child shall be 1184
distributed, or shall descend and pass in parcenary, pursuant to 1185
section 2105.06 of the Revised Code as if the parent had 1186
predeceased the deceased child. 1187

(C) Subject to divisions (D) and (E) of this section, a 1188
parent who is alleged to have abandoned a child who died as an 1189
intestate minor shall be considered as a next of kin or an heir at 1190
law of the deceased child only for the following purposes: 1191

(1) To receive any notice required to be given to the heirs 1192
at law of a decedent in connection with an application for release 1193
of an estate from administration under section 2113.03 of the 1194
Revised Code; 1195

(2) To be named as a next of kin in an application for the 1196
appointment of a person as the administrator of the estate of the 1197
deceased child, if the parent is known to the person filing the 1198
application pursuant to section 2113.07 of the Revised Code, and 1199
to receive a citation issued by the probate court pursuant to that 1200
section. 1201

(D)(1) The prohibition against inheritance set forth in 1202

division (B) of this section shall be enforceable only in 1203
accordance with a probate court adjudication rendered pursuant to 1204
this division. 1205

(2) If the administrator of the estate of an intestate minor 1206
has actual knowledge, or reasonable cause to believe, that the 1207
minor was abandoned by a parent, the administrator shall file a 1208
petition pursuant to section 2123.02 of the Revised Code to obtain 1209
an adjudication that the parent abandoned the child and that, 1210
because of the prohibition against inheritance set forth in 1211
division (B) of this section, the parent shall not be considered 1212
to be an heir at law of, and shall not be entitled to inherit the 1213
real and personal property of, the deceased child pursuant to 1214
section 2105.06 of the Revised Code. That parent shall be named as 1215
a defendant in the petition and, whether or not that parent is a 1216
resident of this state, shall be served with a summons and a copy 1217
of the petition in accordance with the Rules of Civil Procedure. 1218
In the heirship determination proceeding, the administrator has 1219
the burden of proving, by a preponderance of the evidence, that 1220
the parent abandoned the child. If, after the hearing, the probate 1221
court finds that the administrator has sustained that burden of 1222
proof, the probate court shall include in its adjudication 1223
described in section 2123.05 of the Revised Code its findings that 1224
the parent abandoned the child and, because of the prohibition 1225
against inheritance set forth in division (B) of this section, the 1226
parent shall not be considered to be an heir at law of, and shall 1227
not be entitled to inherit the real and personal property of, the 1228
deceased child pursuant to section 2105.06 of the Revised Code. If 1229
the probate court so finds, then, upon the entry of its 1230
adjudication on its journal, the administrator may make a final 1231
distribution of the estate of the deceased child in accordance 1232
with division (B) of this section. 1233

(3) An heirship determination proceeding resulting from the 1234

filing of a petition pursuant to this division shall be conducted 1235
in accordance with Chapter 2123. of the Revised Code, except to 1236
the extent that a provision of this section conflicts with a 1237
provision of that chapter, in which case the provision of this 1238
section shall control. 1239

(E) If the administrator of the estate of an intestate minor 1240
has not commenced an heirship determination proceeding as 1241
described in division (D) of this section within four months from 1242
the date that ~~he~~ the administrator receives ~~his~~ the 1243
administrator's letters of administration, then ~~such a~~ that 1244
proceeding may not be commenced subsequently, no parent of the 1245
deceased child shall be prohibited from inheriting the real or 1246
personal property of the deceased child pursuant to division (B) 1247
of this section, and the probate of the estate of the deceased 1248
child in accordance with section 2105.06 and other relevant 1249
sections of the Revised Code shall be forever binding. 1250

Sec. 2105.11. When a person dies intestate leaving children 1251
and none of the children of ~~such~~ the intestate have died leaving 1252
children or their lineal descendants, ~~such~~ the estate shall 1253
descend to the children of ~~such~~ the intestate, living at the time 1254
of ~~his~~ the intestate's death, in equal proportions. 1255

Sec. 2105.13. If some of the children of an intestate are 1256
living and others are dead, the estate shall descend to the 1257
children who are living and to the lineal descendants of ~~such~~ the 1258
children ~~as~~ who are dead, so that each child who is living will 1259
inherit the share to which ~~he~~ the child who is living would have 1260
been entitled if all the children of the intestate were living, 1261
and the lineal descendants of the deceased child will inherit 1262
equal parts of that portion of the estate to which ~~such~~ the 1263
deceased child would be entitled if ~~he~~ the deceased child were 1264
living. 1265

This section shall apply in all cases in which the 1266
descendants of the intestate, not more remote than lineal 1267
descendants of grandparents, entitled to share in the estate, are 1268
of unequal degree of consanguinity to the intestate, so that those 1269
who are of the nearest degree of consanguinity will take the share 1270
to which they would have been entitled, had all the descendants in 1271
the same degree of consanguinity with them who died leaving issue, 1272
been living. 1273

Sec. 2105.14. Descendants of an intestate begotten before ~~his~~ 1274
the intestate's death, but born ~~thereafter~~ after the intestate's 1275
death, in all cases will inherit as if born in the lifetime of the 1276
intestate and surviving ~~him~~ the intestate; but in no other case 1277
can a person inherit unless living at the time of the death of the 1278
intestate. 1279

Sec. 2105.15. A person of sound mind and memory may appear 1280
before the probate judge of ~~his~~ the person's county and in the 1281
presence of ~~such~~ the judge and two disinterested persons of ~~such~~ 1282
that person's acquaintance, file a written declaration declaring 1283
that, as ~~his~~ the person's free and voluntary act, ~~he~~ the person 1284
did designate and appoint another, stating the name and place of 1285
residence of ~~such~~ the other person specifically, to stand toward 1286
~~him~~ the person in the relation of an heir at law in the event of 1287
~~his~~ the person's death. ~~Such~~ The declaration ~~must~~ shall be 1288
attested by the two disinterested persons and subscribed by the 1289
declarant. If satisfied that ~~such~~ the declarant is of sound mind 1290
and memory and free from restraint, the judge ~~thereupon~~ shall 1291
enter that fact upon ~~his~~ the judge's journal and make a complete 1292
record of ~~such~~ the proceedings. ~~Thenceforward~~ From then on the 1293
person designated will stand in the same relation, for all 1294
purposes, to ~~such~~ the declarant as ~~he~~ the person designated could 1295
if a child born in lawful wedlock. The rules of inheritance will 1296

be the same between ~~him~~ the person designated and the relations by 1297
blood of the declarant, as if so born. A certified copy of ~~such~~ 1298
the record will be prima-facie evidence of the fact stated ~~therein~~ 1299
in the record, and conclusive evidence, unless impeached for 1300
actual fraud or undue influence. After a lapse of one year from 1301
the date of ~~such~~ the designation, ~~such~~ the declarant may have ~~such~~ 1302
the designation vacated or changed by filing in ~~said~~ that probate 1303
court an application to vacate or change ~~such~~ the designation of 1304
heir; provided, that there is compliance with the procedure, 1305
conditions, and prerequisites required in the making of the 1306
original declaration. 1307

Sec. 2105.16. No person who is capable of inheriting shall be 1308
deprived of the inheritance by reason of any of ~~his~~ the person's 1309
ancestors having been aliens. Aliens may hold, possess, and enjoy 1310
~~lands, tenements, and hereditaments~~ real property within this 1311
state, either by descent, devise, gift, or purchase, as fully as 1312
any citizen of the United States or of this state may do. 1313

Sec. 2105.19. (A) Except as provided in division (C) of this 1314
section, no person who is convicted of, pleads guilty to, or is 1315
found not guilty by reason of insanity of a violation of or 1316
complicity in the violation of section 2903.01, 2903.02, or 1317
2903.03 of the Revised Code or of an existing or former law of any 1318
other state, the United States, or a foreign nation, substantially 1319
equivalent to a violation of or complicity in the violation of any 1320
of these sections, no person who is indicted for a violation of or 1321
complicity in the violation of any of those sections or laws and 1322
subsequently is adjudicated incompetent to stand trial on that 1323
charge, and no juvenile who is found to be a delinquent child by 1324
reason of committing an act that, if committed by an adult, would 1325
be a violation of or complicity in the violation of any of those 1326
sections or laws, shall in any way benefit by the death. All 1327

property of the decedent, and all money, insurance proceeds, or 1328
other property or benefits payable or distributable in respect of 1329
the decedent's death, shall pass or be paid or distributed as if 1330
the person who caused the death of the decedent had predeceased 1331
the decedent. 1332

(B) A person prohibited by division (A) of this section from 1333
benefiting by the death of another is a constructive trustee for 1334
the benefit of those entitled to any property or benefit that the 1335
person has obtained, or over which ~~he~~ the person has exerted 1336
control, because of the decedent's death. A person who purchases 1337
any such property or benefit from the constructive trustee, for 1338
value, in good faith, and without notice of the constructive 1339
trustee's disability under division (A) of this section, acquires 1340
good title, but the constructive trustee is accountable to the 1341
beneficiaries for the proceeds or value of the property or 1342
benefit. 1343

(C) A person who is prohibited from benefiting from a death 1344
pursuant to division (A) of this section either because ~~he~~ the 1345
person was adjudicated incompetent to stand trial or was found not 1346
guilty by reason of insanity, or ~~his~~ the person's guardian 1347
appointed pursuant to Chapter 2111. of the Revised Code or other 1348
legal representative, may file a complaint to declare ~~his~~ the 1349
person's right to benefit from the death in the probate court in 1350
which the decedent's estate is being administered or ~~which that~~ 1351
released the estate from administration. The complaint shall be 1352
filed no later than sixty days after the person is adjudicated 1353
incompetent to stand trial or found not guilty by reason of 1354
insanity. The court shall notify each person who is a devisee or 1355
legatee under the decedent's will, or if there is no will, each 1356
person who is an heir of the decedent pursuant to section 2105.06 1357
of the Revised Code that ~~such~~ a complaint of that nature has been 1358
filed within ten days after the filing of ~~such a~~ the complaint. 1359

The person who files the ~~motion~~ complaint, and each person who is 1360
required to be notified of the filing of the ~~motion~~ complaint 1361
under this division, is entitled to a jury trial in the action. To 1362
assert the right, the person desiring a jury trial shall demand a 1363
jury in the manner prescribed in the Civil Rules. 1364

A person who files a complaint pursuant to this division 1365
shall be restored to ~~his~~ the person's right to benefit from the 1366
death unless the court determines, by a preponderance of the 1367
evidence, that the person would have been convicted of a violation 1368
of, or complicity in the violation of, section 2903.01, 2903.02, 1369
or 2903.03 of the Revised Code, or of a law of another state, the 1370
United States, or a foreign nation that is substantially similar 1371
to any of those sections, if ~~he~~ the person had been brought to 1372
trial in the case in which ~~he~~ the person was adjudicated 1373
incompetent or if ~~he~~ the person were not insane at the time of the 1374
commission of the offense. 1375

Sec. 2106.01. (A) After the initial appointment of an 1376
administrator or executor of the estate, the probate court shall 1377
issue a citation to the surviving spouse, if any is living at the 1378
time of the issuance of the citation, to elect whether to exercise 1379
the surviving spouse's rights under Chapter 2106. of the Revised 1380
Code, including, after the probate of a will, the right to elect 1381
to take under the will or under section 2105.06 of the Revised 1382
Code. 1383

A surviving spouse may waive the service of the citation 1384
required under this division by filing in the probate court a 1385
written waiver of the citation. The waiver shall include an 1386
acknowledgment of receipt of the description of the general rights 1387
of the surviving spouse required by division (B) of section 1388
2106.02 of the Revised Code. 1389

(B) If the surviving spouse elects to take under section 1390

2105.06 of the Revised Code and if the value of the property that 1391
the surviving spouse is entitled to receive is equal to or greater 1392
than the value of the decedent's interest in the mansion house as 1393
determined under section 2106.10 of the Revised Code, the 1394
surviving spouse also is entitled to make an election pursuant to 1395
division (A) of section 2106.10 of the Revised Code. 1396

(C) If the surviving spouse elects to take under section 1397
2105.06 of the Revised Code, the surviving spouse shall take not 1398
to exceed one-half of the net estate, unless two or more of the 1399
decedent's children or their lineal descendants survive, in which 1400
case the surviving spouse shall take not to exceed one-third of 1401
the net estate. 1402

For purposes of this division, the net estate shall be 1403
determined before payment of federal estate tax, estate taxes 1404
under Chapter 5731. of the Revised Code, or any other tax that is 1405
subject to apportionment under section 2113.86 or 2113.861 of the 1406
Revised Code. 1407

(D) Unless the will expressly provides that in case of an 1408
election under division (A) of this section there shall be no 1409
acceleration of remainder or other interests bequeathed or devised 1410
by the will, the balance of the net estate shall be disposed of as 1411
though the surviving spouse had predeceased the testator. If there 1412
is a disposition by a will to an inter vivos trust that was 1413
created by the testator, if under the terms of the trust the 1414
surviving spouse is entitled to any interest in the trust or is 1415
granted any power or nomination with respect to the trust, and if 1416
the surviving spouse makes an election to take under section 1417
2105.06 of the Revised Code, then, unless the trust instrument 1418
provides otherwise, the surviving spouse is ~~deemed~~ considered for 1419
purposes of the trust to have predeceased the testator, and there 1420
shall be an acceleration of remainder or other interests in all 1421
property bequeathed or devised to the trust by the will, in all 1422

property held by the trustee at the time of the death of the 1423
decedent, and in all property that comes into the ~~hands~~ possession 1424
or under the control of the trustee by reason of the death of the 1425
decedent. 1426

(E) The election of a surviving spouse to take under a will 1427
or under section 2105.06 of the Revised Code may be made at any 1428
time after the death of the decedent, but the surviving spouse 1429
shall not make the election later than five months from the date 1430
of the initial appointment of an administrator or executor of the 1431
estate. On a motion filed before the expiration of the five-month 1432
period, and for good cause shown, the court may allow further time 1433
for the making of the election. If no action is taken by the 1434
surviving spouse before the expiration of the five-month period, 1435
it is conclusively presumed that the surviving spouse elects to 1436
take under the will. The election shall be entered on the journal 1437
of the court. 1438

When proceedings for advice or to contest the validity of a 1439
will are begun within the time allowed by this division for making 1440
the election, the election may be made within three months after 1441
the final disposition of the proceedings, if the will is not set 1442
aside. 1443

(F) When a surviving spouse succeeds to the entire estate of 1444
the testator, having been named the sole devisee and legatee, it 1445
shall be presumed that the spouse elects to take under the will of 1446
the testator, unless the surviving spouse manifests a contrary 1447
intention. 1448

Sec. 2106.08. If, because of a legal disability, a surviving 1449
spouse is unable to make an election as provided by section 1450
2106.01 of the Revised Code, as soon as the facts come to the 1451
knowledge of the probate court, the probate court shall appoint 1452
some suitable person to ascertain the value of the provision made 1453

for the surviving spouse by the testator, the value of the rights 1454
of the surviving spouse in the estate of the testator under 1455
Chapter 2105. of the Revised Code, and the adequate support needs 1456
of the surviving spouse after taking into consideration the other 1457
available resources and the age, probable life expectancy, 1458
physical and mental condition, and present and reasonably 1459
anticipated future needs of the surviving spouse. The appointment 1460
by the court shall be made at any time within the times described 1461
in division (E) of section 2106.01 of the Revised Code for making 1462
an election under that section. 1463

When the person so appointed returns the report of ~~his~~ the 1464
person's investigation, the court may elect for the surviving 1465
spouse to take under section 2105.06 of the Revised Code only if 1466
it finds, after taking into consideration the other available 1467
resources and the age, probable life expectancy, physical and 1468
mental condition, and present and reasonably anticipated future 1469
needs of the surviving spouse, that the election to take under 1470
section 2105.06 of the Revised Code is necessary to provide 1471
adequate support for the surviving spouse during ~~his~~ the surviving 1472
spouse's life expectancy. 1473

After making its determination under this section, the court 1474
shall record upon its journal the election made for the surviving 1475
spouse. The election, when so entered, shall have the same effect 1476
as an election made by one not under legal disability. 1477

Sec. 2106.11. Subject to the right of the surviving spouse to 1478
elect to receive the decedent's interest in the mansion house 1479
pursuant to section 2106.10 of the Revised Code, the specific 1480
monetary share payable to a surviving spouse under division (B), 1481
(C), or (D) of section 2105.06 of the Revised Code shall be paid 1482
out of the tangible and intangible personal property in the 1483
intestate estate to the extent that the personal property is 1484

available for distribution. The personal property distributed to 1485
the surviving spouse, other than cash, shall be valued at the 1486
appraised value. 1487

Before tangible and intangible personal property is 1488
transferred to the surviving spouse in payment or part payment of 1489
the specific monetary share, the administrator or executor shall 1490
file an application that includes an inventory of the personal 1491
property intended to be distributed in kind to the surviving 1492
spouse, together with a statement of the appraised value of each 1493
item of personal property included. The court shall examine the 1494
application and make a finding of the amount of personal property 1495
to be distributed to the surviving spouse, and shall order that 1496
the personal property be distributed to the surviving spouse. The 1497
court concurrently shall make a finding of the amount of money 1498
that remains due and payable to the surviving spouse in 1499
satisfaction of the specific monetary share to which the surviving 1500
spouse is entitled under division (B), (C), or (D) of section 1501
2105.06 of the Revised Code. Any amount that remains due and 1502
payable shall be a charge on the title to any real property in the 1503
estate but the charge does not bear interest. This charge may be 1504
conveyed or released in the same manner as any other interest in 1505
real ~~estate~~ property and may be enforced by foreclosure or any 1506
other appropriate remedy. 1507

Sec. 2107.01. ~~In~~ As used in Chapters 2101. to 2131. of the 1508
Revised Code, ~~"will":~~ 1509

(A) "Will" includes codicils to wills admitted to probate, 1510
lost, spoliated, or destroyed wills, and instruments admitted to 1511
probate under section 2107.081 of the Revised Code, but "will" 1512
does not include inter vivos trusts or other instruments that have 1513
not been admitted to probate. 1514

(B) "Testator" means any person who makes a will. 1515

Sec. 2107.02. A person ~~of the age of~~ who is eighteen years, 1516
of age or ~~ever~~ older, of sound mind and memory, and not under 1517
restraint may make a will. 1518

Sec. 2107.03. Except oral wills, every ~~last will and~~ 1519
~~testament~~ shall be in writing, but may be handwritten or 1520
typewritten. The will shall be signed at the end by the testator 1521
~~making it~~ or by some other person in the testator's conscious 1522
presence and at the testator's express direction, ~~and.~~ The will 1523
shall be attested and subscribed in the conscious presence of the 1524
testator, by two or more competent witnesses, who saw the testator 1525
subscribe, or heard the testator acknowledge the testator's 1526
signature. 1527

For purposes of this section, "conscious presence" means 1528
within the range of any of the testator's senses, excluding the 1529
sense of sight or sound that is sensed by telephonic, electronic, 1530
or other distant communication. 1531

Sec. 2107.04. No agreement to make a will or to make a devise 1532
or bequest by will shall be enforceable unless it is in writing. 1533
~~Such~~ The agreement ~~must~~ shall be signed by the maker or by some 1534
other person at ~~such~~ the maker's express direction. If signed by a 1535
person other than ~~such~~ the maker, the instrument ~~must~~ shall be 1536
subscribed by two or more competent witnesses who heard ~~such~~ the 1537
maker acknowledge that it was signed at ~~his~~ the maker's direction. 1538
1539

Sec. 2107.05. An existing document, book, record, or 1540
memorandum may be incorporated in a will by reference, if referred 1541
to as being in existence at the time the will is executed. ~~Such~~ 1542
That document, book, record, or memorandum shall be deposited in 1543

the probate court when the will is probated or within thirty days 1544
~~thereafter~~ after the will is probated, unless the court grants an 1545
extension of time for good cause shown. A copy may be substituted 1546
for the original document, book, record, or memorandum if ~~such~~ the 1547
copy is certified to be correct by a person authorized to take 1548
acknowledgments ~~on deeds~~. 1549

Sec. 2107.07. A will may be deposited by the ~~maker~~ testator, 1550
or by some person for the ~~maker~~ testator, in the office of the 1551
judge of the probate court in the county in which the testator 1552
lives. ~~Such~~ That will shall be safely kept until delivered or 1553
disposed of as provided by section 2107.08 of the Revised Code. 1554
The judge, on being paid the fee of ~~one dollar~~ five dollars, shall 1555
receive, keep, and give a certificate of deposit for ~~such~~ the 1556
will. 1557

Every will ~~which~~ that is ~~to be~~ so deposited shall be enclosed 1558
in a sealed ~~wrapper~~, ~~which~~ envelope ~~that~~ shall be indorsed with 1559
the name of the testator. The judge shall indorse ~~thereon~~ on the 1560
envelope the date of delivery and the person by whom ~~such~~ the will 1561
was delivered. The ~~wrapper~~ envelope may be indorsed with the name 1562
of a person to whom it is to be delivered after the death of the 1563
testator. ~~Such~~ The will shall not be opened or read until 1564
delivered to a person entitled to receive it, until the ~~maker~~ 1565
~~petitions~~ testator files a complaint in the probate court for a 1566
declaratory judgment of the validity of the will pursuant to 1567
section 2107.081 of the Revised Code, or until otherwise disposed 1568
of as provided in section 2107.08 of the Revised Code. 1569

Sec. 2107.08. During the lifetime of a testator, the 1570
testator's will, deposited according to section 2107.07 of the 1571
Revised Code, shall be delivered only to ~~him~~ the testator, to some 1572
person authorized by ~~him~~ the testator by a written order, or to a 1573
probate court for a determination of its validity when the 1574

testator so requests. After the testator's death, the will shall 1575
be delivered to the person named in the indorsement on the ~~wrapper~~ 1576
envelope of the will, if there is a person named who demands it. 1577
If the testator has ~~petitioned~~ filed a complaint in the probate 1578
court for a judgment declaring the validity of the will pursuant 1579
to section 2107.081 of the Revised Code and the court has rendered 1580
the judgment, the probate judge with possession shall deliver the 1581
will to the proper probate court as determined under section 1582
2107.11 of the Revised Code, upon the death of the testator, for 1583
probate. 1584

If no person named in the indorsement demands the will and it 1585
is not one that has been declared valid pursuant to section 1586
2107.084 of the Revised Code, it shall be publicly opened in the 1587
probate court within ~~two months~~ one month after notice of the 1588
testator's death and retained in the office of the probate judge 1589
until offered for probate. If the jurisdiction belongs to any 1590
other probate court, the will shall be delivered to the person 1591
entitled to its custody, to be presented for probate in the other 1592
court. If the probate judge who opens the will has jurisdiction of 1593
it, ~~he~~ the probate judge immediately shall give notice of its 1594
existence to the executor named in the will or, if any, to the 1595
persons holding a power to nominate an executor as described in 1596
section 2107.65 of the Revised Code, or, if it is the case, to the 1597
executor named in the will and to the persons holding a power to 1598
nominate a coexecutor as described in that section. If no executor 1599
is named and no persons hold a power to nominate an executor as 1600
described in that section, the probate judge shall give notice to 1601
other persons immediately interested. 1602

Sec. 2107.081. (A) A person who executes a will allegedly in 1603
conformity with the laws of this state may ~~petition~~ file a 1604
complaint in the probate court of the county in which ~~he~~ the 1605
person is domiciled, ~~if he~~ the person is domiciled in this state, 1606

or in the probate court of the county in which any of ~~his~~ the 1607
person's real property is located, if ~~he~~ the person is not 1608
domiciled in this state, for a judgment declaring the validity of 1609
the will. 1610

The ~~petition~~ complaint may be filed in the form determined by 1611
the probate court of the county in which it is filed. 1612

The ~~petition~~ complaint shall name as parties defendant all 1613
persons named in the will as beneficiaries, and all of the persons 1614
who would be entitled to inherit from the testator under Chapter 1615
2105. of the Revised Code had the testator died intestate on the 1616
date the ~~petition~~ complaint was filed. 1617

For the purposes of this section, "domicile" shall be 1618
determined at the time of filing the ~~petition~~ complaint with the 1619
probate court. 1620

(B) The failure of a testator to file a ~~petition~~ complaint 1621
for a judgment declaring the validity of a will ~~he~~ the testator 1622
has executed shall not be construed as evidence or an admission 1623
that the will was not properly executed pursuant to section 1624
2107.03 of the Revised Code or any prior law of this state in 1625
effect at the time of execution or as evidence or an admission 1626
that the testator did not have the requisite testamentary capacity 1627
~~and freedom from undue influence under section 2107.02 of the~~ 1628
~~Revised Code~~ or was under any restraint. 1629

Sec. 2107.082. Service of process in an action authorized by 1630
section 2107.081 of the Revised Code shall be made on every party 1631
defendant named in ~~that action~~ the complaint filed under that 1632
section by the following methods: 1633

(A) By certified mail, or any other valid personal service 1634
permitted by the Rules of Civil Procedure, if the party is an 1635
inhabitant of this state or is found within this state; 1636

(B) By certified mail, with a copy of the summons and 1637
~~petition~~ complaint, to the party at ~~his~~ the party's last known 1638
address or any other valid personal service permitted by the Rules 1639
of Civil Procedure, if the party is not an inhabitant of this 1640
state or is not found within this state; 1641

(C) By publication, according to Civil Rule 4.4, in a 1642
newspaper of general circulation published in the county where the 1643
~~petition~~ complaint was filed, for three consecutive weeks, if the 1644
address of the party is unknown, if all methods of personal 1645
service permitted under division (B) of this section were 1646
attempted without success, or if the interest of the party under 1647
the will or in the estate of the testator should the will be 1648
declared invalid is unascertainable at that time. 1649

Sec. 2107.083. When a ~~petition~~ complaint is filed pursuant to 1650
section 2107.081 of the Revised Code, the probate court shall 1651
conduct a hearing on the validity of the will. The hearing shall 1652
be adversary in nature and shall be conducted pursuant to section 1653
2721.10 of the Revised Code, except as otherwise provided in 1654
sections 2107.081 to 2107.085 of the Revised Code. 1655

Sec. 2107.084. (A) The probate court shall declare the will 1656
valid if, after conducting a proper hearing pursuant to section 1657
2107.083 of the Revised Code, it finds that the will was properly 1658
executed pursuant to section 2107.03 of the Revised Code or under 1659
any prior law of this state that was in effect at the time of 1660
execution and that the testator had the requisite testamentary 1661
capacity and ~~freedom from undue influence pursuant to section~~ 1662
~~2107.02 of the Revised Code~~ was not under any restraint. 1663

Any ~~such~~ judgment under this section declaring a will valid 1664
is binding in this state as to the validity of the will on all 1665
facts found, unless provided otherwise in this section, section 1666

2107.33 of the Revised Code, or division (B) of section 2107.71 of 1667
the Revised Code, and, if the will remains valid, shall give the 1668
will full legal effect as the instrument of disposition of the 1669
testator's estate, unless the will has been modified or revoked 1670
according to law. 1671

(B) Any declaration of validity issued as a judgment pursuant 1672
to this section shall be sealed in an envelope along with the will 1673
to which it pertains, and filed by the probate judge or ~~his~~ 1674
~~designated officer~~ the probate judge's designee in the offices of 1675
that probate court. The filed will shall be available during the 1676
testator's lifetime only to the testator. If the testator removes 1677
a filed will from the possession of the probate judge, the 1678
declaration of validity rendered under division (A) of this 1679
section no longer has any effect. 1680

(C) A testator may revoke or modify a will declared valid and 1681
filed with a probate court pursuant to this section by ~~petitioning~~ 1682
filing a complaint in the probate court in possession of the will 1683
and asking that the will be revoked or modified. The ~~petition~~ 1684
complaint shall include a document executed pursuant to sections 1685
2107.02 and 2107.03 of the Revised Code, and shall name as parties 1686
defendant those persons who were parties defendant in any previous 1687
action declaring the will valid, those persons who are named in 1688
any modification as beneficiaries, and those persons who would be 1689
entitled because of the revocation or modification, to inherit 1690
from the testator under Chapter 2105. of the Revised Code had the 1691
testator died intestate on the date the ~~petition~~ complaint was 1692
filed. Service of the ~~petition~~ complaint and process shall be made 1693
on these parties by the methods authorized in section 2107.082 of 1694
the Revised Code. 1695

Unless waived by all parties, the court shall conduct a 1696
hearing on the validity of the revocation or modification 1697
requested under this division in the same manner as it would on 1698

any initial ~~petition~~ complaint for a judgment declaring a will to 1699
be valid under this section. If the court finds that the 1700
revocation or modification is valid, ~~as defined~~ under the 1701
procedure described in division (A) of this section, the 1702
revocation or modification shall take full effect and be binding, 1703
and shall revoke the will or modify it to the extent of the valid 1704
modification. The revocation or modification, the judgment 1705
declaring it valid, and the will itself shall be sealed in an 1706
envelope and filed with the probate court, and shall be available 1707
during the testator's lifetime only to the testator. 1708

(D) A ~~testator may also modify a will by any later will or~~ 1709
that has been declared valid under division (A) of this section 1710
and is in the possession of the probate judge may be modified by 1711
~~codicil executed according to the laws of this state or any other~~ 1712
~~state and if the codicil is declared valid by the same procedure~~ 1713
as the will. A testator may revoke a will by any method permitted 1714
under section 2107.33 of the Revised Code. 1715

(E) A declaration of validity of a will, ~~or of a codicil to a~~ 1716
will previously declared valid, or of a revocation or modification 1717
of a will previously determined to be valid, that is given under 1718
division (A) or (C) of this section, whichever is applicable, is 1719
not subject to collateral attack, except by a person and in the 1720
manner specified in division (B) of section 2107.71 of the Revised 1721
Code, but is appealable subject to the terms of Chapter 2721. of 1722
the Revised Code. 1723

Sec. 2107.085. The finding of facts by a probate court in a 1724
proceeding brought under sections 2107.081 to 2107.085 of the 1725
Revised Code is not admissible as evidence in any proceeding other 1726
than one brought to determine the validity of a will. 1727

The determination or judgment rendered in a proceeding under 1728
~~these~~ those sections is not binding upon the parties to ~~such a~~ 1729

that proceeding in any action not brought to determine the 1730
validity of a will. 1731

The failure of a testator to file a ~~petition~~ complaint for a 1732
judgment declaring the validity of a will ~~he~~ the testator has 1733
executed is not admissible as evidence in any proceeding to 1734
determine the validity of that will or any other will executed by 1735
the testator. 1736

Sec. 2107.09. (A) If real ~~or personal estate~~ property is 1737
devised or personal property is bequeathed by a ~~last~~ will, the 1738
executor, or any interested person, may cause ~~such~~ the will to be 1739
brought before the probate court of the county in which the 1740
decedent was domiciled. By ~~citation, attachment, or warrant or, if~~ 1741
~~circumstances require it, by warrant or attachment in the first~~ 1742
~~instance~~ judicial order, ~~such~~ the court may compel the person 1743
having the custody or control of ~~such~~ the will to produce it 1744
before the court for the purpose of being proved. 1745

If the person having the custody or control of the will 1746
intentionally conceals or withholds it or neglects or refuses to 1747
produce it for probate without reasonable cause, ~~he~~ the person may 1748
be committed to the county jail and kept in ~~close~~ custody until ~~he~~ 1749
~~produces~~ the will is produced. ~~This~~ The person also shall be 1750
liable to any party aggrieved for the damages sustained by ~~such~~ 1751
that neglect or refusal. 1752

Any ~~citation, attachment, or warrant~~ judicial order issued 1753
pursuant to this section may be issued into any county in the 1754
state and shall be served and returned by the officer to whom it 1755
is delivered. 1756

The officer to whom ~~such~~ the process is delivered shall be 1757
liable for neglect in its service or return in ~~like~~ the same 1758
manner as sheriffs are liable for neglect in not serving or 1759
returning a capias issued upon an indictment. 1760

(B) In the case of a will that has been declared valid 1761
pursuant to section 2107.084 of the Revised Code, the probate 1762
judge who made the declaration or who has possession of the will 1763
shall cause the will and the judgment declaring validity to be 1764
brought before the proper probate court as determined by section 1765
2107.11 of the Revised Code at a time after the death of the 1766
testator. If the death of the testator is brought to the attention 1767
of the probate judge by an interested party, the judge shall cause 1768
the will to be brought before the proper probate court at that 1769
time. 1770

Sec. 2107.10. (A) No property or right, testate or intestate, 1771
shall pass to a beneficiary named in a will who knows of the 1772
existence of the will for ~~three years~~ one year after the death of 1773
the testator and has the power to control it, and, without 1774
reasonable cause, intentionally conceals or withholds it or 1775
neglects or refuses within ~~the three years~~ that one year to cause 1776
it to be offered for or admitted to probate. The ~~estate~~ property 1777
devised or bequeathed to ~~such devisee~~ that beneficiary shall 1778
descend to the heirs of the testator, not including any heir who 1779
has concealed or withheld the will. 1780

(B) No property or right, testate or intestate, passes to a 1781
beneficiary named in a will when the will was declared valid and 1782
filed with a probate judge pursuant to section 2107.084 of the 1783
Revised Code, the declaration and filing took place in a county 1784
different from the county in which the will of the testator would 1785
be probated under section 2107.11 of the Revised Code, and the 1786
named beneficiary knew of the declaration and filing and of the 1787
death of the testator and did not notify the probate judge with 1788
whom the will was filed. This division does not preclude a named 1789
beneficiary from acquiring property or rights from the estate of 1790
the testator for failing to notify a probate judge if ~~it is his~~ 1791
~~reasonable belief~~ the named beneficiary reasonably believes that 1792

the judge has previously been notified of the testator's death. 1793

Sec. 2107.11. (A) A will shall be admitted to probate: 1794

~~(A)(1)~~ In the county in this state in which the testator was 1795
domiciled ~~if~~, at the time of ~~his~~ the testator's death, ~~he was~~ 1796
~~domiciled in this state;~~ 1797

~~(B)(2)~~ In any county of this state where any real property or 1798
personal property of ~~such~~ the testator is located if, at the time 1799
of ~~his~~ the testator's death, ~~he~~ the testator was not domiciled in 1800
this state, and provided that ~~such~~ the will has not previously 1801
been admitted to probate in this state or in the state of ~~such~~ the 1802
testator's domicile; 1803

~~(C)(3)~~ In the county of this state in which a probate court 1804
rendered a judgment declaring that the will was valid and ~~where~~ in 1805
which the will was filed with the probate court. 1806

(B) For the purpose of division (A)(2) of this section, 1807
intangible personal property is located in the place where the 1808
instrument evidencing a debt, obligation, stock, or chose in 1809
action is located or if there is no ~~such~~ instrument of that nature 1810
where the debtor resides. 1811

Sec. 2107.15. If a devise or bequest is made to a person who 1812
is one of only two witnesses to a will, the devise or bequest is 1813
void. The witness shall then be competent to testify to the 1814
execution of the will, as if the devise or bequest had not been 1815
made. If the witness would have been entitled to a share of the 1816
testator's estate in case the will was not established, ~~he~~ the 1817
witness takes so much of that share that does not exceed the 1818
bequest or devise to ~~him~~ the witness. The devisees and legatees 1819
shall contribute for that purpose as for an absent or afterborn 1820
child under section 2107.34 of the Revised Code. 1821

Sec. 2107.17. When a witness to a will, or other witness 1822
competent to testify at a probate or declaratory judgment 1823
proceeding, resides out of its jurisdiction, or resides within it 1824
but is infirm and unable to attend court, the probate court may 1825
issue a commission with the will annexed directed to any suitable 1826
person. In lieu of the original will, the probate court, in its 1827
discretion, may annex to the commission a photocopy of the will or 1828
a copy of the will made by photostatic or any similar process. The 1829
person to whom the commission is directed shall take the 1830
deposition or authorize the taking of the deposition of the 1831
witness as provided by the Rules of Civil Procedure. The 1832
testimony, certified and returned, shall be admissible and have 1833
the same effect in the proceedings as if taken in open court. 1834

Sec. 2107.18. The probate court shall admit a will to probate 1835
if it appears from the face of the will, or if the probate court 1836
requires, in its discretion, the testimony of the witnesses to a 1837
will and it appears from that testimony, that the execution of the 1838
will complies with the law in force at the time of the execution 1839
of the will in the jurisdiction in which it was executed, ~~or~~ with 1840
the law in force in this state at the time of the death of the 1841
testator, or with the law in force in the jurisdiction in which 1842
the testator was domiciled at the time of ~~his~~ the testator's 1843
death. 1844

The probate court shall admit a will to probate when there 1845
has been a prior judgment by a probate court declaring that the 1846
will is valid, rendered pursuant to section 2107.084 of the 1847
Revised Code, if the will has not been removed from the possession 1848
of the probate judge and has not been modified or revoked under 1849
division (C) or (D) of section 2107.084 of the Revised Code. 1850

Sec. 2107.20. When admitted to probate every will shall be 1851

filed in the office of the probate judge and recorded, together 1852
with any testimony or prior judgment of a probate court declaring 1853
the will valid, by ~~him~~ the judge or the clerk of the probate court 1854
in a book to be kept for that purpose. 1855

A copy of ~~such the~~ recorded will, with a copy of the order of 1856
probate annexed ~~thereto~~ to the copy of the recorded will, 1857
certified by the judge under seal of ~~his~~ the judge's court, shall 1858
be as effectual in all cases as the original would be, if 1859
established by proof. 1860

Sec. 2107.21. If real ~~estate~~ property devised by will is 1861
situated in any county other than that in which the will is 1862
proved, declared valid, or admitted to probate, an authenticated 1863
copy of the will and the order of probate or the judgment 1864
declaring validity shall be admitted to the record in the office 1865
of the probate judge of each county in which ~~such the~~ real ~~estate~~ 1866
property is situated upon the order of ~~such that~~ judge. The 1867
authenticated copy shall have the same validity ~~therein in the~~ 1868
county in which the real property is situated as if probate had 1869
been had in ~~such that~~ county. 1870

Sec. 2107.22. (A)(1)(a) When a will has been admitted to 1871
probate by a probate court and another will of later date is 1872
presented to the same court for probate, notice of the will of 1873
later date shall be given to those persons required to be notified 1874
under section 2107.19 of the Revised Code, and to the fiduciaries 1875
and beneficiaries under the will of earlier date. The probate 1876
court may admit the will of later date to probate the same as if 1877
no earlier will had been so admitted if it appears from the face 1878
of the will of later date, or if an interested person makes a 1879
demand as described in division (A)(1)(b) of this section and it 1880
appears from the testimony of the witnesses to the will given in 1881
accordance with that division, that the execution of the will 1882

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 1914
section 2107.084 of the Revised Code has been admitted to probate 1915
by a probate court, and an authenticated copy of another will of 1916
later date that was executed and proved as required by law is 1917
presented to the same court for record, the will of later date 1918
shall be admitted the same as if no other will had been admitted 1919
and the proceedings shall continue as provided in this section. 1920

Sec. 2107.29. When the record of a will is destroyed, a copy 1921
of ~~such the~~ will or a copy of ~~such the~~ will and its probate may be 1922
recorded by the probate court if it appears to the court's 1923
satisfaction that ~~such the~~ record has been destroyed and if it 1924
appears, by reason of a certificate signed and sealed by the 1925
probate judge, ~~or by the clerk of the court of common pleas,~~ that 1926
~~such the~~ copy is a true copy of the original will or a true copy 1927
of the original will and its probate. 1928

Sec. 2107.32. Every probate judge who admits a will or copy 1929
of a will to record under sections 2107.29 to 2107.31, ~~inclusive,~~ 1930
of the Revised Code, shall immediately ~~thereafter shall~~ after 1931
admitting the will or copy to record give notice for three 1932
consecutive weeks in two weekly newspapers of ~~his~~ the probate 1933
judge's county if two are published ~~therein in the county,~~ or if 1934
not, in one newspaper of general circulation in the county, 1935
stating the name of the person the record of whose will has been 1936
destroyed and the day when ~~such the~~ record was supplied under 1937
those sections. All persons interested in the record, at any time 1938
within five years from the making of ~~such the~~ record, may come 1939
into the probate court and contest the question whether the record 1940
~~thus that was~~ supplied is the same as the destroyed record 1941
~~destroyed.~~ 1942

Sec. 2107.34. If, after making a ~~last will and testament,~~ a 1943

testator has a child born alive, ~~or~~ adopts a child, or designates 1944
an heir in the manner provided by section 2105.15 of the Revised 1945
Code, or if a child or designated heir who is absent and reported 1946
to be dead proves to be alive, and no provision has been made in 1947
~~such the~~ will or by settlement for ~~such the~~ pretermitted child or 1948
heir, or for ~~the~~ that child's or heir's issue ~~thereof~~, the will 1949
shall not be revoked; ~~but unless~~. Unless it appears by ~~such the~~ 1950
will that it was the intention of the testator to disinherit ~~such~~ 1951
the pretermitted child or heir, the devises and legacies granted 1952
by ~~such the~~ will, except those to a surviving spouse, shall be 1953
abated proportionately, or in ~~such any~~ other manner ~~as that~~ is 1954
necessary to give effect to the intention of the testator as shown 1955
by the will, so that ~~such the~~ pretermitted child or heir will 1956
receive a share equal to that which ~~such the~~ person would have 1957
been entitled to receive out of the estate if ~~such the~~ testator 1958
had died intestate with no surviving spouse, owning only that 1959
portion of the testator's estate not devised or bequeathed to or 1960
for the use and benefit of a surviving spouse. If ~~such the~~ 1961
pretermitted child or heir dies prior to the death of the 1962
testator, the issue of ~~such the~~ deceased child or heir shall 1963
receive the share the parent would have received if living. 1964

If ~~such the~~ pretermitted child or heir supposed to be dead at 1965
the time of executing the will has lineal descendants, provision 1966
for whom is made by the testator, the other legatees and devisees 1967
need not contribute, but ~~such the~~ pretermitted child or heir shall 1968
take the provision made for the pretermitted child's or heir's 1969
lineal descendants or ~~such that~~ part of it as, in the opinion of 1970
the probate judge, may be equitable. In settling the claim of a 1971
pretermitted child or heir, any portion of the testator's estate 1972
received by a party interested, by way of advancement, is a 1973
portion of the estate and shall be charged to the party who has 1974
received it. 1975

Though measured by Chapter 2105. of the Revised Code, the 1976
share taken by a pretermitted child or heir shall be considered as 1977
a testate succession. This section does not prejudice the right of 1978
any fiduciary to act under any power given by the will, nor shall 1979
the title of innocent purchasers for value of any of the property 1980
of the testator's estate be affected by any right given by this 1981
section to a pretermitted child or heir. 1982

Sec. 2107.35. An encumbrance upon real or personal ~~estate~~ 1983
property for the purpose of securing the payment of money or the 1984
performance of a covenant shall not revoke a ~~will~~ previously 1985
executed ~~and will~~ relating to ~~such estate~~ that property. 1986

Sec. 2107.36. An act of a testator ~~which~~ that alters but does 1987
not wholly divest ~~such~~ the testator's interest in property 1988
previously devised or bequeathed by ~~him~~ the testator does not 1989
revoke the devise or bequest of ~~such~~ the property, ~~but such~~. The 1990
devise or bequest shall pass to the devisee or legatee the actual 1991
interest of the testator, ~~which~~ that would otherwise descend to 1992
~~his~~ the testator's heirs or pass to ~~his~~ the testator's next of 1993
kin, unless, ~~in~~ the instrument by which ~~such~~ the alteration is 1994
made, declares the testator's intention ~~is declared~~ that it shall 1995
operate as a revocation of ~~such~~ the previous devise or bequest. 1996

If the instrument by which ~~such~~ the alteration is made is 1997
wholly inconsistent with the previous devise or bequest, ~~such~~ the 1998
instrument ~~will~~ shall operate as a revocation ~~thereof~~ of the 1999
devise or bequest, unless ~~such~~ the instrument depends on a 2000
condition or contingency, and ~~such~~ the condition is not performed 2001
or ~~such~~ the contingency does not happen. 2002

Sec. 2107.38. If a testator executes a second will, the 2003
destruction, cancellation, or revocation of the second will shall 2004
not revive the first will unless the terms of ~~such~~ the revocation 2005

show that it was ~~such the~~ testator's intention to revive and give 2006
effect to ~~his the testator's~~ first will or unless, after ~~such the~~ 2007
destruction, cancellation, or revocation of the second will, ~~such~~ 2008
the testator republishes ~~his the testator's~~ first will. 2009

Sec. 2107.46. Any fiduciary may ~~maintain~~ file an action in 2010
the probate court against creditors, legatees, distributees, or 2011
other parties, and ask the direction or judgment of the court in 2012
any matter respecting the trust, estate, or property to be 2013
administered, and the rights of the parties in interest. 2014

If any fiduciary fails for thirty days to ~~bring such~~ file an 2015
action under this section after a written request from a party in 2016
interest, the party making the request may ~~institute~~ file the ~~suit~~ 2017
action. 2018

Sec. 2107.47. (A) The title, estate, or interest of a bona 2019
fide purchaser, lessee, or encumbrancer, for value, in ~~land~~ real 2020
property situated in this state, that is derived from an heir of a 2021
decedent and acquired without knowledge of a will of the decedent 2022
that effectively disposes of it to another person, shall not be 2023
defeated by the production of a will of the decedent, unless, in 2024
the case of a resident decedent, the will is offered for probate 2025
within three months after the death of the decedent, or unless, in 2026
the case of a nonresident decedent, the will is offered for record 2027
in this state within three months after the death of the decedent. 2028

(B) The title, estate, or interest of a bona fide purchaser, 2029
lessee, or encumbrancer, for value, in ~~land~~ real property situated 2030
in this state, that is derived from a beneficiary under a will of 2031
a decedent and acquired without knowledge of a later will of the 2032
decedent that effectively disposes of it to another person, shall 2033
not be defeated by the production of a later will of the decedent, 2034
unless, in the case of a resident decedent, the later will is 2035

offered for probate within three months after the death of the 2036
decedent, or unless, in the case of a nonresident decedent, the 2037
later will is offered for record in this state within three months 2038
after the death of the decedent. 2039

Sec. 2107.49. When ~~lands, tenements, or hereditaments~~ 2040
interests in real property are given by deed or will to a person 2041
for ~~his~~ the person's life, and after ~~his~~ the person's death to ~~his~~ 2042
the person's heirs in fee, the conveyance shall vest an estate for 2043
life only in ~~such~~ the first taker and a remainder in fee simple in 2044
~~his~~ the heirs of the first taker. If the remainder is given to the 2045
heirs of the body of the life tenant, the conveyance shall vest an 2046
estate for life only in ~~such~~ the first taker and a remainder in 2047
fee simple in the heirs of ~~his~~ the body of the life tenant. The 2048
rule in Shelley's case is abolished by this section and shall not 2049
be given effect. 2050

Sec. 2107.50. Any estate, right, or interest in any property 2051
of which a decedent ~~was possessed~~ had an interest at ~~his decease~~ 2052
the time of the decedent's death shall pass under ~~his~~ the 2053
decedent's will unless ~~such~~ the will manifests a different 2054
intention. 2055

Sec. 2107.501. (A) A specific devisee or legatee has the 2056
right ~~of~~ to the remaining specifically devised or bequeathed 2057
property, and the following: 2058

(1) Any balance on the purchase price, together with any 2059
security interest owing from a purchaser to the testator at death 2060
by reason of sale of the property; 2061

(2) Any amount of condemnation award unpaid at death for the 2062
taking of the property; 2063

(3) Any proceeds unpaid at death on fire or casualty 2064

insurance on the property; 2065

(4) Property owned by the testator at death as a result of 2066
foreclosure, or obtained in lieu of foreclosure, of the security 2067
for a specifically devised or bequeathed obligation. 2068

(B) If specifically devised or bequeathed property is sold by 2069
a guardian, by an agent acting within the authority of a power of 2070
attorney, or by an agent acting within the authority of a durable 2071
power of attorney, or if a condemnation award or insurance 2072
proceeds are paid to a guardian, to an agent acting within the 2073
authority of a power of attorney, or to an agent acting within the 2074
authority of a durable power of attorney as a result of 2075
condemnation, fire, or casualty to the property, the specific 2076
devisee or legatee has the right to a general pecuniary devise or 2077
bequest equal to the net proceeds of sale, the condemnation award, 2078
or the insurance proceeds, and ~~such a that~~ devise or bequest shall 2079
be treated as property subject to section 2107.54 of the Revised 2080
Code. This section does not apply if subsequent to the sale, 2081
condemnation, fire, or casualty, it is adjudicated that the 2082
disability of the testator has ceased and the testator survives 2083
the adjudication by one year. The right of the specific devisee or 2084
legatee is reduced by any right ~~the specific devisee or legatee~~ 2085
~~has~~ acquired under division (A) of this section. 2086

Sec. 2107.51. Every devise of ~~lands, tenements, or~~ 2087
~~hereditaments~~ an interest in real property in a will shall convey 2088
all the estate of the devisor ~~therein in the property~~, unless it 2089
clearly appears by the will that the devisor intended to convey a 2090
less estate. 2091

Sec. 2107.52. (A) As used in this section, "relative" means 2092
an individual who is related to a testator by consanguinity and an 2093
heir at law designated pursuant to section 2105.15 of the Revised 2094

Code. 2095

(B) Unless a contrary intention is manifested in the will, if 2096
a devise of real property or a bequest of personal property is 2097
made to a relative of a testator and the relative was dead at the 2098
time the will was made or dies after that time, leaving issue 2099
surviving the testator, those issue shall take by representation 2100
the devised or bequeathed property as the devisee or legatee would 2101
have done if ~~he~~ the devisee or legatee had survived the testator. 2102
If the testator devised or bequeathed a residuary estate or the 2103
entire estate after debts, other general or specific devises and 2104
bequests, or an interest less than a fee or absolute ownership to 2105
that devisee or legatee and relatives of the testator and if that 2106
devisee or legatee leaves no issue, the estate devised or 2107
bequeathed shall vest in the other devisees or legatees surviving 2108
the testator in ~~such~~ the proportions as that the testamentary 2109
share of each devisee or legatee in the devised or bequeathed 2110
property bears to the total of the shares of all of the surviving 2111
devisees or legatees, unless a different disposition is made or 2112
required by the will. 2113

Sec. 2107.53. When part of the real ~~estate~~ property of a 2114
testator descends to ~~his~~ the testator's heirs because it was not 2115
disposed of by ~~his~~ the testator's will, and ~~his~~ the testator's 2116
personal ~~estate~~ property is insufficient to pay ~~his~~ the testator's 2117
debts, the undevised real ~~estate~~ property shall be chargeable 2118
first with the debts, as far as it will go, in exoneration of the 2119
real ~~estate~~ property that is devised, unless it appears from the 2120
will that a different arrangement of assets was made for the 2121
payment of ~~such~~ the testator's debts, in which case ~~such~~ the 2122
assets shall be applied for that purpose in conformity with the 2123
will. 2124

Sec. 2107.54. (A) When real or personal property, devised or 2125

bequeathed, is taken from the devisee or legatee for the payment 2126
of a debt of the testator, the other devisees and legatees shall 2127
contribute their respective proportions of the loss to the person 2128
from whom ~~such~~ the payment was taken so that the loss will fall 2129
equally on all the devisees and legatees according to the value of 2130
the property received by each of them. 2131

If, by making a specific devise or bequest, the testator has 2132
exempted a devisee or legatee from liability to contribute to the 2133
payment of debts, or if the will makes a different provision for 2134
the payment of debts than the one prescribed in this section, the 2135
estate shall be applied in conformity with the will. 2136

(B) A devisee or legatee shall not be prejudiced by the fact 2137
that the holder of a claim secured by lien on the property devised 2138
or bequeathed failed to present ~~such~~ the claim to the executor or 2139
administrator for allowance within the time allowed by sections 2140
2117.06 and 2117.07 of the Revised Code, and the devisee or 2141
legatee shall be restored by right of contribution, exoneration, 2142
or subrogation, to the position ~~he~~ the devisee or legatee would 2143
have occupied if ~~such~~ the claim had been presented and allowed for 2144
~~such~~ the sum ~~as~~ that is justly owing on it. 2145

(C) A devisee of real ~~estate~~ property that is subject to a 2146
mortgage lien that exists on the date of the testator's death, who 2147
does not have a right of exoneration that extends to that lien 2148
because of the operation of division (B) of section 2113.52 of the 2149
Revised Code, has a duty to contribute under this section to 2150
devisees and legatees who are burdened if the claim secured by the 2151
lien is presented and allowed pursuant to Chapter 2117. of the 2152
Revised Code. 2153

(D) This section does not affect the liability of the whole 2154
estate of the testator for the payment of ~~his~~ the testator's 2155
debts. This section applies only to the marshaling of the assets 2156
as between those who hold or claim under the will. 2157

Sec. 2107.55. When a part of the estate of a testator 2158
descends to a child born or adopted, or to an heir designated, 2159
after the execution of the will, or to a child absent and reported 2160
to be dead at the time of execution of the will but later found to 2161
be alive, or to a witness to a will who is a devisee or legatee, 2162
~~such the~~ estate and the advancement made to ~~such the~~ child, heir, 2163
or witness for all the purposes mentioned in section 2107.54 of 2164
the Revised Code shall be considered as if it had been devised to 2165
~~such that~~ child, heir, or witness and ~~he the child, heir, or~~ 2166
witness shall be bound to contribute with the devisees and 2167
legatees, as provided by ~~such that~~ section, and may claim 2168
contribution from them accordingly. 2169

Sec. 2107.56. When any of the persons liable to contribute 2170
toward the discharge of a testator's debt according to sections 2171
2107.54 and 2107.55 of the Revised Code, is insolvent, the others 2172
shall be severally liable to each other for the loss occasioned by 2173
~~such the~~ insolvency, each being liable in proportion to the value 2174
of the property received by ~~him the person~~ from the estate of the 2175
deceased. If any one of the persons liable dies without paying ~~his~~ 2176
the person's proportion of ~~such the~~ debt, ~~his the~~ executors and 2177
administrators of the person's estate shall be liable ~~therefor for~~ 2178
that proportion to the extent to which ~~he the person~~ would have 2179
been liable if living. 2180

Sec. 2107.58. When a sale of ~~lands~~ real property aliened or 2181
unaliened by a devisee or heir is ordered for the payment of the 2182
debts of an estate, sections 2107.53 to 2107.57, ~~inclusive,~~ of the 2183
Revised Code do not prevent the probate court from making ~~such an~~ 2184
order and decree for the sale of any portion of the aliened or 2185
unaliened ~~land as~~ real property that is equitable ~~between among~~ 2186
the ~~several~~ parties, and making an order of contribution and 2187

further order and decree to settle and adjust the various rights 2188
and liabilities of the parties. 2189

Sec. 2107.59. When a ~~last will and testament~~ is admitted to 2190
probate, or a will made out of this state is admitted to record as 2191
provided by sections 2129.05 to 2129.07 of the Revised Code, and 2192
~~lands, tenements, or hereditaments~~ interests in real property are 2193
given or devised by ~~such~~ the will to the executors named in the 2194
will, or nominated pursuant to a power as described in section 2195
2107.65 of the Revised Code, to be sold or conveyed, or ~~such~~ 2196
~~estate~~ the interests in real property thereby ~~is~~ are ordered to be 2197
sold by ~~such~~ the executors and one or more of the executors dies, 2198
refuses to act, or neglects to take upon ~~himself~~ self the 2199
execution of the will, then all sales and conveyances of ~~such~~ 2200
~~estate~~ the interests in real property by the executors who took 2201
upon themselves in this state the execution of the will, or the 2202
survivor of them, shall be as valid as if the remaining executors 2203
had joined in the sale and conveyance. But if none of ~~such~~ the 2204
executors take upon themselves the execution of the will, or if 2205
all the executors who take out letters testamentary die, resign, 2206
or are removed before the sale and conveyance of ~~such~~ ~~estate~~ the 2207
interests in real property, or die, resign, or are removed after 2208
the sale and before the conveyance is made, the sale or 2209
conveyance, or both, shall be made by the administrator with the 2210
will annexed or, if any, by a successor executor or successor 2211
coexecutor nominated pursuant to a power as described in section 2212
2107.65 of the Revised Code. 2213

Sec. 2107.60. An oral will, made in the last sickness, shall 2214
be valid in respect to personal ~~estate~~ property if reduced to 2215
writing and subscribed by two competent disinterested witnesses 2216
within ten days after the speaking of the testamentary words. ~~Such~~ 2217
The witnesses ~~must~~ shall prove that the testator was of sound mind 2218

and memory, not under restraint, and that ~~he~~ the testator called 2219
upon some person present at the time the testamentary words were 2220
spoken to bear testimony to ~~such~~ the disposition as ~~his~~ the 2221
testator's will. 2222

No oral will shall be admitted to record unless it is offered 2223
for probate within ~~six~~ three months after the death of the 2224
testator. 2225

Sec. 2107.61. Unless it has been admitted to probate or 2226
record, as provided in sections 2107.01 to 2107.62, ~~inclusive, and~~ 2227
~~or~~ 2129.05 to 2129.07, ~~inclusive,~~ of the Revised Code, no will is 2228
effectual to ~~pass~~ transfer real or personal estate property. 2229

Sec. 2107.65. A testator may confer in ~~his~~ the testator's 2230
will, upon one or more persons, the power to nominate, in writing, 2231
an executor, coexecutor, successor executor, or successor 2232
coexecutor, and also may provide in ~~his~~ the will that the person 2233
or persons so nominated may serve without bond. If a will confers 2234
~~such a~~ that power, the holders of it have the authority to 2235
nominate themselves as executor, coexecutor, successor executor, 2236
or successor coexecutor unless the will provides to the contrary. 2237

Sec. 2107.71. (A) A person interested in a will or codicil 2238
admitted to probate in the probate court, ~~which will or codicil~~ 2239
that has not been declared valid by judgment of a probate court 2240
pursuant to section 2107.084 of the Revised Code, ~~or which will or~~ 2241
~~codicil~~ that has been declared valid by judgment of a probate 2242
court pursuant to section 2107.084 of the Revised Code, ~~but which~~ 2243
has been removed from the possession of the probate judge, may 2244
contest its validity by filing a civil action complaint in the 2245
probate court in the county in which ~~such~~ the will or codicil was 2246
admitted to probate. 2247

(B) Except as otherwise provided in this division, no person 2248

may contest the validity of any will or codicil as to facts 2249
decided if it was submitted to a probate court by ~~its maker~~ the 2250
testator during ~~his~~ the testator's lifetime and declared valid by 2251
judgment of the probate court and filed with the judge of the 2252
probate court pursuant to section 2107.084 of the Revised Code and 2253
if the will was not removed from the possession of the probate 2254
judge. A person may contest the validity of ~~such a~~ that will, 2255
modification, or codicil as to ~~such~~ those facts if the person is 2256
one who should have been named a party defendant in the action in 2257
which the will, modification, or codicil was declared valid, 2258
pursuant to section 2107.081 or 2107.084 of the Revised Code, and 2259
if the person was not named a defendant and properly served in 2260
~~such~~ that action. Upon the filing of ~~an action~~ a complaint 2261
contesting the validity of a will or codicil that is authorized by 2262
this division, the court shall proceed with the action in the same 2263
manner as if the will, modification, or codicil had not been 2264
previously declared valid under sections 2107.081 to 2107.085 of 2265
the Revised Code. 2266

(C) No person may introduce, as evidence in an action 2267
authorized by this section contesting the validity of a will, the 2268
fact that the testator of the will did not file a ~~petition~~ 2269
complaint for a judgment declaring its validity under section 2270
2107.081 of the Revised Code. 2271

Sec. 2107.73. Persons who are necessary parties to a will 2272
contest action are as follows: 2273

(A) Any person designated in a will to receive a testamentary 2274
disposition of real or personal property; 2275

(B) Heirs who would take property pursuant to section 2105.06 2276
of the Revised Code had the testator died intestate; 2277

(C) The executor or the administrator with the will annexed; 2278

(D) The attorney general as provided by section 109.25 of the Revised Code; 2279
2280

(E) Other interested parties. 2281

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. 2282
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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. 2291
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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. 2298
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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 2302
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fiduciary. The written acceptance may be filed with the 2309
application for appointment. 2310

No act or transaction by a fiduciary is valid prior to the 2311
issuance of letters of appointment to the fiduciary. This section 2312
does not prevent an executor named in a will, an executor 2313
nominated pursuant to a power as described in section 2107.65 of 2314
the Revised Code, or a person with the right of disposition under 2315
section 2108.70 or 2108.81 of the Revised Code from paying funeral 2316
expenses, or prevent necessary acts for the preservation of the 2317
trust estate prior to the issuance of ~~such~~ those letters. 2318

Sec. 2109.021. After letters of appointment are issued to a 2319
fiduciary, the court shall accept filings by mail in matters of 2320
estates, guardianships, or trusts, unless the court in writing 2321
notifies the fiduciary or attorney of record that a personal 2322
appearance is necessary, or a personal appearance is otherwise 2323
required by law. ~~An The court shall reject an~~ improper or 2324
incomplete filing ~~shall be rejected,~~ and ~~that court~~ shall return 2325
it to the sender, ~~and impose a cost of two dollars and fifty cents~~ 2326
~~per improper or incomplete filing, chargeable against the estate.~~ 2327

Sec. 2109.03. At the time of the appointment of a fiduciary, 2328
~~such~~ the fiduciary shall file in the probate court the name of the 2329
attorney, if any, who will represent ~~him~~ the fiduciary in matters 2330
relating to the trust. After the name of an attorney has been 2331
filed, notices sent to ~~such~~ that fiduciary in ~~his~~ the fiduciary's 2332
official capacity shall also be sent by the court to ~~such~~ that 2333
attorney who may sign waiver of service of any or all of ~~such~~ the 2334
notices upon ~~him~~ the attorney. If the fiduciary is absent from the 2335
state, ~~such~~ the attorney shall be the agent of the fiduciary upon 2336
whom summonses, citations, and notices may be served. Any summons, 2337
citation, or notice may be served upon the fiduciary by delivering 2338
duplicate copies ~~thereof~~ of the summons, citation, or notice to 2339

the attorney designated by ~~him~~ the fiduciary. No probate judge 2340
shall permit any person to practice law in the probate court for 2341
compensation, unless ~~he~~ the person has been admitted to the 2342
practice of law within the state. This section does not prevent 2343
any person from representing ~~his~~ the person's own interest in any 2344
estate, matter, action, or proceeding. 2345

Sec. 2109.04. (A)(1) Unless otherwise provided by law, order, 2346
or local rule, every fiduciary, prior to the issuance of the 2347
fiduciary's letters as provided by section 2109.02 of the Revised 2348
Code, shall file in the probate court in which the letters are to 2349
be issued a bond with a penal sum in ~~such an amount as may be that~~ 2350
is fixed by the court, but in no event less than double the 2351
probable value of the personal estate property and of the annual 2352
real estate property rentals ~~which that~~ will come into ~~such~~ 2353
~~person's hands~~ the possession or under the control of the person 2354
as a fiduciary. The bond of a fiduciary shall be in a form 2355
approved by the court and signed by two or more personal sureties 2356
or by one or more corporate sureties approved by the court. It 2357
shall be conditioned that the fiduciary faithfully and honestly 2358
will discharge the duties devolving upon the person as fiduciary, 2359
and shall be conditioned further as may be provided by law. 2360

(2) Except as otherwise provided in this division, if the 2361
instrument creating the trust dispenses with the giving of a bond, 2362
the court shall appoint a fiduciary without bond, unless the court 2363
is of the opinion that the interest of the trust demands it. If 2364
the court is of that opinion, it may require bond to be given in 2365
any amount it fixes. If a parent nominates a guardian for the 2366
parent's child in a will and provides in the will that the 2367
guardian may serve without giving bond, the court may appoint the 2368
guardian without bond or require the guardian to give bond in 2369
accordance with division (A)(1) of this section. 2370

(3) A guardian of the person only does not have to give bond 2371
unless, for good cause shown, the court considers a bond to be 2372
necessary. When a bond is required of a guardian of the person 2373
only, it shall be determined and filed in accordance with division 2374
(A)(1) of this section. This division does not apply to a guardian 2375
of the person only nominated in a parent's will if the will 2376
provides that the guardian may serve without giving bond. 2377

(4) When the probable value of the personal estate property 2378
and of the annual real estate property rentals that will come into 2379
the ~~guardian's hands~~ possession or under the control of the 2380
guardian as a fiduciary is less than ten thousand dollars, the 2381
court may waive or reduce a bond required by division (A)(1) of 2382
this section. 2383

(B) When an executive director who is responsible for the 2384
administration of children services in the county is appointed as 2385
trustee of the estate of a ward pursuant to section 5153.18 of the 2386
Revised Code and has furnished bond under section 5153.13 of the 2387
Revised Code, or when an agency under contract with the department 2388
of developmental disabilities for the provision of protective 2389
service under sections 5123.55 to 5123.59 of the Revised Code is 2390
appointed as trustee of the estate of a ward under ~~such~~ sections 2391
5123.55 to 5123.59 of the Revised Code and any employees of the 2392
agency having custody or control of funds or property of ~~such a~~ 2393
that ward have furnished bond under section 5123.59 of the Revised 2394
Code, the court may dispense with the giving of a bond. 2395

(C) When letters are granted without bond, at any later 2396
period on its own motion or upon the application of any party 2397
interested, the court may require bond to be given in ~~such an~~ 2398
amount ~~as may be~~ that is fixed by the court. On failure to give 2399
~~such~~ that bond, the defaulting fiduciary shall be removed. 2400

No instrument authorizing a fiduciary whom it names to serve 2401
without bond shall be construed to relieve a successor fiduciary 2402

from the necessity of giving bond, unless the instrument clearly 2403
evidences ~~such~~ that intention. 2404

The court ~~by which~~ that appoints a fiduciary ~~is appointed~~ may 2405
reduce the amount of the bond of ~~such~~ the fiduciary at any time 2406
for good cause shown. 2407

When two or more persons are appointed as joint fiduciaries, 2408
the court may take a separate bond from each or a joint bond from 2409
all. 2410

Sec. 2109.05. When ~~deemed~~ considered necessary by the probate 2411
court and not otherwise directed in the will, a bond, as provided 2412
by sections 2109.01 to 2109.58, ~~inclusive~~, of the Revised Code, 2413
shall be required in all trusts created by will and not fully 2414
discharged, on the petition of an interested person and after 2415
notice to the trustee. 2416

If ~~such a~~ the trustee fails to give bond within the time 2417
ordered by the court, ~~he shall be removed~~ the court shall remove
the trustee from ~~his~~ the trust, or the trustee shall be considered 2419
to have declined it. ~~Another person may be appointed in his stead~~
~~upon giving the required bond.~~ 2421

Sec. 2109.06. The probate court ~~by which~~ that appoints a 2422
fiduciary ~~is appointed~~ may, on its own motion or on the 2423
application of any interested party, and after notice to the 2424
fiduciary, require a new bond or sureties or an additional bond or 2425
sureties, whenever, in the opinion of ~~such~~ the court, the 2426
interests of the trust demand it. 2427

Immediately upon the filing of the inventory by a fiduciary, 2428
the court shall determine whether the amount of the bond of ~~such~~
the fiduciary is sufficient and shall require new or additional 2430
bond if in the opinion of the court the interests of the trust 2431
demand it. 2432

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

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

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

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

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

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

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

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

with or without suit, of a wrongful death claim, and the proceeds 2463
of all real estate property in which the deceased had an interest, 2464
that is located in this state, and that is sold, when the property 2465
or proceeds have come to the possession of the administrator or to 2466
the possession of a person for the administrator; 2467

(3) To render a just and true account of the administrator's 2468
administration at the times required by section 2109.301 of the 2469
Revised Code; 2470

(4) To deliver the letters of administration into court if a 2471
will of the deceased is proved and allowed. 2472

Sec. 2109.09. (A) Unless the testator has specified otherwise 2473
in the will, the bond required of an executor by section 2109.04 2474
of the Revised Code shall not be required of the executor to 2475
administer an estate in accordance with the will of the testator 2476
if the executor is the next of kin and if the executor is entitled 2477
to the entire net proceeds of the estate. 2478

(B) The bond otherwise required of an executor by section 2479
2109.04 of the Revised Code shall be conditioned as follows: 2480

(1) To file with the probate court within the time required 2481
by section 2115.02 of the Revised Code an inventory of all the 2482
tangible and intangible personal property of the testator that is 2483
to be administered and that comes to the executor's possession or 2484
knowledge and an inventory of the testator's interest in real 2485
estate property located in this state; 2486

(2) To administer and distribute according to law and the 2487
will of the testator all the testator's tangible and intangible 2488
personal property, the proceeds of any action for wrongful death 2489
or of any settlement, with or without suit, of a wrongful death 2490
claim, and the proceeds of all real estate property in which the 2491
testator had an interest, that is located in this state, and that 2492

is sold, when the property or proceeds have come to the possession 2493
of the executor or to the possession of another person for the 2494
executor; 2495

(3) To render a just and true account of the executor's 2496
administration at the times required by section 2109.301 of the 2497
Revised Code. 2498

Sec. 2109.10. If an executor or administrator is sole 2499
residuary legatee or distributee and if division (A) of section 2500
2109.07 or division (A) of section 2109.09 of the Revised Code 2501
does not apply, instead of giving the bond prescribed by section 2502
2109.04 of the Revised Code, the executor or administrator may 2503
give a bond to the satisfaction of the probate court conditioned 2504
as follows: 2505

(A) To pay the costs of administration and all the debts and 2506
legacies of the decedent to the extent of the assets of the 2507
estate; 2508

(B) If there is a will, to pay over the testator's estate to 2509
the person entitled to the testator's estate if the will is set 2510
aside; 2511

(C) If there is no will offered at the opening of the estate, 2512
to pay over the testator's estate to the person entitled to the 2513
testator's estate if a will is probated after the administrator's 2514
initial appointment. 2515

The giving of ~~such~~ that bond shall not discharge the lien on 2516
the decedent's real ~~estate~~ property for the payment of the 2517
decedent's debts, except that part ~~which~~ that has been lawfully 2518
sold by the executor or administrator. 2519

Sec. 2109.11. The bond required by section 2109.04 of the 2520
Revised Code of a testamentary trustee shall be conditioned as 2521
follows: 2522

(A) To make and return to the probate court within the time 2523
required by section 2109.58 of the Revised Code a true inventory 2524
of all moneys, ~~chattels~~, rights, credits, other personal property, 2525
and real ~~estate~~ property belonging to the trust that come to the 2526
trustee's possession or knowledge; 2527

(B) To administer and distribute according to law and the 2528
will of the testator all moneys, ~~chattels~~, rights, credits, other 2529
personal property and real ~~estate~~ property belonging to the trust 2530
that come to the possession of the trustee or to the possession of 2531
any other person for the trustee; 2532

(C) To render a just and true account of the trustee's 2533
administration at the times required by section 2109.303 of the 2534
Revised Code. 2535

Sec. 2109.12. Any bond required by or pursuant to section 2536
2109.04 of the Revised Code of a guardian shall be conditioned as 2537
follows: 2538

(A) If applicable, to make and return to the probate court 2539
within the time required by section 2111.14 of the Revised Code a 2540
true inventory of all moneys, ~~chattels~~, rights, credits, other 2541
personal property, and real ~~estate~~ property belonging to the ward 2542
that come to the guardian's possession or knowledge; 2543

(B) To administer and distribute according to law all moneys, 2544
~~chattels~~, rights, credits, other personal property, and real 2545
~~estate~~ property belonging to the ward that come to the possession 2546
of the guardian or to the possession of any other person for the 2547
guardian; 2548

(C) To render a just and true account of the guardian's 2549
administration at any times required by or pursuant to section 2550
2109.302 of the Revised Code. 2551

Sec. 2109.14. If the estate held by a fiduciary consists in 2552

whole or in part of works of nature or of art ~~which~~ that are 2553
suitable for preservation and exhibition in a museum or other 2554
similar institution, the probate court may authorize and direct 2555
that any or all of ~~such~~ those works be deposited with a 2556
corporation conducting ~~such a~~ the museum or other similar 2557
institution; provided that no such deposit shall be authorized or 2558
directed except with a corporation having a net worth of at least 2559
ten times the value of the works to be deposited. ~~Such~~ The deposit 2560
shall be made in the name of the fiduciary, and the property 2561
deposited shall not be withdrawn from the custody of ~~such~~ the 2562
depository or otherwise deposited except upon the special order of 2563
the court. The probate judge may impose ~~such~~ any conditions 2564
relative to insurance and the care and protection of the property 2565
deposited ~~as~~ that the court thinks best for the interests of the 2566
estate and the beneficiaries ~~thereof~~ of the estate. After ~~such~~ the 2567
deposit has been made, a receipt for ~~said~~ that property executed 2568
by ~~said~~ that corporation shall be filed with the court, ~~which~~ and 2569
the receipt shall acknowledge that ~~said~~ the property is held by 2570
~~said~~ that corporation subject to the order of the court. When ~~such~~ 2571
the receipt is filed, the court may fix or reduce the amount of 2572
the bond so that the amount of the penalty ~~thereof~~ of the bond is 2573
determined with respect to the value of the remainder only of the 2574
estate or fund, without including the value of the property 2575
deposited. Neither the fiduciary nor ~~his~~ the fiduciary's sureties 2576
shall be liable for any loss to the trust estate resulting from a 2577
deposit authorized and directed by the court pursuant to this 2578
section, provided ~~such~~ the fiduciary has acted in good faith. 2579

Sec. 2109.17. If the bond of a fiduciary is executed by 2580
personal sureties, one or more of ~~such~~ the sureties shall be a 2581
resident of the county in which ~~such~~ the fiduciary applies for 2582
appointment. The sureties shall own real property worth double the 2583
sum to be secured, over and above all encumbrances, and shall have 2584

property in this state liable to execution equal to the sum to be 2585
secured. ~~When~~ If two or more sureties are offered on the same 2586
bond, they must have in the aggregate the qualifications 2587
prescribed in this section. ~~Such~~ The sureties shall qualify under 2588
oath and may be required to exhibit to the probate court 2589
satisfactory evidence of the ownership of ~~such~~ the real property. 2590

No corporate surety shall be acceptable on a fiduciary's bond 2591
in ~~such~~ the probate court unless ~~such~~ the surety is acceptable to 2592
the United States government on surety bonds in like the same 2593
amount, as shown by the regulations issued by the secretary of the 2594
treasury of the United States, or in any other manner, to the 2595
satisfaction of the court. ~~Such~~ The surety shall also be qualified 2596
to do business in this state. 2597

A surety on the bond of a fiduciary shall not be held liable 2598
for any debt of ~~such~~ the fiduciary to the estate represented by 2599
~~him~~ the fiduciary existing at the time ~~such~~ the fiduciary was 2600
appointed; but ~~such~~ the surety shall be liable to the extent that 2601
~~such~~ the debt has been made uncollectible by wrongful act of ~~such~~ 2602
the fiduciary after appointment. 2603

Sec. 2109.19. If a fiduciary wastes or unfaithfully 2604
administers an estate, on the application of a surety on the 2605
fiduciary's bond the probate court granting letters of appointment 2606
to ~~such~~ the fiduciary may order ~~him~~ the fiduciary to render an 2607
account and to execute to ~~such~~ the surety a bond of indemnity with 2608
sureties approved by the court. Upon neglect or refusal to execute 2609
~~such~~ the bond within the time ordered, the court may remove ~~such~~ 2610
the fiduciary, revoke ~~his~~ the fiduciary's letters of appointment, 2611
and appoint another fiduciary in ~~his~~ the fiduciary's place. 2612

Sec. 2109.20. Instead of the sureties required on ~~his~~ a 2613
guardian's bond by section 2109.04 of the Revised Code, a guardian 2614

of the person and estate or of the estate only of any ward may 2615
execute to the ward a mortgage upon unencumbered real ~~estate~~ 2616
property. The guardian first shall furnish to the probate court a 2617
title guarantee or a mortgagee's title insurance policy for the 2618
benefit of the guardianship, with respect to the real ~~estate~~ 2619
property, and it shall be shown to the court's satisfaction that, 2620
exclusive of improvements on the real ~~estate~~ property, the real 2621
~~estate~~ property is of a value sufficient to secure the bond. The 2622
mortgage shall be recorded in the county in which the property is 2623
situated and filed with the court. 2624

Sec. 2109.21. (A) An administrator, special administrator, 2625
administrator de bonis non, or administrator with the will annexed 2626
shall be a resident of this state and shall be removed on proof 2627
that the administrator is no longer a resident of this state. 2628

(B)(1) To qualify for appointment as executor or trustee, an 2629
executor or a trustee named in a will or nominated in accordance 2630
with any power of nomination conferred in a will, may be a 2631
resident of this state or, as provided in this division, a 2632
nonresident of this state. To qualify for appointment, a 2633
nonresident executor or trustee named in, or nominated pursuant 2634
to, a will shall be an individual who is related to the ~~maker of~~ 2635
~~the will~~ testator by consanguinity or affinity, or a person who 2636
resides in a state that has statutes or rules that authorize the 2637
appointment of a nonresident person who is not related to the 2638
~~maker of a will~~ testator by consanguinity or affinity, as an 2639
executor or trustee when named in, or nominated pursuant to, a 2640
will. No such executor or trustee shall be refused appointment or 2641
removed solely because the executor or trustee is not a resident 2642
of this state. 2643

The court may require that a nonresident executor or trustee 2644
named in, or nominated pursuant to, a will assure that all of the 2645

assets of the decedent that are in the county at the time of the 2646
death of the decedent will remain in the county until distribution 2647
or until the court determines that the assets may be removed from 2648
the county. 2649

(2) In accordance with this division and section 2129.08 of 2650
the Revised Code, the court shall appoint as an ancillary 2651
administrator a person who is named in the will of a nonresident 2652
decedent, or who is nominated in accordance with any power of 2653
nomination conferred in the will of a nonresident decedent, as a 2654
general executor of the decedent's estate or as executor of the 2655
portion of the decedent's estate located in this state, whether or 2656
not the person so named or nominated is a resident of this state. 2657

To qualify for appointment as an ancillary administrator, a 2658
person who is not a resident of this state and who is named or 2659
nominated as described in this division, shall be an individual 2660
who is related to the ~~maker of the will~~ testator by consanguinity 2661
or affinity, or a person who resides in a state that has statutes 2662
or rules that authorize the appointment of a nonresident of that 2663
state who is not related to the ~~maker of a will~~ testator by 2664
consanguinity or affinity, as an ancillary administrator when the 2665
nonresident is named in a will or nominated in accordance with any 2666
power of nomination conferred in a will. If a person who is not a 2667
resident of this state and who is named or nominated as described 2668
in this division so qualifies for appointment as an ancillary 2669
administrator and if the provisions of section 2129.08 of the 2670
Revised Code are satisfied, the court shall not refuse to appoint 2671
the person, and shall not remove the person, as ancillary 2672
administrator solely because the person is not a resident of this 2673
state. 2674

The court may require that an ancillary administrator who is 2675
not a resident of this state and who is named or nominated as 2676
described in this division, assure that all of the assets of the 2677

decedent that are in the county at the time of the death of the 2678
decedent will remain in the county until distribution or until the 2679
court determines that the assets may be removed from the county. 2680

(C)(1) A guardian of the estate shall be a resident of this 2681
state, except that the court may appoint a nonresident of this 2682
state as a guardian of the estate if any of the following applies: 2683

(a) The nonresident is named in a will by a parent of a 2684
minor. 2685

(b) The nonresident is selected by a minor over the age of 2686
fourteen years as provided by section 2111.12 of the Revised Code. 2687

(c) The nonresident is nominated in or pursuant to a durable 2688
power of attorney as described in division (D) of section 1337.09 2689
of the Revised Code or a writing as described in division (A) of 2690
section 2111.121 of the Revised Code. 2691

(2) A guardian of the estate, other than a guardian named in 2692
a will by a parent of a minor, selected by a minor over the age of 2693
fourteen years, or nominated in or pursuant to a durable power of 2694
attorney or writing described in division (C)(1)(c) of this 2695
section, may be removed on proof that the guardian of the estate 2696
is no longer a resident of this state. 2697

(3) The court may appoint a resident or nonresident of this 2698
state as a guardian of the person. 2699

(D) Any fiduciary, whose residence qualifications are not 2700
defined in this section, shall be a resident of this state, and 2701
shall be removed on proof that the fiduciary is no longer a 2702
resident of this state. 2703

(E) Any fiduciary, in order to assist in the carrying out of 2704
the fiduciary's fiduciary duties, may employ agents who are not 2705
residents of the county or of this state. 2706

(F) Every fiduciary shall sign and file with the court a 2707

statement of permanent address and shall notify the court of any 2708
change of address. A court may remove a fiduciary if the fiduciary 2709
fails to comply with this division. 2710

Sec. 2109.22. The marriage of any person does not disqualify 2711
~~him~~ the person from acting as fiduciary, whether the marriage 2712
occurs before or after ~~his~~ the person's appointment and 2713
qualification, and all of ~~his~~ the person's acts in ~~such that~~ 2714
capacity shall have the same validity as though ~~he~~ the person were 2715
unmarried. 2716

Sec. 2109.24. The probate court at any time may accept the 2717
resignation of any fiduciary upon the fiduciary's proper 2718
accounting, if the fiduciary was appointed by, is under the 2719
control of, or is accountable to the court. The fiduciary may 2720
resign by filing a written statement with the court after giving 2721
at least fifteen days notice to the persons known to be interested 2722
in the estate. Upon notice or a motion of the fiduciary to resign, 2723
the court may set the matter for a hearing and may notify all 2724
interested persons. No fiduciary shall resign without an order of 2725
the court. 2726

If a fiduciary fails to make and file an inventory as 2727
required by sections 2109.58, 2111.14, and 2115.02 of the Revised 2728
Code or to render a just and true account of the fiduciary's 2729
administration at the times required by section 2109.301, 2730
2109.302, or 2109.303 of the Revised Code, and if the failure 2731
continues for thirty days after the fiduciary has been notified by 2732
the court of the expiration of the relevant time, the fiduciary 2733
~~forthwith~~ may be removed by the court and shall receive no 2734
allowance for the fiduciary's services unless the court enters 2735
upon its journal its findings that the delay was necessary and 2736
reasonable. 2737

The court may remove any fiduciary, after giving the 2738
fiduciary not less than ten days' notice, for habitual 2739
drunkenness, neglect of duty, incompetency, or fraudulent conduct, 2740
because the interest of the property, testamentary trust, or 2741
estate that the fiduciary is responsible for administering demands 2742
it, or for any other cause authorized by law. 2743

The court may remove a testamentary trustee upon the written 2744
application of more than one-half of the persons having an 2745
interest in the estate controlled by the testamentary trustee, but 2746
the testamentary trustee is not to be considered as a person 2747
having an interest in the estate under the proceedings; except 2748
that no testamentary trustee appointed under a will shall be 2749
removed upon ~~such~~ the written application unless for a good cause. 2750

Upon the resignation or removal of the fiduciary, the court 2751
shall revoke all letters of authority for the fiduciary. 2752

Sec. 2109.25. (A) Whenever it appears to the satisfaction of 2753
the probate court that a fiduciary is unable to perform ~~his~~ the 2754
fiduciary's duties because ~~he~~ the fiduciary is engaged or is about 2755
to engage in military service as defined by this section, the 2756
court may remove ~~such~~ the fiduciary and appoint a substitute or 2757
authorize the remaining fiduciaries to execute the trust. ~~Such~~ 2758
That action may be taken on the court's own motion or on the 2759
application of any party in interest, including the fiduciary or 2760
cofiduciary, either without notice or upon notice to ~~such~~ those 2761
persons and in ~~such~~ the manner ~~as~~ that the court shall direct. 2762

If any of the duties of ~~such~~ that office remain unexecuted 2763
when a fiduciary who has resigned or been removed on account of 2764
~~his~~ the fiduciary's military service ceases to be in ~~such~~ that 2765
military service, ~~he~~ the fiduciary shall be reappointed as 2766
fiduciary upon ~~his~~ the fiduciary's application to the court and 2767
upon ~~such~~ any notice ~~as~~ that the court may direct, provided ~~he~~ the 2768

fiduciary is at the time a suitable and competent person and has 2769
the qualifications as to residence required by section 2109.21 of 2770
the Revised Code. If ~~such~~ the person is reappointed, the court 2771
shall remove the substitute fiduciary and revoke ~~his~~ the 2772
substitute fiduciary's letters of appointment, and shall make such 2773
further order or decree as justice requires. 2774

~~"Military service,"~~ as (B) As used in this section, "military 2775
service" means any service, work, or occupation ~~which~~ that in the 2776
opinion of the court is directly or indirectly in furtherance of 2777
any military effort of the United States. ~~Such definition~~ 2778
"Military service" includes internment in an enemy country, 2779
residence in any foreign country, or residence in any possession 2780
or dependency of the United States, if by reason ~~thereof~~ of the 2781
internment or residence the fiduciary is unable to return to this 2782
state. 2783

Sec. 2109.26. If a sole fiduciary dies, is dissolved, 2784
declines to accept, resigns, is removed, or becomes incapacitated 2785
prior to the termination of the trust, the probate court shall 2786
require a final account of all dealings of ~~such~~ the trust to be 2787
filed ~~forthwith~~ by ~~such~~ the fiduciary if a living person and able 2788
to act. If ~~such~~ the fiduciary is a living person but unable to 2789
act, ~~such~~ the final account shall be filed by ~~his~~ the fiduciary's 2790
guardian, or, if there is no guardian, by some other suitable 2791
person in ~~his~~ the fiduciary's behalf, appointed or approved by the 2792
court. If ~~such~~ the fiduciary is a deceased person, ~~such~~ the final 2793
account shall be filed by ~~his~~ the fiduciary's executor or 2794
administrator. If no estate is commenced for a deceased fiduciary, 2795
the deceased fiduciary's successor shall file the final account. 2796
If ~~such~~ the fiduciary is a dissolved corporation, ~~such~~ the final 2797
account shall be filed by ~~such~~ those persons ~~as~~ that are charged 2798
by law with winding up the affairs of ~~such~~ the dissolved 2799
corporation. ~~Thereupon the~~ The court shall cause ~~such~~ the 2800

proceedings to be had as are provided by sections 2109.30 to 2801
2109.36, ~~inclusive~~, of the Revised Code. 2802

Whenever such a vacancy occurs and ~~such~~ that contingency is 2803
not otherwise provided for by law or by the instrument creating 2804
the trust, or whenever ~~such~~ the instrument names no fiduciary, the 2805
court shall, on its own motion or on the application of any person 2806
beneficially interested, issue letters of appointment as fiduciary 2807
to ~~some~~ a competent person or persons who shall qualify according 2808
to law and execute the trust to its proper termination. ~~Such~~ The 2809
vacancy and the appointment of a successor fiduciary shall not 2810
affect the liability of the former fiduciary or ~~his~~ the former 2811
fiduciary's sureties ~~which~~ that was previously incurred. 2812

Sec. 2109.302. (A) Every guardian or conservator shall render 2813
an account of the administration of the ward's estate at least 2814
once in each two years. The guardian or conservator shall render 2815
an account at any time other than a time otherwise mentioned in 2816
this section upon the order of the probate court issued for good 2817
cause shown either at its own instance or upon the motion of any 2818
person interested in the estate. Except as provided in division 2819
(B) of this section, every guardian or conservator shall render a 2820
final account within thirty days after completing the 2821
administration of the ward's estate or within any other period of 2822
time that the court may order. 2823

Every account shall include an itemized statement of all 2824
receipts of the guardian or conservator during the accounting 2825
period and of all disbursements and distributions made by the 2826
guardian or conservator during the accounting period. The itemized 2827
disbursements and distributions shall be verified by vouchers or 2828
proof, except in the case of an account rendered by a corporate 2829
fiduciary subject to section 1111.28 of the Revised Code. In 2830
addition, the account shall include an itemized statement of all 2831

funds, assets, and investments of the estate known to or in the 2832
possession of the guardian or conservator at the end of the 2833
accounting period and shall show any changes in investments since 2834
the last previous account. 2835

Every account shall be upon the signature of the guardian or 2836
conservator. When two or more guardians or conservators render an 2837
account, the court may allow the account upon the signature of one 2838
of the guardians or conservators. 2839

Upon the filing of every account, the guardian or 2840
conservator, except a corporate fiduciary subject to section 2841
1111.28 of the Revised Code, shall exhibit to the court for its 2842
examination both of the following: the securities shown in the 2843
account as being in the ~~hands~~ possession or under the control of 2844
the guardian or conservator, or the certificate of the person in 2845
possession of the securities, if held as collateral or pursuant to 2846
section 2109.13 or 2131.21 of the Revised Code; and a passbook or 2847
certified bank statement showing as to each depository the fund 2848
deposited to the credit of the ward's estate. The court may 2849
designate a deputy clerk, an agent of a corporate surety on the 2850
bond of the guardian or conservator, or another suitable person 2851
whom the court appoints as commissioner to make the examination 2852
and to report the person's findings to the court. ~~When~~ If 2853
securities are located outside the county, the court may appoint a 2854
commissioner or request another probate court to make the 2855
examination and to report its findings to the court. The court may 2856
examine the guardian or conservator under oath concerning the 2857
account. 2858

~~When~~ If a guardian or conservator is authorized by law to 2859
distribute the assets of the estate, in whole or in part, the 2860
guardian or conservator may do so and include a report of the 2861
distribution in the guardian's or conservator's succeeding 2862
account. 2863

(B)(1) The court may waive, by order, an account that 2864
division (A) of this section requires of a guardian of the estate 2865
or of a guardian of the person and estate, other than an account 2866
made pursuant to court order, if any of the following 2867
circumstances apply: 2868

(a) The assets of the estate consist entirely of real 2869
property. 2870

(b) The assets of the estate consist entirely of personal 2871
property, that property is held by a bank, savings and loan 2872
association, or trust company in accordance with section 2109.13 2873
of the Revised Code, and the court has authorized expenditures of 2874
not more than ten thousand dollars annually for the support, 2875
maintenance, or, if applicable, education of the ward. 2876

(c) The assets of the estate consist entirely of real 2877
property and of personal property that is held by a bank, savings 2878
and loan association, or trust company in accordance with section 2879
2109.13 of the Revised Code, and the court has authorized 2880
expenditures of not more than ten thousand dollars annually for 2881
the support, maintenance, or, if applicable, education of the 2882
ward. 2883

(2) The order of a court entered pursuant to division (B)(1) 2884
of this section is prima-facie evidence that a guardian of the 2885
estate or a guardian of the person and estate has authority to 2886
make expenditures as described in divisions (B)(1)(b) and (c) of 2887
this section. 2888

(3) Notwithstanding the requirements for accounts by other 2889
guardians under this section, a guardian of the person is not 2890
required to render an account except upon an order of the court 2891
that the court issues for good cause shown either at its own 2892
instance or upon the motion of any person interested in the 2893
estate. 2894

Sec. 2109.303. (A) Except as provided in division (B) of this section, every testamentary trustee shall, and every other fiduciary not subject to section 2109.301 or 2109.302 of the Revised Code may, render an account of the trustee's or other fiduciary's administration of the estate or trust at least once in each two years. Any testamentary trustee or other fiduciary shall render an account, subject to division (B) of this section, at any 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 2927
or other fiduciaries render an account, the court may allow the 2928
account upon the signature of one of them. 2929

Upon the filing of every account, the testamentary trustee or 2930
other fiduciary, except a corporate fiduciary subject to section 2931
1111.28 of the Revised Code, shall exhibit to the court for its 2932
examination both of the following: the securities shown in the 2933
account as being in the ~~hands~~ possession or under the control of 2934
the testamentary trustee or other fiduciary, or the certificate of 2935
the person in possession of the securities, if held as collateral 2936
or pursuant to section 2109.13 or 2131.21 of the Revised Code; and 2937
a passbook or certified bank statement showing as to each 2938
depository the fund deposited to the credit of the estate or 2939
trust. The court may designate a deputy clerk, an agent of a 2940
corporate surety on the bond of the testamentary trustee or other 2941
fiduciary, or another suitable person whom the court appoints as 2942
commissioner to make the examination and to report the person's 2943
findings to the court. ~~When~~ If securities are located outside the 2944
county, the court may appoint a commissioner or request another 2945
probate court to make the examination and to report its findings 2946
to the court. The court may examine the testamentary trustee or 2947
other fiduciary under oath concerning the account. 2948

~~When~~ If a testamentary trustee or other fiduciary is 2949
authorized by law or by the instrument governing distribution to 2950
distribute the assets of the estate or trust, in whole or in part, 2951
the testamentary trustee or other fiduciary may do so and include 2952
a report of the distribution in the testamentary trustee's or 2953
fiduciary's succeeding account. 2954

(B) If the assets of a testamentary charitable trust are held 2955
and managed by a testamentary trustee or other fiduciary who is an 2956
individual or by a corporate fiduciary and if the trust merges 2957
into a qualified community foundation, then, after the 2958

testamentary trustee or other fiduciary files with the court a 2959
final and distributive account pertaining to the trust and 2960
activities up to the effective date of the merger, the 2961
testamentary trustee or other fiduciary and any successors of the 2962
testamentary trustee or other fiduciary shall not be required to 2963
render any accounting to the court pertaining to the merged trust 2964
and activities that follow the effective date of the merger. 2965

(C) As used in this section: 2966

(1) "Charitable trust" has the same meaning as in section 2967
109.23 of the Revised Code. 2968

(2) "Qualified community foundation" means any foundation 2969
that is exempt from federal income taxation under sections 2970
170(b)(1)(A)(vi) and 501(c)(3) of the "Internal Revenue Code of 2971
1986," 100 Stat. 2085, 26 U.S.C. 170(b)(1)(A)(vi) and 501 (c)(3), 2972
as amended; that is further described in section 1.170A-9(10) and 2973
(11) of Title 26 of the Code of Federal Regulations, 26 C.F.R. 2974
1.170A-9(10) and (11), as amended; and that publishes at least 2975
annually and circulates widely within its community an audited 2976
report of its fund balances, activities, and donors. 2977

(3) "Testamentary charitable trust" means any charitable 2978
trust that is created by a will. 2979

(4) "Other fiduciary" means a fiduciary other than an 2980
executor, administrator, guardian, conservator, or testamentary 2981
trustee. 2982

Sec. 2109.32. (A) Every fiduciary's account required by 2983
section 2109.301, 2109.302, or 2109.303 of the Revised Code shall 2984
be set for hearing before the probate court. The hearing on the 2985
account shall be set not earlier than thirty days after the filing 2986
of the account. 2987

At the hearing upon an account required by section 2109.302 2988

or 2109.303 of the Revised Code and, if ordered by the court, upon
an account required by section 2109.301 of the Revised Code, the
court shall inquire into, consider, and determine all matters
relative to the account and the manner in which the fiduciary has
executed the fiduciary's trust, including the investment of trust
funds, and may order the account approved and settled or make any
other order ~~as~~ that the court considers proper. If, at the hearing
upon an account, the court finds that the fiduciary has fully and
lawfully administered the estate or trust and has distributed the
assets of the estate or trust in accordance with the law or the
instrument governing distribution, as shown in the account, the
court shall order the account approved and settled and may order
the fiduciary discharged. Upon approval of a final and
distributive account required by division (B)(1) of section
2109.301 of the Revised Code, the court may order the surety bond
for the fiduciary terminated. Unless otherwise ordered by the
court, the fiduciary shall be discharged without further order
twelve months following the approval of the final and distributive
account.

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

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

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

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

simultaneously with the filing of the account. 3021

(3) The probate court shall not approve the final account of 3022
any executor or administrator until the following events have 3023
occurred: 3024

(a) Three months have passed since the death of the decedent. 3025

(b) The surviving spouse has filed an election to take under 3026
or against the will, or the time for making the election has 3027
expired. 3028

(4) If an administrator or executor learns of the existence 3029
of newly discovered assets after the filing of the final account 3030
or otherwise comes into possession of assets belonging to the 3031
estate after the filing of the final account, the executor or 3032
administrator shall file a supplemental final account with respect 3033
to the disposition of the assets and shall provide a copy of the 3034
supplemental final account to each heir of an intestate estate or 3035
to each beneficiary of a testate estate, as provided in division 3036
(B)(1) of this section and subject to the exceptions specified in 3037
divisions (B)(1)(a) and (b) of this section. 3038

(C) The rights of any person with a pecuniary interest in the 3039
estate are not barred by approval of an account pursuant to 3040
divisions (A) and (B) of this section. These rights may be barred 3041
following a hearing on the account pursuant to section 2109.33 of 3042
the Revised Code. 3043

Sec. 2109.33. A fiduciary may serve notice of the hearing 3044
upon ~~his~~ the fiduciary's account to be conducted under section 3045
2109.32 of the Revised Code, or may cause the notice to be served, 3046
upon any person who is interested in the estate or trust, 3047
including creditors as the court may direct. The probate court, 3048
after notice to the fiduciary upon the motion of any interested 3049
person for good cause shown or at its own instance, may order that 3050

a notice of the hearing is to be served upon persons the court 3051
designates. 3052

The notice shall be made by mail in addition to service by 3053
publication, shall set forth the time and place of the hearing, 3054
and shall specify the account to be considered and acted upon by 3055
the court at the hearing and the period of time covered by the 3056
account. It shall contain a statement to the effect that the 3057
person notified is required to examine the account, to inquire 3058
into the contents of the account and into all matters that may 3059
come before the court at the hearing on the account, and to file 3060
any exceptions that the person may have to the account at least 3061
five days prior to the hearing on the account, and that upon ~~his~~ 3062
the person's failure to file exceptions, the account may be 3063
approved without further notice. If the person to be notified was 3064
not a party to the proceeding in which any prior account was 3065
settled, the notice, for the purpose of barring any rights 3066
possessed by that person, may include and specify the prior 3067
accounts and the periods of time covered by them. In that event, 3068
the notice shall inform the person notified that the approval of 3069
the account filed most recently will terminate any rights 3070
possessed by ~~him~~ the person to vacate the order settling each 3071
prior account so specified, except as provided in section 2109.35 3072
of the Revised Code, and shall further inform the person that, 3073
under penalty of losing those rights, ~~he forthwith~~ the person 3074
shall examine each prior account so specified, shall inquire into 3075
its contents, and, if ~~he deems~~ the person considers it necessary 3076
to protect ~~his~~ the person's rights, shall take the action with 3077
respect to ~~his~~ the person's rights that is permitted by law. 3078

The notice of the hearing upon an account shall be served at 3079
least fifteen days prior to the hearing on the account. Any 3080
competent person may waive service of notice and consent to the 3081
approval of any account by the court. Waivers of service and 3082

consents to approval shall be recorded with the account. 3083

Any person interested in an estate or trust may file 3084
exceptions to an account or to matters pertaining to the execution 3085
of the trust. All exceptions shall be specific and written. 3086
Exceptions shall be filed and a copy of them furnished to the 3087
fiduciary by the exceptor, not less than five days prior to the 3088
hearing on the account. The court for cause may allow further time 3089
to file exceptions. If exceptions are filed to an account, the 3090
court may allow further time for serving notice of the hearing 3091
upon any person who may be affected by an order disposing of the 3092
exceptions and who has not already been served with notice of the 3093
hearing in accordance with this section. 3094

A probate court, by local rule, may require that notice of 3095
the hearing on a final account be given to all heirs in an 3096
intestate estate and to all residuary beneficiaries in a testate 3097
estate. 3098

Any notice that is required or permitted by this section or 3099
by any local rule adopted under authority of this section shall be 3100
served, and any waiver of the right to receive any notice of those 3101
types may be waived, in accordance with the Rules of Civil 3102
Procedure. 3103

Sec. 2109.34. If an interest in an estate or trust is or may 3104
be possessed by persons who will compose a certain class upon the 3105
happening of any future event, the unborn members of ~~such~~ that 3106
class shall be ~~deemed~~ considered to be represented in any hearing 3107
upon a fiduciary's account required by section 2109.32 of the 3108
Revised Code, if any living member of the class is made a party to 3109
~~such~~ that proceeding or if a trustee for the proceeding is 3110
appointed by the probate court. The unborn members of ~~such~~ the 3111
class need not be served by publication. An order made in ~~such~~ the 3112
proceeding shall be binding upon all members of ~~such~~ the class, 3113

except that ~~such~~ the order may be vacated for fraud as provided in 3114
section 2109.35 of the Revised Code. 3115

If the beneficiaries, both present and future, of a 3116
charitable trust are not represented by a trustee or an existing 3117
corporation or other organization, they shall be represented in 3118
any ~~such~~ proceeding under this section by the attorney general if 3119
~~he~~ the attorney general is made a party ~~thereto~~ to the proceeding. 3120
Any order made in the proceeding shall be binding upon ~~such~~ those 3121
beneficiaries, except for fraud. 3122

Sec. 2109.35. The order of the probate court upon the 3123
settlement of a fiduciary's account shall have the effect of a 3124
judgment and may be vacated only as follows: 3125

(A) The order may be vacated for fraud, upon motion of any 3126
person affected by the order or upon the court's own order, if the 3127
motion is filed or order is made within one year after discovery 3128
of the existence of the fraud. Any person who is subject to any 3129
legal disability may file the motion at any time within one year 3130
after the removal of the legal disability or within one year after 3131
~~he~~ the person discovers the existence of the fraud, whichever is 3132
later, or ~~his~~ the person's guardian or a successor guardian may do 3133
so during the period of the legal disability. If the death of any 3134
person occurs during the period within which ~~he~~ the person could 3135
have filed the motion, ~~his~~ the person's administrator or executor 3136
may file it within one year after the person's death. 3137

(B) The order may be vacated for good cause shown, other than 3138
fraud, upon motion of any person affected by the order who was not 3139
a party to the proceeding in which the order was made and who had 3140
no knowledge of the proceeding in time to appear in it; provided 3141
that, if the account settled by the order is included and 3142
specified in the notice to that person of the proceeding in which 3143
a subsequent account is settled, the right of that person to 3144

vacate the order shall terminate upon the settlement of the 3145
subsequent account. A person affected by an order settling an 3146
account shall be ~~deemed~~ considered to have been a party to the 3147
proceeding in which the order was made if that person was served 3148
with notice of the hearing on the account in accordance with 3149
section 2109.33 of the Revised Code, waived that notice, consented 3150
to the approval of the account, filed exceptions to the account, 3151
or is bound by section 2109.34 of the Revised Code; but no person 3152
in being who is under legal disability at the time of that 3153
proceeding shall be ~~deemed~~ considered to have been a party to that 3154
proceeding unless ~~he~~ the person was represented in it as provided 3155
in section 2111.23 of the Revised Code. Neither the fiduciary nor 3156
~~his~~ the fiduciary's surety shall incur any liability as a result 3157
of the vacation of an order settling an account in accordance with 3158
this division, if the motion to vacate the order is filed more 3159
than three years following the settlement of the fiduciary's 3160
account showing complete distribution of assets; but the 3161
three-year period shall not affect the liability of any heir, 3162
devisee, or distributee either before or after the expiration of 3163
that period. 3164

(C) The order may be vacated for good cause shown upon motion 3165
of the fiduciary, if the motion is filed prior to the settlement 3166
of the account showing that the fiduciary has fully discharged his 3167
trust. 3168

A motion to vacate an order settling an account shall set 3169
forth the items of the account with respect to which complaint is 3170
made and the reasons for complaining of those items. The person 3171
filing a motion to vacate an order settling an account or another 3172
person the court may designate shall cause notice of the hearing 3173
on the motion to be served upon all interested parties who may be 3174
adversely affected by an order of the court granting the motion. 3175

An order settling an account shall not be vacated unless the 3176

court determines that there is good cause for doing so, and the 3177
burden of proving good cause shall be upon the complaining party. 3178

The vacation of an order settling an account, made after 3179
notice given in the manner provided in section 2109.33 of the 3180
Revised Code, shall not affect the rights of a purchaser for value 3181
in good faith, a lessee for value in good faith, or an 3182
encumbrancer for value in good faith; provided that, if the 3183
fiduciary has effected any such sale, lease, or encumbrance, any 3184
person prejudiced by it may proceed, after vacation of the order, 3185
against any distributee benefiting from the sale, lease, or 3186
encumbrance to the extent of the amount received by that 3187
distributee on distribution of the estate or trust, or if any 3188
heir, devisee, or distributee has effected any such sale, lease, 3189
or encumbrance, any person prejudiced by it may proceed, after the 3190
vacation of the order, against that heir, devisee, or distributee, 3191
to the extent of the value at the time of alienation of the 3192
property aliened by ~~him~~ the person, with legal interest. 3193

Sec. 2109.36. An application for an order of distribution of 3194
the assets of an estate or trust held by a fiduciary may be set 3195
for hearing before the probate court at ~~such~~ the time ~~as~~ that the 3196
court shall designate. The fiduciary may serve notice of the 3197
hearing upon ~~such~~ the application, or cause ~~such~~ the notice to be 3198
served, upon any person who may be affected by an order disposing 3199
~~thereof~~ of the application; or the court, upon motion of any 3200
interested person for good cause shown or at its own instance, may 3201
order ~~such~~ the notice to be served upon ~~any~~ ~~such~~ that person. ~~Such~~ 3202
The notice shall set forth the time and place of the hearing and 3203
shall be accompanied by a statement of the proposed distribution. 3204
At the hearing upon the application the court shall inquire into, 3205
consider, and determine all matters relative ~~thereto~~ to the 3206
application, and make ~~such~~ an order ~~as~~ that the court ~~deems~~ 3207
considers proper. If the court makes an order of distribution, the 3208

fiduciary shall comply ~~therewith~~ with the order and shall account 3209
to the court for ~~his~~ the fiduciary's distribution, verified by 3210
vouchers or proof. An order of distribution shall have the effect 3211
of a judgment. ~~Such~~ The order may be reviewed upon appeal and may 3212
be vacated as provided in section 2109.35 of the Revised Code. 3213

Sec. 2109.361. (A) As used in this section, "third-party 3214
distribution" means the distribution by a fiduciary of an estate 3215
or trust of the assets of that estate or trust when both of the 3216
following apply: 3217

(1) The fiduciary makes the distribution to either of the 3218
following persons: 3219

(a) The transferee of a beneficiary; 3220

(b) Any person pursuant to an agreement, request, or 3221
instruction of a beneficiary or pursuant to a legal claim against 3222
a beneficiary. 3223

(2) The distribution is the subject of an agreement between a 3224
beneficiary and any person that requires the fiduciary or 3225
beneficiary to pay a percentage of an inheritance or a dollar 3226
amount to any person other than the beneficiary. 3227

(B) Prior to making a third-party distribution, the affected 3228
beneficiary or the affected beneficiary's guardian or other legal 3229
representative of the beneficiary may file an application for the 3230
approval of a third-party distribution with the probate court. An 3231
application filed pursuant to this division shall identify the 3232
person to whom the third-party distribution is to be made, 3233
disclose the basis for making the third-party distribution, and 3234
include a copy of any written agreement between the affected 3235
beneficiary and the person to whom the third-party distribution is 3236
to be made. 3237

(C) The probate court shall hold a hearing on an application 3238

filed under division (B) of this section. The applicant shall 3239
serve notice of the hearing on all interested parties at least 3240
fifteen days prior to the hearing in accordance with Civil Rule 3241
73. An interested party may waive notice of the hearing in 3242
accordance with Civil Rule 73. 3243

(D) The probate court may approve the third-party 3244
distribution in whole or in part, as the court determines is just 3245
and equitable. To the extent that the application is approved, the 3246
court shall determine whether the third-party distribution is 3247
properly charged solely against the beneficiary's share of the 3248
estate or trust or whether some or all of the third-party 3249
distribution is properly charged against the residue of the 3250
affected estate or trust. The court may consider any relevant 3251
factors in evaluating the application, including, but not limited 3252
to, any of the following: 3253

(1) The amount or percentage of the affected beneficiary's 3254
share that would be the subject of the proposed third-party 3255
distribution measured against the reasonable value of any ~~goods~~ 3256
assets or services the person to whom the third-party distribution 3257
would be made provided to the beneficiary or to the estate or 3258
trust; 3259

(2) Whether the agreement, request, or instructions of the 3260
affected beneficiary were procured by duress, fraud, 3261
misrepresentation, undue influence, or other unfair means; 3262

(3) Whether the amount of the proposed third-party 3263
distribution is fixed or contingent under the terms of the 3264
agreement between the affected beneficiary and the recipient of 3265
the proposed third-party distribution; 3266

(4) Whether the beneficiary was represented by an attorney 3267
during the pendency of the probate action, or the beneficiary 3268
authorized the recipient of the proposed third-party distribution 3269

to retain an attorney who is licensed to practice law in Ohio for 3270
the beneficiary to formally represent the beneficiary in any 3271
proceeding regarding the decedent's estate, and the recipient of 3272
the proposed third-party distribution is responsible for paying 3273
the attorney's fees; 3274

(5) The extent, if any, to which the recipient of the 3275
proposed third-party distribution incurred expenses in connection 3276
with the services provided to the affected beneficiary, estate, or 3277
trust; 3278

(6) Whether the beneficiary was required to advance any 3279
payments for fees or expenses to the recipient of the proposed 3280
third-party distribution. 3281

(E) Division (D)(4) of this section does not prohibit the 3282
beneficiary from retaining the beneficiary's own legal counsel. 3283

(F) This section does not apply to third-party distributions 3284
to an attorney who represents a beneficiary and does not affect 3285
any other provision of law regarding the compensation of 3286
attorneys. 3287

Sec. 2109.37. (A) Except as otherwise provided by law, 3288
including division (D) of this section, or by the instrument 3289
creating the trust, a fiduciary having funds belonging to a trust 3290
~~which~~ that are to be invested may invest them in the following: 3291

(1) Bonds or other obligations of the United States or of 3292
this state; 3293

(2) Bonds or other interest-bearing obligations of any 3294
county, municipal corporation, school district, or other legally 3295
constituted political taxing subdivision within the state, 3296
provided that ~~such~~ the county, municipal corporation, school 3297
district, or other subdivision has not defaulted in the payment of 3298
the interest on any of its bonds or interest-bearing obligations, 3299

for more than one hundred twenty days during the ten years 3300
immediately preceding the investment by the fiduciary in the bonds 3301
or other obligations, and provided that ~~such~~ the county, municipal 3302
corporation, school district, or other subdivision, is not, at the 3303
time of the investment, in default in the payment of principal or 3304
interest on any of its bonds or other interest-bearing 3305
obligations; 3306

(3) Bonds or other interest-bearing obligations of any other 3307
state of the United States which, within twenty years prior to the 3308
making of ~~such~~ that investment, has not defaulted for more than 3309
ninety days in the payment of principal or interest on any of its 3310
bonds or other interest-bearing obligations; 3311

(4) Any bonds issued by or for federal land banks and any 3312
debentures issued by or for federal intermediate credit banks 3313
under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 3314
U.S.C.A. 641, as amended; or any debentures issued by or for banks 3315
for cooperatives under the "Farm Credit Act of 1933," 48 Stat. 3316
257, 12 U.S.C.A. 131, as amended; 3317

(5) Notes ~~which~~ that are: (a) secured by a first mortgage on 3318
real ~~estate~~ property held in fee and located in the state, 3319
improved by a unit designed principally for residential use for 3320
not more than four families or by a combination of ~~such~~ that 3321
dwelling unit and business property, the area designed or used for 3322
nonresidential purposes not to exceed fifty per cent of the total 3323
floor area; (b) secured by a first mortgage on real ~~estate~~ 3324
property held in fee and located in the state, improved with a 3325
building designed for residential use for more than four families 3326
or with a building used primarily for business purposes, if the 3327
unpaid principal of the notes secured by ~~such~~ that mortgage does 3328
not exceed ten per cent of the value of the estate or trust or 3329
does not exceed five thousand dollars, whichever is greater; or 3330
(c) secured by a first mortgage on an improved farm held in fee 3331

and located in the state, provided that ~~such~~ the mortgage requires 3332
that the buildings on the mortgaged property shall be well insured 3333
against loss by fire, and so kept, for the benefit of the 3334
mortgagee, until the debt is paid, and provided that the unpaid 3335
principal of the notes secured by the mortgage shall not exceed 3336
fifty per cent of the fair value of the mortgaged real ~~estate~~ 3337
property at the time the investment is made, and the notes shall 3338
be payable not more than five years after the date on which the 3339
investment in them is made; except that the unpaid principal of 3340
the notes may equal sixty per cent of the fair value of the 3341
mortgaged real ~~estate~~ property at the time the investment is made, 3342
and may be payable over a period of fifteen years following the 3343
date of the investment by the fiduciary if regular installment 3344
payments are required sufficient to amortize four per cent or more 3345
of the principal of the outstanding notes per annum and if the 3346
unpaid principal and interest become due and payable at the option 3347
of the holder upon any default in the payment of any installment 3348
of interest or principal upon the notes, or of taxes, assessments, 3349
or insurance premiums upon the mortgaged premises or upon the 3350
failure to cure any such default within any grace period provided 3351
~~therein~~ in the notes not exceeding ninety days in duration; 3352

(6) Life, endowment, or annuity contracts of legal reserve 3353
life insurance companies regulated by sections 3907.01 to 3907.21, 3354
3909.01 to 3909.17, 3911.01 to 3911.24, 3913.01 to 3913.10, 3355
3915.01 to 3915.15, and 3917.01 to 3917.05 of the Revised Code, 3356
and licensed by the superintendent of insurance to transact 3357
business within the state, provided that the purchase of contracts 3358
authorized by this division shall be limited to executors or the 3359
successors to their powers when specifically authorized by will 3360
and to guardians and trustees, which contracts may be issued on 3361
the life of a ward, a beneficiary of a trust fund, or according to 3362
a will, or upon the life of a person in whom ~~such~~ the ward or 3363
beneficiary has an insurable interest and the contracts shall be 3364

drawn by the insuring company so that the proceeds shall be the	3365
sole property of the person whose funds are so invested;	3366
(7) Notes or bonds secured by mortgages and insured by the	3367
federal housing administrator or debentures issued by such <u>that</u>	3368
administrator;	3369
(8) Obligations issued by a federal home loan bank created	3370
under the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12	3371
U.S.C.A. 1421, as amended;	3372
(9) Shares and certificates or other evidences of deposits	3373
issued by a federal savings and loan association organized and	3374
incorporated under the "Home Owners' Loan Act of 1933," 48 Stat.	3375
128, 12 U.S.C.A. 1461, as amended, to the extent and only to the	3376
extent that those shares or certificates or other evidences of	3377
deposits are insured pursuant to the "Financial Institutions	3378
Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12	3379
U.S.C.A. 1811, as amended;	3380
(10) Bonds issued by the home owners' loan corporation	3381
created under the "Home Owners' Act of 1933," 48 Stat. 128, 12	3382
U.S.C.A. 1461, as amended;	3383
(11) Obligations issued by the national mortgage association	3384
created under the "National Housing Act," 48 Stat. 1246 (1934), 12	3385
U.S.C.A. 1701, as amended;	3386
(12) Shares and certificates or other evidences of deposits	3387
issued by a domestic savings and loan association organized under	3388
the laws of the state, which association has obtained insurance of	3389
accounts pursuant to the "Financial Institutions Reform, Recovery,	3390
and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as	3391
amended, or as may be otherwise provided by law, only to the	3392
extent that such <u>the</u> evidences of deposits are insured under that	3393
act, as amended;	3394
(13) Shares and certificates or other evidences of deposits	3395

issued by a domestic savings and loan association organized under 3396
the laws of the state, provided that no fiduciary may invest ~~such~~ 3397
~~the~~ deposits except with the approval of the probate court, and 3398
then in an amount not to exceed the amount ~~which~~ that the 3399
fiduciary is permitted to invest under division (A)(12) of this 3400
section; 3401

(14) In savings accounts in, or certificates or other 3402
evidences of deposits issued by, a national bank located in the 3403
state or a state bank located in and organized under the laws of 3404
the state or a state credit union located and organized under the 3405
laws of the state or a federal credit union located in the state 3406
by depositing the funds in the bank or credit union, and ~~such the~~ 3407
national or state bank or the federal or state credit union when 3408
itself acting in a fiduciary capacity may deposit the funds in 3409
savings accounts in, or certificates or other evidences of 3410
deposits issued by, its own savings department or any bank 3411
subsidiary corporation owned or controlled by the bank holding 3412
company that owns or controls ~~such the~~ national or state bank; 3413
provided that no deposit shall be made by any fiduciary, 3414
individual, or corporate, unless the deposits of the depository 3415
bank are insured by the federal deposit insurance corporation 3416
created under the "Federal Deposit Insurance Corporation Act of 3417
1933," 48 Stat. 162, 12 U.S.C. 264, as amended, or provided that 3418
no deposit shall be made by any fiduciary, individual or 3419
corporate, unless the deposits of the depository credit union are 3420
insured by the national credit union administration created under 3421
the "Federal Credit Union Act of 1934," 48 Stat. 1216, 12 U.S.C. 3422
1751, as amended, or the deposits of the depository credit union 3423
are insured by a share guaranty corporation as defined in Chapter 3424
1761. of the Revised Code, and provided that the deposit of the 3425
funds of any one trust in ~~any such those~~ savings accounts in, or 3426
certificates or other evidences of deposits issued by, any one 3427
bank or credit union shall not exceed the sum insured under ~~that~~ 3428

~~aet those acts~~, as amended, or under Chapter 1761. of the Revised 3429
Code; 3430

(15) Obligations consisting of notes, bonds, debentures, or 3431
equipment trust certificates issued under an indenture, ~~which that~~ 3432
are the direct obligations, or in the case of equipment trust 3433
certificates are secured by direct obligations, of a railroad or 3434
industrial corporation, or a corporation engaged directly and 3435
primarily in the production, transportation, distribution, or sale 3436
of electricity or gas, or the operation of telephone or telegraph 3437
systems or waterworks, or in some combination of them; provided 3438
that the obligor corporation is one ~~which that~~ is incorporated 3439
under the laws of the United States, any state, ~~or~~ the District of 3440
Columbia, or foreign government, and the obligations are rated at 3441
the time of purchase in the highest or next highest classification 3442
established by at least two standard rating services selected from 3443
a list of the standard rating services ~~which that~~ shall be 3444
prescribed by the superintendent of financial institutions; 3445
provided that every such list shall be certified by the 3446
superintendent to the clerk of each probate court in the state, 3447
and shall continue in effect until a different list is prescribed 3448
and certified as provided in this division; 3449

(16) Obligations issued, assumed, or guaranteed by the 3450
international finance corporation or by the international bank for 3451
reconstruction and development, the Asian development bank, the 3452
inter-American development bank, the African development bank, or 3453
other similar development bank in which the president, as 3454
authorized by congress and on behalf of the United States, has 3455
accepted membership, provided that the obligations are rated at 3456
the time of purchase in the highest or next highest classification 3457
established by at least one standard rating service selected from 3458
a list of standard rating services ~~which that~~ shall be prescribed 3459
by the superintendent of financial institutions; 3460

(17) Securities of any investment company, as defined in and 3461
registered under sections 3 and 8 of the "Investment Company Act 3462
of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8, that are 3463
invested exclusively in forms of investment or in instruments that 3464
are fully collateralized by forms of investment in which the 3465
fiduciary is permitted to invest pursuant to divisions (A)(1) to 3466
(16) of this section, provided that, in addition to ~~such~~ those 3467
forms of investment, the investment company may, for the purpose 3468
of reducing risk of loss or of stabilizing investment returns, 3469
engage in hedging transactions. 3470

(B) No administrator or executor may invest funds belonging 3471
to an estate in any asset other than a direct obligation of the 3472
United States that has a maturity date not exceeding one year from 3473
the date of investment, or other than in a short-term investment 3474
fund that is invested exclusively in obligations of the United 3475
States or of its agencies, or primarily in ~~such~~ those obligations 3476
and otherwise only in variable demand notes, corporate money 3477
market instruments including, but not limited to, commercial 3478
paper, or fully collateralized repurchase agreements or other 3479
evidences of indebtedness that are payable on demand or generally 3480
have a maturity date not exceeding ninety-one days from the date 3481
of investment, except with the approval of the probate court or 3482
with the permission of the instruments creating the trust. 3483

(C)(1) In addition to the investments allowed by this 3484
section, a guardian or trustee, with the approval of the court, 3485
may invest funds belonging to the trust in productive real ~~estate~~ 3486
property located within the state, provided that neither the 3487
guardian nor the trustee nor any member of the family of either 3488
has any interest in ~~such~~ the real ~~estate~~ property or in the 3489
proceeds of the purchase price. The title to any real ~~estate~~ 3490
property so purchased by a guardian ~~must~~ shall be taken in the 3491
name of the ward. 3492

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

(D) If the fiduciary is a trustee appointed by and accountable to the probate court, the fiduciary shall invest the trust's assets pursuant to the requirements and standards set forth in the Ohio Uniform Prudent Investor Act.

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

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

(2) Subject to division (C) of this section, collective

investment funds established in accordance with section 1111.14 of 3524
the Revised Code or securities of any investment company, 3525
including any affiliated investment company, whether or not the 3526
fiduciary has invested other funds held by it in an agency or 3527
other nonfiduciary capacity in the securities of the same 3528
investment company or affiliated investment company. ~~Such~~ Those 3529
investments may be made regardless of the eligibility of the 3530
underlying assets held by the fund portfolios of the investment 3531
company. 3532

(3) Bonds or other interest-bearing obligations of any state 3533
or territory of the United States, or of any county, city, 3534
village, school district, or other legally constituted political 3535
taxing subdivision of any state or territory of the United States, 3536
not otherwise eligible under division (A)(2) or (3) of section 3537
2109.37 of the Revised Code, or of any foreign government; 3538

(4) Debt or equity securities of foreign corporations that 3539
trade on recognized United States domiciled exchanges. 3540

(B) No investment shall be made pursuant to this section 3541
~~which that,~~ at the time ~~such the~~ investment is made, causes the 3542
aggregate market value of the investments, not made eligible by 3543
section 2109.37 or 2109.372 of the Revised Code, to exceed sixty 3544
per cent of the aggregate market value at that time of all the 3545
property of the fund held by the fiduciary. No sale or other 3546
liquidation of any investment shall be required solely because of 3547
any change in the relative market value of those investments made 3548
eligible by this section and those made eligible by section 3549
2109.37 or 2109.372 of the Revised Code; provided that, in the 3550
event of a sale of investments authorized by this section, the 3551
proceeds from the sale may be reinvested in the kinds and classes 3552
of securities authorized by this section without regard to the 3553
percentage limitation provided in this division. In determining 3554
the aggregate market value of the property of a fund and the 3555

percentage of a fund to be invested under this section, a 3556
fiduciary may rely upon published market quotations as to those 3557
investments for which ~~such~~ those quotations are available and upon 3558
~~such~~ the valuations of other investments ~~as that~~, in the 3559
fiduciary's best judgment, seem fair and reasonable according to 3560
available information. 3561

(C)(1)(a) A fiduciary making an investment of trust funds in 3562
securities of an affiliated investment company, or a bank 3563
subsidiary corporation or other corporation owned or controlled by 3564
the bank holding company that owns or controls the fiduciary, may 3565
charge a reasonable fee for investment advisory, brokerage, 3566
transfer agency, registrar, management, or other similar services 3567
provided to an affiliated investment company. The fee may be in 3568
addition to the compensation to which the fiduciary is otherwise 3569
entitled to receive from the trust, provided that the fee is 3570
charged as a percentage of either asset value or income earned or 3571
actual amount charged and is disclosed at least annually by 3572
prospectus, account statement, or any other written means to all 3573
persons entitled to receive statements of account activity. The 3574
fiduciary shall disclose the relationship between the fiduciary 3575
and the affiliated investment company, at least annually by 3576
account statement, whether or not the fee is charged. 3577

(b) A fiduciary making an investment of trust funds in 3578
securities of an affiliated investment company pursuant to 3579
division (A)(2) of this section shall, when providing any periodic 3580
account statements to the trust fund, report the net asset value 3581
of the shares comprising the investment of the trust funds in the 3582
affiliated investment company. 3583

(c) If a fiduciary making an investment of trust funds in 3584
securities of an affiliated investment company pursuant to 3585
division (A)(2) of this section invests ~~such~~ those funds in any 3586
mutual fund, the fiduciary shall disclose, in at least ten-point 3587

boldface type, by prospectus, account statement, or any other 3588
written means to all persons entitled to receive statements of 3589
account activity, that the mutual fund is not insured or 3590
guaranteed by the federal deposit insurance corporation or by any 3591
other government-sponsored agency of the federal government or of 3592
this state. 3593

(2) Unless the investment of trust funds in securities of an 3594
affiliated investment company can be made under the terms of the 3595
instrument creating the trust, an exception to the investment of 3596
trust funds in securities of an affiliated investment company may 3597
be filed with the probate court. Any exception filed pursuant to 3598
this division ~~must~~ shall be signed by all persons who would, at 3599
the time the exception is filed, be permitted to file an exception 3600
to an account pursuant to section 2109.33 of the Revised Code and 3601
~~must~~ shall state that all ~~such~~ of those persons request that the 3602
current investment of trust funds in securities of an affiliated 3603
investment company be terminated within a reasonable time. If the 3604
probate court determines that the exception complies with the 3605
requirements of this division, the probate court shall establish a 3606
schedule for disposing of any current investments in securities of 3607
an affiliated investment company, and the fiduciary shall cause 3608
the trust to dispose of the investments in accordance with the 3609
schedule. The fiduciary shall not be liable for any loss incurred 3610
by the trust as a result of complying with division (C)(2) of this 3611
section. 3612

(D) As used in this section, "affiliated investment company" 3613
and "reasonable fee" have the same meanings as in division (E) of 3614
section 1111.13 of the Revised Code. 3615

Sec. 2109.372. (A) As used in this section: 3616

(1) "Short term trust-quality investment fund" means a short 3617
term investment fund that meets both of the following conditions: 3618

(a) The fund may be either a collective investment fund 3619
established in accordance with section 1111.14 of the Revised Code 3620
or a registered investment company, including any affiliated 3621
investment company whether or not the fiduciary has invested other 3622
funds held by it in an agency or other nonfiduciary capacity in 3623
the securities of the same registered investment company or 3624
affiliated investment company. 3625

(b) The fund is invested in any one or more of the following 3626
manners: 3627

(i) In obligations of the United States or of its agencies; 3628

(ii) In obligations of one or more of the states of the 3629
United States or their political subdivisions; 3630

(iii) In obligations of foreign governments or states; 3631

(iv) In variable demand notes, corporate money market 3632
instruments including, but not limited to, commercial paper rated 3633
at the time of purchase in either of the two highest 3634
classifications established by at least one nationally recognized 3635
standard rating service; 3636

~~(iv)~~(v) Deposits in banks, savings banks, or savings and loan 3637
associations, whose deposits are insured by the federal deposit 3638
insurance corporation, or in credit unions insured by the national 3639
credit union administration or by a credit union share guaranty 3640
corporation established under Chapter 1761. of the Revised Code, 3641
if the rate of interest paid on ~~such~~ those deposits is at least 3642
equal to the rate of interest generally paid by ~~such~~ those banks, 3643
savings banks, savings and loan associations, or credit unions on 3644
deposits of similar terms or amounts; 3645

~~(v)~~(vi) In fully collateralized repurchase agreements or 3646
other evidences of indebtedness that are of trust quality and are 3647
payable on demand or have a maturity date consistent with the 3648
purpose of the fund and the duty of fiduciary prudence. 3649

(2) "Registered investment company" means any investment 3650
company that is defined in and registered under sections 3 and 8 3651
of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 3652
80a-3 and 80a-8. 3653

(3) "Affiliated investment company" has the same meaning as 3654
in division (E)(1) of section 1111.13 of the Revised Code. 3655

(B) A fiduciary is not required to invest cash that belongs 3656
to the trust and may hold that cash for the period prior to 3657
distribution if either of the following applies: 3658

(1) The fiduciary reasonably expects to do either of the 3659
following: 3660

(a) Distribute the cash to beneficiaries of the trust on a 3661
quarterly or more frequent basis; 3662

(b) Use the cash for the payment of debts, taxes, or expenses 3663
of administration within the ninety-day period following the 3664
receipt of the cash by the fiduciary. 3665

(2) Determined on the basis of the facilities available to 3666
the fiduciary and the amount of the income that reasonably could 3667
be earned by the investment of the cash, the amount of the cash 3668
does not justify the administrative burden or expense associated 3669
with its investment. 3670

(C) If a fiduciary wishes to hold funds that belong to the 3671
trust in liquid form and division (B) of this section does not 3672
apply, the fiduciary may so hold the funds as long as they are 3673
temporarily invested as described in division (D) of this section. 3674

(D)(1) A fiduciary may make a temporary investment of cash 3675
that the fiduciary may hold uninvested in accordance with division 3676
(B) of this section, and shall make a temporary investment of 3677
funds held in liquid form pursuant to division (C) of this 3678
section, in any of the following investments, unless the governing 3679

instrument provides for other investments in which the temporary 3680
investment of cash or funds is permitted: 3681

(a) A short term trust-quality investment fund; 3682

(b) Direct obligations of the United States or of its 3683
agencies; 3684

(c) A deposit with a bank, savings bank, savings and loan 3685
association, or credit union, including a deposit with the 3686
fiduciary itself or any bank subsidiary corporation owned or 3687
controlled by the bank holding company that owns or controls the 3688
fiduciary, whose deposits are insured by the federal deposit 3689
insurance corporation, if the rate of interest paid on that 3690
deposit is at least equal to the rate of interest generally paid 3691
by that bank, savings bank, savings and loan association, or 3692
credit union on deposits of similar terms or amounts. 3693

(2) A fiduciary that makes a temporary investment of cash or 3694
funds pursuant to division (D)(1) of this section may charge a 3695
reasonable fee for the services associated with that investment. 3696
The fee shall be in addition to the compensation to which the 3697
fiduciary is entitled for ordinary fiduciary services. 3698

(3) Fiduciaries that make one or more temporary investments 3699
of cash or funds pursuant to division (D)(1) of this section shall 3700
provide to the beneficiaries of the trusts involved, that are 3701
currently receiving income or have a right to receive income, a 3702
written disclosure of their temporary investment practices and, if 3703
applicable, the method of computing reasonable fees for their 3704
temporary investment services pursuant to division (D)(2) of this 3705
section. Fiduciaries may comply with this requirement in any 3706
appropriate written document, including, but not limited to, any 3707
periodic statement or account. 3708

(4) A fiduciary that makes a temporary investment of cash or 3709
funds in an affiliated investment company pursuant to division 3710

(D)(1)(a) of this section shall, when providing any periodic 3711
account statements of its temporary investment practices, report 3712
the net asset value of the shares comprising the investment in the 3713
affiliated investment company. 3714

(5) If a fiduciary that makes a temporary investment of cash 3715
or funds in an affiliated investment company pursuant to division 3716
(D)(1)(a) of this section invests in any mutual fund, the 3717
fiduciary shall provide to the beneficiaries of the trust 3718
involved, that are currently receiving income or have a right to 3719
receive income, a written disclosure, in at least ten-point 3720
boldface type, that the mutual fund is not insured or guaranteed 3721
by the federal deposit insurance corporation or by any other 3722
government agency or government-sponsored agency of the federal 3723
government or of this state. 3724

Sec. 2109.38. Sections 2109.37, 2109.371, and 2109.372 of the 3725
Revised Code do not prohibit a fiduciary from retaining any part 3726
of a trust estate as received by ~~him~~ the fiduciary even though 3727
~~such that~~ part is not of the class or percentage permitted to 3728
fiduciaries, or from retaining any investment made by ~~him~~ the 3729
fiduciary after ~~such the~~ investment ceases to be of a class or 3730
exceeds the percentage permitted by law, provided the 3731
circumstances are not such as to require the fiduciary to dispose 3732
of ~~such the~~ investment in the performance of ~~his~~ the fiduciary's 3733
duties. 3734

Sec. 2109.39. A fiduciary entitled to a distributive share of 3735
the assets of an estate or trust has the same right as other 3736
beneficiaries to accept or demand distribution in kind and may 3737
retain any security or investment so distributed to ~~him~~ the 3738
fiduciary as though it were a part of the original estate received 3739
by ~~him~~ the fiduciary. 3740

Sec. 2109.40. Unless the instrument creating a trust forbids, 3741
a fiduciary may do all of the things ~~which~~ that an individual 3742
holder might do with respect to securities held by ~~him~~ the 3743
fiduciary, including the exercise or sale of subscription rights, 3744
the acceptance of new stock in the same corporation in place of 3745
the stock held, or in the event of reorganization, sale, or merger 3746
in a different corporation, and with the approval of the probate 3747
court, the investment of additional funds ~~where~~ if required of all 3748
shareholders participating in a reorganization. 3749

Sec. 2109.42. Subject to section 2109.372 of the Revised 3750
Code, a fiduciary who has funds belonging to a trust ~~which~~ that 3751
are not required for payment of current obligations of ~~his~~ the 3752
fiduciary's trust or distribution shall, unless otherwise ordered 3753
by the probate court, invest ~~such~~ those funds within a reasonable 3754
time according to section 2109.37 or 2109.371 of the Revised Code. 3755
On failure to do so, ~~such~~ the fiduciary shall account to the trust 3756
for ~~such~~ any loss of interest ~~as~~ that is found by the court to be 3757
due to ~~his~~ the fiduciary's negligence. 3758

Sec. 2109.43. No fiduciary shall make any personal use of the 3759
funds or property belonging to a trust. For a violation of this 3760
section, ~~such~~ the fiduciary and ~~his~~ the fiduciary's bond shall be 3761
liable in an action for any loss occasioned by ~~such~~ that use and 3762
for ~~such~~ any additional amount by way of forfeiture, not exceeding 3763
the amount of the loss occasioned by ~~such~~ the use, ~~as~~ that may be 3764
fixed by the probate court hearing ~~such~~ the case. ~~Such~~ Those 3765
amounts shall be payable for the benefit of the beneficiary, if 3766
living, and to ~~his~~ the beneficiary's estate if ~~he~~ the beneficiary 3767
is deceased. In addition to the penalties under this section, the 3768
court may remove the fiduciary pursuant to section 2109.24 of the 3769
Revised Code for fraudulent conduct or dereliction of duty related 3770

to the fiduciary's personal use or misuse of funds or property 3771
belonging to a trust. However, if all interested persons consent 3772
to the fiduciary's use of the property in a signed writing filed 3773
with the probate court, the fiduciary may make personal use of 3774
property belonging to the trust. 3775

An action under this section shall be brought not later than 3776
one year after the termination of the trust or the discovery of 3777
~~such~~ that loss. 3778

It is within the court's discretion, upon application, notice 3779
to interested persons, and a hearing, to allow the personal use of 3780
trust property by the fiduciary. 3781

Sec. 2109.44. (A) Fiduciaries shall not buy from or sell to 3782
themselves and shall not have in their individual capacities any 3783
dealings with the estate, except as expressly authorized by the 3784
instrument creating the trust and then only ~~1111.13~~ ~~1111.14~~ with 3785
the approval of the probate court in each instance. No corporate 3786
fiduciary, ~~τ~~ as defined in section 1101.01 of the Revised Code, 3787
that is not subject to examination or regulatory oversight by the 3788
superintendent of financial institutions, the comptroller of the 3789
currency, or the office of thrift supervision shall be permitted 3790
to deal with the estate, any power in the instrument creating the 3791
trust to the contrary notwithstanding. This section does not 3792
prohibit a fiduciary from making an advancement ~~when~~ if the 3793
advancement has been expressly authorized by the instrument 3794
creating the trust or ~~when~~ if the probate court approves or from 3795
engaging in any act authorized by this chapter. 3796

(B) The fiduciary may petition the court for authority to 3797
purchase property of the estate if all of the following 3798
requirements are met: 3799

(1) Written consent to the purchase is signed by the 3800
following: 3801

(a) Each known heir whose interest in the estate would be 3802
affected by the proposed purchase; 3803

(b) Each known devisee whose interest in the estate would be 3804
affected by the proposed purchase. 3805

(2) The written consents are filed with the court. 3806

(3) The purchase is shown to be to the advantage of the 3807
estate. 3808

(C) The court shall deliver notice of the hearing on the 3809
petition to the heirs, devisees, or legatees of the estate or any 3810
interested person. 3811

Sec. 2109.45. Before the probate court confirms a sale by an 3812
executor, administrator, guardian, assignee, or trustee made under 3813
an order allowing that officer to make a private sale, the court 3814
shall require that officer to file a statement indicating that the 3815
private sale was made after diligent endeavor to obtain the best 3816
price for the property and that the private sale was at the 3817
highest price ~~he~~ the executor, administrator, guardian, assignee, 3818
or trustee could ~~get~~ obtain for the property. 3819

Sec. 2109.46. When it appears to be for the best interests of 3820
the ~~trust~~ entrusted estate, a fiduciary other than an executor or 3821
administrator may, with the approval of the probate court, borrow 3822
money and mortgage real ~~estate~~ property belonging to the ~~trust~~ 3823
entrusted estate, whether ~~such~~ the real ~~estate~~ property was 3824
acquired by purchase or by descent and distribution. 3825

The fiduciary proposing ~~se~~ to borrow money ~~must~~ shall file in 3826
the probate court ~~which~~ that appointed ~~him~~ the fiduciary a 3827
~~petition~~ complaint describing all of the real ~~estate~~ property in 3828
the trust and stating the nature and amount of the encumbrances 3829
~~thereon~~ on that real property, the date ~~such~~ those encumbrances 3830
became or will become due, and the rate of interest ~~thereon~~ on 3831

those encumbrances. The ~~petition~~ complaint shall also contain a 3832
statement of the personal property in the trust, the income from 3833
~~such~~ the personal property, and the income from the real ~~estate~~ 3834
property in ~~such~~ the trust. ~~Such petition~~ The complaint if filed 3835
by a guardian shall state the names, ages, and residences of the 3836
ward and next of kin known to be a resident ~~in the~~ of this state, 3837
including the spouse of ~~such~~ the ward and persons holding liens on 3838
~~such~~ the real ~~estate~~ property unless the liens will be 3839
extinguished, all of whom ~~must~~ shall be made defendants and be 3840
notified of the pendency and prayer of the ~~petition~~ complaint in 3841
~~such~~ the manner ~~as~~ that the court directs. In addition ~~such~~ 3842
~~petition,~~ the complaint shall contain a statement of the nature of 3843
the ~~imbecility~~ incompetency or ~~insanity~~ incapacity, if any, of 3844
~~such~~ the ward, whether temporary or confirmed and its duration. 3845
Except as provided in this section, the defendants and notice 3846
~~thereto~~ to the defendants shall be the same as though the real 3847
~~estate~~ property proposed to be mortgaged were being sold by the 3848
fiduciary. The ~~petition~~ complaint shall set forth the purpose of 3849
the loan, the amount required ~~therefor~~ for the loan, and ~~such~~ any 3850
other facts ~~as~~ that may be pertinent to the question whether ~~such~~ 3851
the money should be borrowed and shall contain a prayer that the 3852
fiduciary be authorized to mortgage so much of the ward's lands as 3853
may be necessary to secure ~~such~~ the loan. 3854

Upon the filing of ~~such petition~~ the complaint, the 3855
proceedings as to pleadings and proof shall be the same as on 3856
~~petition~~ a complaint to sell real ~~estate~~ property belonging to the 3857
trust. 3858

Sec. 2109.47. Before the probate court makes an order 3859
authorizing a guardian to mortgage real ~~estate~~ property for the 3860
purpose of borrowing money to make repairs or improvements, the 3861
court shall appoint ~~three~~ disinterested persons whose duty it 3862
shall be to investigate fully the necessity for and the 3863

advisability of making the repairs or improvements and their 3864
probable cost and to report their conclusions to the court. 3865

Sec. 2109.48. If on the final hearing of a fiduciary's 3866
~~petition~~ complaint to borrow money and mortgage real estate 3867
property belonging to the trust it appears to be for the best 3868
interests of the trust that the prayer of the ~~petition~~ complaint 3869
be granted, the probate court shall fix the amount necessary to be 3870
borrowed, direct what ~~lands~~ real property shall be encumbered by 3871
mortgage to secure ~~such that~~ amount, and issue an order to ~~such~~ 3872
the fiduciary directing ~~him~~ the fiduciary to ascertain and report 3873
to the court the rate of interest and the length of time for which 3874
~~he~~ the fiduciary can borrow ~~such that~~ amount. 3875

If ~~such the~~ report of the fiduciary and the terms proposed 3876
are satisfactory to the court, they may be accepted and confirmed 3877
and the fiduciary ordered, as fiduciary, to execute a note for 3878
~~such the~~ amount to be borrowed and a mortgage on the ~~lands~~ real 3879
property so designated, which shall be a valid lien ~~thereon~~ on the 3880
property. The fiduciary in no way shall be personally liable for 3881
the payment of any part of the sum borrowed, but ~~such the~~ 3882
mortgaged ~~lands~~ real property alone shall be bound ~~therefor~~ for 3883
its payment. ~~Such The~~ court shall direct the distribution of the 3884
fund and the fiduciary shall report to the court, for its 3885
approval, the execution of ~~such the~~ notes and mortgage and ~~his~~ the 3886
fiduciary's distribution of the fund. 3887

Sec. 2109.49. The probate judge, ~~when~~ if the probate judge 3888
~~deems~~ considers it necessary or upon the written application of 3889
any party interested in the trust estate, may appoint a suitable 3890
~~persons~~ person to investigate the administration of the trust or 3891
estate and report to the court. The expense ~~thereof~~ of the 3892
investigation shall be taxed as costs against the party asking for 3893
~~such the~~ examination or the trust fund, as the court may decree. 3894

This section shall not apply to a corporate trustee ~~which~~ that is 3895
subject to section 1111.28 of the Revised Code. 3896

Sec. 2109.50. Upon complaint made to the probate court of the 3897
county having jurisdiction of the administration of ~~a trust~~ an 3898
~~estate, a testamentary trust, or a guardianship~~ or of the county 3899
~~wherein~~ where a person resides against whom the complaint is made, 3900
by a person interested in ~~such trust~~ the estate, testamentary 3901
trust, or guardianship or by the creditor of a person interested 3902
in ~~such trust~~ the estate, testamentary trust, or guardianship 3903
against any person suspected of having concealed, embezzled, or 3904
conveyed away or of being or having been in the possession of any 3905
moneys, ~~chattels~~ personal property, or choses in action of ~~such~~ 3906
the estate, testamentary trust, or guardianship, ~~said~~ the court 3907
shall by citation, ~~attachment or warrant, or, if circumstances~~ 3908
~~require it, by warrant or attachment in the first instance, or~~ 3909
other judicial order compel the person or persons ~~so~~ suspected to 3910
~~forthwith~~ appear before it to be examined, on oath, touching the 3911
matter of the complaint. ~~Where~~ If necessary ~~such, the~~ citation, 3912
~~attachment or warrant~~ or other judicial order may be issued into 3913
any county in the state and shall be served and returned by the 3914
officer to whom it is delivered. The officer to whom ~~such~~ the 3915
process is delivered shall be liable for negligence in its service 3916
or return in ~~like~~ a similar manner as sheriffs are liable for 3917
negligence in not serving or returning a capias issued upon an 3918
indictment. Before issuing an extra-county citation, ~~attachment or~~ 3919
~~warrant~~ or other judicial order, the probate judge may require the 3920
complainant to post security with the probate court in ~~such~~ an 3921
amount and in ~~such~~ a form ~~as~~ that the probate judge ~~shall find~~ 3922
finds acceptable in order to cover the costs of the proceeding 3923
under this section, including in ~~such~~ those costs a reasonable 3924
allowance for the ~~travelling~~ travel expenses of the person or 3925
persons against whom an extra-county citation, ~~attachment or~~ 3926

~~warrant or other judicial order~~ is to be issued. ~~Such~~ The security 3927
may be in the form of a bond, the amount, terms, conditions, and 3928
sureties of which shall be subject to the approval of the probate 3929
judge. 3930

The probate court may initiate proceedings on its own motion. 3931

The probate court shall ~~forthwith~~ promptly proceed to hear 3932
and determine the matter. 3933

The examinations, including questions and answers, shall be 3934
reduced to writing, signed by the party examined, and filed in the 3935
probate court. 3936

If required by either party, the probate court shall swear 3937
~~such~~ the witnesses ~~as may be~~ who are offered by either party 3938
touching the matter of ~~such~~ the complaint and cause the 3939
examination of every ~~such~~ witness, including questions and 3940
answers, to be reduced to writing, signed by the witness, and 3941
filed in the probate court. 3942

All costs of ~~such~~ the proceedings, including the reasonable 3943
~~travelling~~ travel expenses of a person against whom an 3944
extra-county citation, ~~attachment or warrant~~ or judicial order is 3945
issued, shall be assessed against and paid by the party making the 3946
complaint, except as provided by section 2109.52 of the Revised 3947
Code. 3948

Sec. 2109.51. If a person compelled under section 2109.50 of 3949
the Revised Code to appear for examination refuses to answer 3950
interrogatories propounded, the probate court shall commit ~~such~~ 3951
the person to the county jail, and ~~such~~ the person shall remain in 3952
close custody until ~~he~~ the person submits to the court's order. 3953

Sec. 2109.52. When passing on a complaint made under section 3954
2109.50 of the Revised Code, the probate court shall determine, by 3955
the verdict of a jury if either party requires it or without if 3956

not required, whether the person accused is guilty of having 3957
concealed, embezzled, conveyed away, or been in the possession of 3958
moneys, ~~chattels~~ personal property, or choses in action of the 3959
~~trust~~ estate, testamentary trust, or guardianship. If ~~such~~ the 3960
person is found guilty, the probate court shall assess the amount 3961
of damages to be recovered or the court may order the return of 3962
the specific thing concealed or embezzled or may order restoration 3963
in kind. The probate court may issue a citation or other judicial 3964
order into any county in this state, ~~which citation that~~ shall be 3965
served and returned as provided in section 2109.50, ~~requiring of~~ 3966
the Revised Code. The citation or other judicial order shall 3967
require any person ~~to appear before it~~ who claims any interest in 3968
the assets alleged to have been concealed, embezzled, conveyed, or 3969
held in possession ~~and at such~~ to appear before the court. At the 3970
hearing, the court may hear and determine questions of title 3971
relating to ~~such~~ those assets. In all cases, except when the 3972
person found guilty is the fiduciary, the probate court shall 3973
~~forthwith~~ render judgment in favor of the fiduciary or if there is 3974
no fiduciary in this state, the probate court shall render 3975
judgment in favor of the state, against the person found guilty, 3976
for the amount of the moneys or the value of the ~~chattels~~ personal 3977
property or choses in action concealed, embezzled, conveyed away, 3978
or held in possession, together with ten per cent penalty and all 3979
costs of ~~such~~ the proceedings or complaint; except that ~~such~~ the 3980
judgment shall be reduced to the extent of the value of any thing 3981
specifically restored or returned in kind as provided in this 3982
section. 3983

If the person found guilty is the fiduciary, the probate 3984
court shall ~~forthwith~~ render judgment in favor of the state 3985
against ~~him~~ the fiduciary for ~~such~~ the amount of the moneys or the 3986
value of the personal property or choses in action concealed, 3987
embezzled, conveyed away, or held in possession, together with 3988
penalty and costs as provided in this section. 3989

Sec. 2109.53. If a judgment is rendered against a fiduciary 3990
under section 2109.52 of the Revised Code, ~~he~~ the fiduciary shall 3991
~~forthwith~~ be removed by the probate court ~~and that part of the~~ 3992
~~trust not already administered shall be committed to some other~~ 3993
~~person.~~ If any portion of the estate, testamentary trust, or 3994
guardianship remains to be administered by the probate court at 3995
the time of the removal of the fiduciary, the court shall appoint 3996
a new fiduciary to continue the administrative process. A 3997
fiduciary ~~so~~ that is removed shall not receive compensation for 3998
acting as fiduciary and ~~must~~ shall be charged ~~in his account with~~ 3999
for the amount of ~~such~~ the judgment. ~~Such~~ The fiduciary's property 4000
also shall be liable for the satisfaction of the judgment on 4001
execution issued ~~thereon~~ on the judgment by ~~his~~ the fiduciary's 4002
successor. 4003

Sec. 2109.54. The fiduciary in whose favor a judgment has 4004
been rendered by the probate court under section 2109.52 of the 4005
Revised Code shall ~~forthwith~~ deliver to the clerk of the court of 4006
common pleas a certificate of ~~such~~ that judgment in accordance 4007
with section 2329.04 of the Revised Code, ~~which certificate the~~ 4008
The probate judge court shall make out complete and deliver the 4009
certificate to ~~such~~ the fiduciary on demand. The clerk shall 4010
~~forthwith~~ issue an execution of the court of common pleas for the 4011
amount of the judgment and the costs that have accrued or that may 4012
accrue ~~thereon~~ on the judgment. Thenceforth proceedings on 4013
execution shall be the same as if the judgment had been rendered 4014
in ~~such~~ that court of common pleas. 4015

Sec. 2109.55. If a judgment is rendered in the name of the 4016
state under section 2109.52 of the Revised Code and there is no 4017
fiduciary within this state, the prosecuting attorney shall cause 4018
the certificate provided for in section 2109.54 of the Revised 4019

Code to be filed in the clerk's office and proceed ~~thereon~~ to 4020
execution on the judgment as provided in ~~such that~~ section. ~~Such~~ 4021
~~The~~ prosecuting attorney shall pay the money realized upon ~~such~~ 4022
the execution to the county treasurer for the use of ~~such trust~~ 4023
the estate, testamentary trust, or guardianship, reserving ~~such~~ 4024
the compensation to ~~himself as~~ the prosecuting attorney that the 4025
probate court allows. 4026

Sec. 2109.56. All gifts, grants, or conveyances of ~~land,~~ 4027
~~tenements, hereditaments~~ real property, rents, or ~~chattels~~ 4028
personal property and all bonds, judgments, or executions made or 4029
obtained with intent to avoid the purpose of the proceedings set 4030
forth in sections 2109.50 to 2109.55, ~~inclusive,~~ of the Revised 4031
Code, or in contemplation of any examination or complaint provided 4032
for by ~~such those~~ sections, shall be void. 4033

Sec. 2109.57. In any action or proceeding pending in a court 4034
of record, if it is made to appear to the court that any person 4035
entitled to all or a part of the proceeds of property sold in ~~such~~ 4036
that action or proceeding is unknown or is a nonresident and not 4037
represented in ~~such the~~ action or proceeding or that the person 4038
entitled cannot, at the time, definitely be ascertained, the 4039
probate court may appoint a trustee to whom the notes and 4040
mortgages for the unpaid part shall be made, delivered, and paid 4041
and to receive, hold, and manage ~~such the~~ proceeds or part ~~thereof~~ 4042
of the proceeds. ~~Such The~~ trustee shall collect the unpaid part of 4043
the proceeds of the property sold, by action or otherwise, and 4044
shall pay over ~~such that~~ fund only on the order of the probate 4045
court appointing ~~him~~ the trustee. 4046

Payment to ~~such the~~ trustee shall be a bar to any claim 4047
thereafter made by any person and the persons or corporations 4048
paying ~~such the~~ money in no case shall be required to see to the 4049
application of the money paid. 4050

If a person entitled to any portion of the money held by ~~such~~ 4051
~~the~~ trustee fails for seven or more years after ~~such the~~ trustee's 4052
appointment to make claim to the money and to present the proof 4053
necessary to entitle ~~such the~~ person to ~~such the~~ money, the 4054
prosecuting attorney of the county in which ~~such the~~ trustee was 4055
appointed shall collect it, with the interest accrued ~~thereon on~~ 4056
~~the money~~, from ~~such the~~ trustee and pay it into ~~such the~~ county's 4057
treasury, to be placed to the credit of the general fund. 4058

~~When~~ Upon application to the probate court which that 4059
appointed ~~such the~~ trustee ~~is satisfied that a~~ and presentment of 4060
the proof necessary to entitle the person who appears and claims 4061
to the moneys paid into the county treasury has a right to receive 4062
them, money, the court shall order the payment of the money to the 4063
person in whole or part, less the costs of collection by the 4064
prosecuting attorney, ~~such court shall order the payment thereof~~ 4065
~~to the person shown to be entitled to such moneys. Such. The~~ 4066
person, on the judge's certificate, shall be given a warrant 4067
~~therefor~~ for the money by the county auditor. 4068

Sec. 2109.58. Each fiduciary as to whom definite provision is 4069
not made in sections 2111.14 and 2115.02 of the Revised Code shall 4070
make and file within three months after ~~his~~ the fiduciary's 4071
appointment a full inventory of the real and personal property 4072
~~belonging to the trust~~ be entrusted with the fiduciary, its value, 4073
and the value of the yearly rent of the real property. 4074

Except as provided by section 2115.16 of the Revised Code, 4075
exceptions to the inventory of a fiduciary may be filed at any 4076
time within six months after the return of the inventory by any 4077
person interested in the ~~trust~~ entrusted property or in any of the 4078
property included in the inventory, but the six-month period shall 4079
not apply in case of fraud or concealment of assets. At the 4080
hearing, the fiduciary and any witness may be examined under oath. 4081

The probate court shall enter its finding on the journal and tax 4082
the costs as may be equitable. 4083

Sec. 2109.59. If a fiduciary, upon demand, refuses or 4084
neglects to pay any creditor whose claim has been allowed by the 4085
fiduciary and not subsequently rejected or to pay any creditor or 4086
make distribution to any person interested in the estate whose 4087
claim or interest has been established by judgment, decree, or 4088
order of court, including an order of distribution, ~~such the~~ 4089
creditor or other person may file a petition against the fiduciary 4090
in the probate court from which the fiduciary received ~~his the~~ 4091
fiduciary's appointment to enforce ~~such the~~ payment or 4092
distribution, briefly setting forth ~~therein in the petition~~ the 4093
amount and nature of ~~his the creditor's or other person's~~ claim or 4094
interest. ~~Such The~~ petition shall not be filed against an executor 4095
or administrator until the expiration of the period prescribed in 4096
section 2117.30 of the Revised Code. 4097

When ~~such the~~ petition is filed, the probate court shall 4098
issue a citation to the fiduciary setting forth the filing of the 4099
petition and the nature of the claim of the petitioner and 4100
commanding ~~such the~~ fiduciary to appear before the court on the 4101
return day ~~thereof~~ to answer and show cause why a judgment should 4102
not be rendered or order entered against ~~him the fiduciary~~. ~~Such~~ 4103
The citation shall be returnable not less than twenty nor more 4104
than forty days from its date and shall be served and returned by 4105
an officer as in the case of summons. ~~Such The~~ citation may issue 4106
to any county in the state. 4107

On the return of the citation, the cause shall be set for 4108
hearing, unless for good cause shown it is continued. The probate 4109
court may hear and determine all questions necessary to ascertain 4110
and fix the amount due from the fiduciary to the petitioner and 4111
render ~~such the~~ judgment or make ~~such the~~ order as that may be 4112

proper. If necessary, ~~such~~ the court may hear, determine, and 4113
settle the rights and claims of all parties interested in the 4114
subject matter of the petition. For ~~such~~ that purpose the probate 4115
court may ~~cause~~ allow all parties in interest to be made parties 4116
to ~~such~~ the petition by amended, supplemental, or ~~crosspetition~~ 4117
cross-petition. The court shall cause notice to be served on all 4118
~~such~~ the parties in the manner provided in this section for 4119
service of the citation upon the fiduciary. 4120

In any ~~such~~ proceeding under this section, the sureties on 4121
the bond of the fiduciary, if made parties ~~thereto~~ to the 4122
proceeding, may make any defense that the fiduciary could make and 4123
the court may render ~~such~~ the judgment or make ~~such~~ the order with 4124
respect to the sureties ~~as~~ that may be proper. 4125

Sec. 2109.60. When a proceeding set forth in section 2109.59 4126
of the Revised Code is pending in the probate court, ~~such~~ the 4127
court, on motion of any party ~~thereto~~ or on the court's own 4128
motion, may ~~reserve and send such~~ transfer the cause to the court 4129
of common pleas ~~which, and the court of common pleas~~ shall hear, 4130
settle, and determine all issues as provided in ~~such~~ that section. 4131
In case of ~~such reservation the transfer~~, the probate court shall 4132
prepare a transcript of the proceedings in the cause, so far as it 4133
has progressed, ~~which~~ that, with the petition and other papers 4134
~~therein in the proceedings, forthwith~~ shall be filed with the 4135
clerk of the court of common pleas. 4136

Sec. 2109.61. An action may be prosecuted on the bond of a 4137
fiduciary against any one or more of the obligors ~~thereof~~ on the 4138
bond by any person who has been injured by reason of the breach of 4139
any condition of the bond. ~~Such~~ The action shall be prosecuted for 4140
the benefit of all persons who are interested in the estate and 4141
who have been similarly injured. Any such person or any obligor on 4142
the bond who is not already a party to the action may intervene 4143

~~therein~~ in the action or be made a party ~~thereto~~ to the action by 4144
supplemental, amended, or ~~crosspetition~~ cross-petition. Notice of 4145
any action or proceeding against the bonded fiduciary shall be 4146
given to the surety. 4147

If a surety on the bond of a fiduciary is not made a party to 4148
an action or proceeding against ~~such~~ the fiduciary, the fact that 4149
a judgment was rendered or an order was entered against the 4150
fiduciary shall constitute only prima-facie evidence of the 4151
justice and validity of the claim in an action subsequently 4152
brought against the sureties on the bond of the fiduciary. 4153

Sec. 2109.62. (A)(1) Upon the filing of a motion by a trustee 4154
with the court that has jurisdiction over the trust, upon the 4155
provision of reasonable notice to all beneficiaries who are known 4156
and in being and who have vested or contingent interests in the 4157
trust, and after holding a hearing, the court may terminate the 4158
trust, in whole or in part, if it determines that all of the 4159
following apply: 4160

(a) It is no longer economically feasible to continue the 4161
trust. 4162

(b) The termination of the trust is for the benefit of the 4163
beneficiaries. 4164

(c) The termination of the trust is equitable and practical. 4165

(d) The current value of the trust is less than one hundred 4166
thousand dollars. 4167

(2) The existence of a spendthrift or similar provision in a 4168
trust instrument or will does not preclude the termination of a 4169
trust pursuant to this section. 4170

(B) If property is to be distributed from an estate being 4171
probated to a trust and the termination of the trust pursuant to 4172
this section does not clearly defeat the intent of the testator, 4173

the probate court has jurisdiction to order the outright 4174
distribution of the property or to make the property custodial 4175
property under sections 5814.01 to 5814.09 of the Revised Code. A 4176
probate court may so order whether the ~~application~~ motion for the 4177
order is made by an inter vivos trustee named in the will of the 4178
decedent or by a testamentary trustee. 4179

(C) Upon the termination of a trust pursuant to this section, 4180
the probate court shall order the distribution of the trust estate 4181
in accordance with any provision specified in the trust instrument 4182
for the premature termination of the trust. If there is no 4183
provision of that nature in the trust instrument, the probate 4184
court shall order the distribution of the trust estate among the 4185
beneficiaries of the trust in accordance with their respective 4186
beneficial interests and in a manner that the court determines to 4187
be equitable. For purposes of ordering the distribution of the 4188
trust estate among the beneficiaries of the trust under this 4189
division, the court shall consider all of the following: 4190

(1) The existence of any agreement among the beneficiaries 4191
with respect to their beneficial interests; 4192

(2) The actuarial values of the separate beneficial interests 4193
of the beneficiaries; 4194

(3) Any expression of preference of the beneficiaries that is 4195
contained in the trust instrument. 4196

Sec. 2111.02. (A) ~~When~~ If found necessary, the probate court 4197
on its own motion or on application by any interested party shall 4198
appoint, subject to divisions (C) and (D) of this section and to 4199
section 2109.21 and division (B) of section 2111.121 of the 4200
Revised Code, a guardian of the person, the estate, or both, of a 4201
minor or incompetent, provided the person for whom the guardian is 4202
to be appointed is a resident of the county or has a legal 4203
settlement in the county and, except in the case of a minor, has 4204

had the opportunity to have the assistance of counsel in the 4205
proceeding for the appointment of ~~such~~ that guardian. An 4206
interested party includes, but is not limited to, a person 4207
nominated in a durable power of attorney as described in division 4208
(D) of section 1337.09 of the Revised Code or in a writing as 4209
described in division (A) of section 2111.121 of the Revised Code. 4210

Except when the guardian of an incompetent is an agency under 4211
contract with the department of developmental disabilities for the 4212
provision of protective services under sections 5123.55 to 5123.59 4213
of the Revised Code, the guardian of an incompetent, by virtue of 4214
~~such~~ the appointment as guardian, shall be the guardian of the 4215
minor children of the guardian's ward, unless the court appoints 4216
some other person as their guardian. 4217

When the primary purpose of the appointment of a guardian is, 4218
or was, the collection, disbursement, or administration of moneys 4219
awarded by the veterans administration to the ward, or assets 4220
derived from ~~such~~ those moneys, no court costs shall be charged in 4221
the proceeding for the appointment or in any subsequent 4222
proceedings made in pursuance of the appointment, unless the value 4223
of the estate, including the moneys then due under the veterans 4224
administration award, exceeds one thousand five hundred dollars. 4225

(B)(1) If the probate court finds it to be in the best 4226
interest of an incompetent or minor, it may appoint pursuant to 4227
divisions (A) and (C) of this section, on its own motion or on 4228
application by an interested party, a limited guardian with 4229
specific limited powers. The sections of the Revised Code, rules, 4230
and procedures governing guardianships apply to a limited 4231
guardian, except that the order of appointment and letters of 4232
authority of a limited guardian shall state the reasons for, and 4233
specify the limited powers of, the guardian. The court may appoint 4234
a limited guardian for a definite or indefinite period. An 4235
incompetent or minor for whom a limited guardian has been 4236

appointed retains all of the incompetent's or minor's rights in 4237
all areas not affected by the court order appointing the limited 4238
guardian. 4239

(2) If a guardian appointed pursuant to division (A) of this 4240
section is temporarily or permanently removed or resigns, and if 4241
the welfare of the ward requires immediate action, at any time 4242
after the removal or resignation, the probate court may appoint, 4243
ex parte and with or without notice to the ward or interested 4244
parties, an interim guardian for a maximum period of fifteen days. 4245
If the court appoints the interim guardian ex parte or without 4246
notice to the ward, the court, at its first opportunity, shall 4247
enter upon its journal with specificity the reason for acting ex 4248
parte or without notice, and, as soon as possible, shall serve 4249
upon the ward a copy of the order appointing the interim guardian. 4250
For good cause shown, after notice to the ward and interested 4251
parties and after hearing, the court may extend an interim 4252
guardianship for a specified period, but not to exceed an 4253
additional thirty days. 4254

(3) If a minor or incompetent has not been placed under a 4255
guardianship pursuant to division (A) of this section and if an 4256
emergency exists, and ~~if~~ it is reasonably certain that immediate 4257
action is required to prevent significant injury to the person or 4258
estate of the minor or incompetent, at any time after it receives 4259
notice of the emergency, the court, ex parte, may issue any order 4260
that it considers necessary to prevent injury to the person or 4261
estate of the minor or incompetent, or may appoint an emergency 4262
guardian for a maximum period of seventy-two hours. A written copy 4263
of any order issued by a court under this division shall be served 4264
upon the incompetent or minor as soon as possible after its 4265
issuance. Failure to serve ~~such an~~ that order after its issuance 4266
or prior to the taking of any action under its authority does not 4267
invalidate the order or the actions taken. The powers of an 4268

emergency guardian shall be specified in the letters of 4269
appointment, and shall be limited to those powers that are 4270
necessary to prevent injury to the person or estate of the minor 4271
or incompetent. If the court acts ex parte or without notice to 4272
the minor or incompetent, the court, at its first opportunity, 4273
shall enter upon its journal a record of the case and, with 4274
specificity, the reason for acting ex parte or without notice. For 4275
good cause shown, after notice to the minor or incompetent and 4276
interested parties, and after hearing, the court may extend an 4277
emergency guardianship for a specified period, but not to exceed 4278
an additional thirty days. 4279

(C) Prior to the appointment of a guardian or limited 4280
guardian under division (A) or (B)(1) of this section, the court 4281
shall conduct a hearing on the matter of the appointment. The 4282
hearing shall be conducted in accordance with all of the 4283
following: 4284

(1) The proposed guardian or limited guardian shall appear at 4285
the hearing and, if appointed, shall swear under oath that the 4286
proposed guardian or limited guardian has made and will continue 4287
to make diligent efforts to file a true inventory in accordance 4288
with section 2111.14 of the Revised Code and find and report all 4289
assets belonging to the estate of the ward and that the proposed 4290
guardian or limited guardian faithfully and completely will 4291
fulfill the other duties of guardian, including the filing of 4292
timely and accurate reports and accountings+. 4293

(2) If the hearing is conducted by a ~~referee~~ magistrate, the 4294
procedures set forth in Civil Rule 53 shall be followed+. 4295

(3) If the hearing concerns the appointment of a guardian or 4296
limited guardian for an alleged incompetent, the burden of proving 4297
incompetency shall be by clear and convincing evidence+. 4298

(4) Upon request of the applicant, the alleged incompetent 4299

for whom the appointment is sought or the alleged incompetent's 4300
counsel, or any interested party, a recording or record of the 4301
hearing shall be made~~+~~. 4302

(5) Evidence of a less restrictive alternative to 4303
guardianship may be introduced, and when introduced, shall be 4304
considered by the court~~+~~. 4305

(6) The court may deny a guardianship based upon a finding 4306
that a less restrictive alternative to guardianship exists~~+~~. 4307

(7) If the hearing concerns the appointment of a guardian or 4308
limited guardian for an alleged incompetent, the alleged 4309
incompetent has all of the following rights: 4310

(a) The right to be represented by independent counsel of the 4311
alleged incompetent's choice; 4312

(b) The right to have a friend or family member of the 4313
alleged incompetent's choice present; 4314

(c) The right to have evidence of an independent expert 4315
evaluation introduced; 4316

(d) If the alleged incompetent is indigent, upon the alleged 4317
incompetent's request: 4318

(i) The right to have counsel and an independent expert 4319
evaluator appointed at court expense; 4320

(ii) If the guardianship, limited guardianship, or standby 4321
guardianship decision is appealed, the right to have counsel 4322
appointed and necessary transcripts for appeal prepared at court 4323
expense. 4324

(D)(1) ~~When~~ If a person has been nominated to be a guardian 4325
of the estate of a minor in or pursuant to a durable power of 4326
attorney as described in division (D) of section 1337.09 of the 4327
Revised Code or a writing as described in division (A) of section 4328
2111.121 of the Revised Code, the person nominated has preference 4329

in appointment over a person selected by the minor. A person who 4330
has been nominated to be a guardian of the person of a minor in or 4331
pursuant to a durable power of attorney or writing of that nature 4332
does not have preference in appointment over a person selected by 4333
the minor, but the probate court may appoint the person named in 4334
the durable power of attorney or the writing, the person selected 4335
by the minor, or another person as guardian of the person of the 4336
minor. 4337

(2) A person nominated as a guardian of an incompetent adult 4338
child pursuant to section 1337.09 or 2111.121 of the Revised Code 4339
shall have preference in appointment over a person applying to be 4340
guardian if the person nominated is competent, suitable, and 4341
willing to accept the appointment, and if the incompetent adult 4342
child does not have a spouse or an adult child and has not 4343
designated a guardian prior to the court finding the adult child 4344
incompetent. 4345

Sec. 2111.021. A competent adult who is physically infirm may 4346
petition the probate court of the county in which ~~he~~ the 4347
petitioner resides, to place, for a definite or indefinite period 4348
of time, ~~his~~ the petitioner's person, any or all of ~~his~~ the 4349
petitioner's real or personal property, or both under a 4350
conservatorship with the court. A petitioner either may grant 4351
specific powers to the conservator or court or may limit any 4352
powers granted by law to the conservator or court, except that the 4353
petitioner may not limit the powers granted to the court by this 4354
section and may not limit the requirement for bond as determined 4355
by the court. The petition shall state whether the person of the 4356
competent adult will be placed under the conservatorship, shall 4357
state with particularity all real and personal property that will 4358
be placed under the conservatorship, shall state the powers 4359
granted and any limitation upon the powers of the conservator or 4360
court, and shall state the name of a proposed suitable 4361

conservator. 4362

After a hearing, if the court finds that the petition was 4363
voluntarily filed and that the proposed conservator is suitable, 4364
the court shall issue an order of conservatorship. Upon issuance 4365
of the order, all sections of the Revised Code governing a 4366
guardianship of the person, the estate, or both, whichever is 4367
involved, except those sections the application of which 4368
specifically is limited by the petitioner, and all rules and 4369
procedures governing ~~such~~ a guardianship of the person, the 4370
estate, or both, shall apply to the conservatorship, including, 4371
but not limited to, applicable bond and accounting requirements. 4372

A conservatorship shall terminate upon a judicial 4373
determination of incompetency, the death of the petitioner, the 4374
order of the probate court, or the execution of a written 4375
termination notice by the petitioner. A termination notice shall 4376
take effect upon execution by the petitioner, and shall be filed 4377
with the court and served upon the conservator. A termination 4378
notice executed by a petitioner relative to a conservatorship of 4379
the estate and the termination of a conservatorship of the estate 4380
based upon a termination notice are void unless the termination 4381
notice is filed with the court within fourteen days after its 4382
execution. Modification of the powers of a conservator or the 4383
court may be made by the petitioner upon motion to the court at 4384
any time during the conservatorship. Neither the establishment of 4385
a conservatorship nor the filing of a petition for conservatorship 4386
with the probate court shall be considered as evidence of mental 4387
impairment under section 2111.01 of the Revised Code. 4388

Upon motion to the probate court and a showing of good cause, 4389
the court may make confidential, or remove from confidential 4390
status, any file, record, petition, motion, account, or paper, 4391
except for an index, docket, or journal, that pertains to a 4392
conservatorship and that is in the possession of the court. 4393

Sec. 2111.031. In connection with an application for the 4394
appointment of a guardian for an alleged incompetent, the court 4395
may appoint physicians and other qualified persons to examine, 4396
investigate, or represent the alleged incompetent, to assist the 4397
court in deciding whether a guardianship is necessary. If the 4398
person is determined to be an incompetent and a guardian is 4399
appointed for ~~him~~ the person, the costs, fees, or expenses 4400
incurred to so assist the court shall be charged either against 4401
the estate of the person or against the applicant, unless the 4402
court determines, for good cause shown, that the costs, fees, or 4403
expenses are to be recovered from the county, in which case they 4404
shall be charged against the county. If the person is not 4405
determined to be an incompetent or a guardian is not appointed for 4406
~~him~~ the person, the costs, fees, or expenses incurred to so assist 4407
the court shall be charged against the applicant, unless the court 4408
determines, for good cause shown, that the costs, fees, or 4409
expenses are to be recovered from the county, in which case they 4410
shall be charged against the county. 4411

A court may require the applicant to make an advance deposit 4412
of an amount that the court determines is necessary to defray the 4413
anticipated costs of examinations of an alleged incompetent and to 4414
cover fees or expenses to be incurred to assist it in deciding 4415
whether a guardianship is necessary. 4416

This section does not affect or apply to the duties of a 4417
probate court investigator under sections 2111.04 and 2111.041 of 4418
the Revised Code. 4419

Sec. 2111.04. (A) Except for an interim or emergency guardian 4420
appointed under division (B)(2) or (3) of section 2111.02 of the 4421
Revised Code, no guardian of the person, the estate, or both shall 4422
be appointed until at least seven days after the probate court has 4423
caused written notice, setting forth the time and place of the 4424

hearing, to be served as follows: 4425

(1) In the appointment of the guardian of a minor, notice 4426
shall be served as follows: 4427

(a) Upon the minor, if over the age of fourteen, by personal 4428
service; 4429

(b) Upon each parent of the minor whose name and address is 4430
known or with reasonable diligence can be ascertained, provided 4431
the parent is free from disability other than minority; 4432

(c) Upon the next of kin of the minor who are known to reside 4433
in this state, if there is no living parent, the name and address 4434
of the parent cannot be ascertained, or the parent is under 4435
disability other than minority; 4436

(d) Upon the person having the custody of the minor. 4437

(2) In the appointment of the guardian of an incompetent, 4438
notice shall be served as follows: 4439

(a)(i) Upon the person for whom appointment is sought by 4440
personal service, by a probate court investigator, or in the 4441
manner provided in division (A)(2)(a)(ii) of this section. The 4442
notice shall be in boldface type and shall inform the alleged 4443
incompetent, in boldface type, of ~~his~~ the alleged incompetent's 4444
rights to be present at the hearing, to contest any application 4445
for the appointment of a guardian for ~~his~~ the alleged 4446
incompetent's person, estate, or both, and to be represented by an 4447
attorney and of all of the rights set forth in division (C)(7) of 4448
section 2111.02 of the Revised Code. 4449

(ii) If the person for whom appointment is sought is a 4450
resident of, or has a legal settlement in, the county in which the 4451
court has jurisdiction, but is absent from that county, the 4452
probate court may designate, by order, a temporary probate court 4453
investigator, in lieu of a regular probate court investigator 4454

appointed or designated under section 2101.11 of the Revised Code, 4455
to make the personal service of the notice described in division 4456
(A)(2)(a)(i) of this section upon the person for whom appointment 4457
is sought. 4458

(b) Upon the next of kin of the person for whom appointment 4459
is sought who are known to reside in this state. 4460

(B) After service of notice in accordance with division (A) 4461
of this section and for good cause shown, the court may appoint a 4462
guardian prior to the time limitation specified in that division. 4463

(C) Notice may not be waived by the person for whom the 4464
appointment is sought. 4465

(D) From the service of notice until the hearing, no sale, 4466
gift, conveyance, or encumbrance of the property of an alleged 4467
incompetent shall be valid as to persons having notice of the 4468
proceeding. 4469

Sec. 2111.041. (A) At the time of the service of notice upon 4470
an alleged incompetent, as required by division (A)(2)(a) of 4471
section 2111.04 of the Revised Code, the court shall require a 4472
regular probate court investigator appointed or designated under 4473
section 2101.11 of the Revised Code or appoint a temporary probate 4474
court investigator to investigate the circumstances of the alleged 4475
incompetent, and, to the maximum extent feasible, to communicate 4476
to the alleged incompetent in a language or method of 4477
communication that ~~he~~ the alleged incompetent can understand, ~~his~~ 4478
the alleged incompetent's rights as specified in that division, 4479
and subsequently to file with the court a report that contains all 4480
of the following: 4481

(1) A statement indicating that the notice was served and 4482
describing the extent to which the alleged incompetent's rights to 4483
be present at the hearing, to contest any application for the 4484

appointment of a guardian for ~~his~~ the alleged incompetent's 4485
person, estate, or both, and to be represented by an attorney were 4486
communicated to ~~him~~ the alleged incompetent in a language or 4487
method of communication understandable to the alleged incompetent; 4488

(2) A brief description, as observed by the investigator, of 4489
the physical and mental condition of the alleged incompetent; 4490

(3) A recommendation regarding the necessity for a 4491
guardianship or a less restrictive alternative; 4492

(4) A recommendation regarding the necessity of appointing 4493
pursuant to section 2111.031 of the Revised Code, an attorney to 4494
represent the alleged incompetent. 4495

(B) The report that is required by division (A) of this 4496
section shall be made a part of the record in the case and shall 4497
be considered by the court prior to establishing any guardianship 4498
for the alleged incompetent. 4499

Sec. 2111.06. If the powers of the person appointed as 4500
guardian of a minor or incompetent are not limited by the order of 4501
appointment, ~~such~~ the person shall be guardian both of the person 4502
and estate of the ward. In every instance the court shall appoint 4503
the same person as guardian of the person and estate of ~~any such~~ 4504
the ward, unless in the opinion of the court the interests of the 4505
ward will be promoted by the appointment of different persons as 4506
guardians of the person and of the estate. 4507

A guardian of the person of a minor shall be appointed as to 4508
a minor having ~~neither~~ no father ~~nor~~ or mother, ~~or~~ whose parents 4509
are unsuitable persons to have the custody ~~and tuition~~ of ~~such~~ the 4510
minor and to provide for the education of the minor as required by 4511
section 3321.01 of the Revised Code, or whose interests, in the 4512
opinion of the court, will be promoted ~~thereby~~ by the appointment 4513
of a guardian. A guardian of the person shall have the custody and 4514

provide for the maintenance of the ward, and if the ward is a 4515
minor, ~~such~~ the guardian shall also provide for the education of 4516
~~such~~ the ward as required by section 3321.01 of the Revised Code. 4517

Before exercising its jurisdiction to appoint a guardian of a 4518
minor, the court shall comply with the jurisdictional standards of 4519
sections 3127.01 to 3127.53 of the Revised Code. 4520

Sec. 2111.07. Each person appointed guardian of the person 4521
and estate of a minor shall have the custody ~~and tuition~~ of ~~his~~ 4522
the ward, the obligation to provide for the education of the ward 4523
as required under section 3321.01 of the Revised Code, and the 4524
management of ~~such~~ the ward's estate during minority, unless ~~such~~ 4525
the guardian is removed or discharged from ~~such~~ that trust or the 4526
guardianship terminates from any of the causes specified in 4527
Chapters 2101. to 2131., ~~inclusive,~~ of the Revised Code. 4528

Sec. 2111.09. Unless expressly appointed or designated to act 4529
both as guardian and executor by a ~~last~~ will in writing, no person 4530
who is or has been an administrator or executor of a ~~last~~ will 4531
shall, prior to the approval of ~~his~~ the person's final account as 4532
~~such~~ executor or administrator, be appointed a guardian of the 4533
person and estate or of the estate only of a ward who is 4534
interested in the estate administered upon or entitled to an 4535
interest under ~~such~~ the will, except that a surviving spouse may 4536
be executor or administrator of the deceased spouse's estate and 4537
also guardian of the person and estate or of the estate only of a 4538
minor child of ~~such~~ the surviving spouse, whether or not ~~such~~ the 4539
minor child is interested in the estate of the deceased spouse. 4540
~~But~~ However, an executor or an administrator may be appointed a 4541
guardian of the person only of a ward. 4542

Sec. 2111.091. No attorney who represents any other person 4543
~~other than himself~~ and who is appointed as a guardian under this 4544

chapter or under any other provision of the Revised Code shall do 4545
either of the following: 4546

(A) Act as a person with co-responsibility for any 4547
guardianship asset for which the guardian ~~he represents~~ is 4548
responsible; 4549

(B) Be a cosignatory on any financial account related to the 4550
guardianship, including any checking account, savings account, or 4551
other banking or trust account. 4552

Sec. 2111.12. (A) A minor over the age of fourteen years may 4553
select a guardian who shall be appointed if a suitable person. If 4554
~~such the~~ minor fails to select a suitable person, an appointment 4555
may be made without reference to the minor's wishes. The minor 4556
shall not select one person to be the guardian of the minor's 4557
estate only and another to be the guardian of the person only, 4558
unless the court ~~which that~~ appoints the guardian is of the 4559
opinion that the interests of ~~such the~~ minor will ~~thereby~~ be 4560
promoted by that selection. 4561

(B) A surviving parent by ~~last a~~ will in writing may appoint 4562
a guardian for any of the surviving parent's children, whether 4563
born at the time of making the will or afterward, to continue 4564
during the minority of the child or for a less time. 4565

When the father or mother of a minor names a person as 4566
guardian of the estate of ~~such the~~ minor in a will, the person 4567
named shall have preference in appointment over the person 4568
selected by ~~such the~~ minor. A person named in ~~such a that~~ will as 4569
guardian of the person of ~~such the~~ minor shall have no preference 4570
in appointment over the person selected by ~~such the~~ minor, but in 4571
~~such that~~ event the probate court may appoint the person named in 4572
the will, the person selected by the minor, or some other person. 4573

Whenever a testamentary guardian is appointed, the 4574

testamentary guardian's duties, powers, and liabilities in all 4575
other respects shall be governed by the law regulating guardians 4576
not appointed by will. 4577

(C) A parent pursuant to a durable power of attorney as 4578
described in division (D) of section 1337.09 or a writing as 4579
described in division (A) of section 2111.121 of the Revised Code 4580
may nominate a person to be a guardian for one or more of the 4581
parent's minor children, whether born at the time of the making of 4582
the ~~petition~~ nomination or afterward. 4583

Sec. 2111.131. (A) The probate court may enter an order that 4584
authorizes a person under a duty to pay or deliver money or 4585
personal property to a minor who does not have a guardian of the 4586
person and estate or a guardian of the estate, to perform that 4587
duty in amounts not exceeding five thousand dollars annually, by 4588
paying or delivering the money or property to any of the 4589
following: 4590

(1) The guardian of the person only of the minor; 4591

(2) The minor's natural guardians, if any, as determined 4592
pursuant to section 2111.08 of the Revised Code; 4593

(3) The ~~minor's own self~~ minor; 4594

(4) Any person who has the care and custody of the minor and 4595
with whom the minor resides, other than a guardian of the person 4596
only or a natural guardian; 4597

(5) A financial institution incident to a deposit in a 4598
federally insured savings account in the sole name of the minor; 4599

(6) A custodian designated by the court in its order, for the 4600
minor under sections 5814.01 to 5814.09 of the Revised Code. 4601

(B) An order entered pursuant to division (A) of this section 4602
authorizes the person or entity specified in it, to receive the 4603
money or personal property on behalf of the minor from the person 4604

under the duty to pay or deliver it, in amounts not exceeding five 4605
thousand dollars annually. Money or personal property so received 4606
by guardians of the person only, natural guardians, and custodians 4607
as described in division (A)(4) of this section may be used by 4608
them only for the support, maintenance, or education of the minor 4609
involved. The order of the court is prima-facie evidence that a 4610
guardian of the person only, a natural guardian, or a custodian as 4611
described in division (A)(4) of this section has the authority to 4612
use the money or personal property received. 4613

(C) A person who pays or delivers moneys or personal property 4614
in accordance with a court order entered pursuant to division (A) 4615
of this section is not responsible for the proper application of 4616
the moneys or property by the recipient. 4617

Sec. 2111.14. (A) In addition to ~~his~~ a guardian's other 4618
duties, every guardian appointed to take care of the estate of a 4619
ward shall have the following duties: 4620

~~(A)(1)~~ To make and file within three months after ~~his~~ the 4621
guardian's appointment a full inventory of the real and personal 4622
property of the ward, its value, and the value of the yearly rent 4623
of the real property, provided that, if the guardian fails to file 4624
the inventory for thirty days after ~~he has~~ having been notified of 4625
the expiration of the time by the probate judge, the judge shall 4626
remove ~~him~~ the guardian and appoint a successor; 4627

~~(B)(2)~~ To manage the estate for the best interest of the 4628
ward; 4629

~~(C)(3)~~ To pay all just debts due from the ward out of the 4630
estate in ~~his hands~~ the possession or under the control of the 4631
guardian, collect all debts due to the ward, compound doubtful 4632
debts, and appear for and defend, or cause to be defended, all 4633
suits against the ward; 4634

~~(D)~~(4) To obey all orders and judgments of the courts 4635
touching the guardianship; 4636

~~(E)~~(5) To bring suit for the ward when a suit is in the best 4637
interests of the ward; 4638

~~(F)~~(6) To settle and adjust, when necessary or desirable, the 4639
assets that ~~he~~ the guardian may receive in kind from an executor 4640
or administrator to the greatest advantage of the ward. Before a 4641
settlement and adjustment is valid and binding, it shall be 4642
approved by the probate court and the approval shall be entered on 4643
its journal. The guardian also shall have the approval of the 4644
probate court to hold the assets as received from the executor or 4645
administrator or to hold what may be received in the settlement 4646
and adjustment of those assets. 4647

(B) No guardian appointed to take care of the estate of a 4648
ward may open a safety deposit box held in the name of the ward, 4649
until the contents of the box have been audited by an employee of 4650
the county auditor in the presence of the guardian and until a 4651
verified report of the audit has been filed by the auditor with 4652
the probate court, ~~which~~. The court then shall issue a release to 4653
the guardian permitting the guardian to have access to the safety 4654
deposit box of the ward. 4655

Sec. 2111.141. The court, by order or rule, may require that 4656
any inventory filed by a guardian pursuant to section 2111.14 of 4657
the Revised Code be supported by evidence that the inventory is a 4658
true and accurate inventory of the estate of the ward of the 4659
guardian, ~~which~~. The evidence may include, but is not limited to, 4660
prior income tax returns, bank statements, and social security 4661
records of the ward or other documents that are relevant to 4662
determining the accuracy of the inventory. In order to verify the 4663
accuracy of an inventory, the court may order a guardian to 4664
produce any additional evidence that may tend to prove that the 4665

guardian is in possession of or has knowledge of assets that 4666
belong to the estate of ~~his~~ the ward and that have not been 4667
included in the guardianship inventory, ~~which~~. The additional 4668
evidence may include, but is not limited to, the guardian's income 4669
tax returns and bank statements and any other documents that are 4670
relevant to determining the accuracy of an inventory. The court 4671
may assign court employees or appoint an examiner to verify an 4672
inventory filed by a guardian. Upon appointment, the assigned 4673
court employees or appointed examiner shall conduct an 4674
investigation to verify the accuracy of the inventory filed by the 4675
guardian. Upon order of the court, the assigned court employees or 4676
appointed examiner may subpoena any documents necessary for ~~his~~ 4677
the investigation. Upon completion of the investigation, the 4678
assigned court employees or appointed examiner shall file a report 4679
with the court. The court shall hold a hearing on the report with 4680
notice to all interested parties. At the hearing, the guardian 4681
shall have the right to examine and cross-examine any assigned 4682
court employees or appointed examiner who conducted the 4683
investigation and filed the report that is the subject of the 4684
hearing. The court shall charge any costs associated with the 4685
verification of an inventory filed by a guardian against the 4686
estate of the ward, except that, if the court determines that the 4687
guardian wrongfully withheld, or aided in the wrongful 4688
withholding, of assets from the inventory filed by the guardian, 4689
the court shall charge the costs against the guardian. 4690

Sec. 2111.16. Unless previously authorized by the court, no 4691
voucher that is signed or purports to be signed by the ward shall 4692
be received from or allowed as a credit in the settlement of a 4693
guardian's account ~~which is signed or purports to be signed by his~~ 4694
~~ward~~. 4695

Sec. 2111.17. A guardian may sue in ~~his~~ the guardian's own 4696

name, describing ~~himself as~~ the guardian as suing on behalf of the 4697
ward ~~for whom he sues~~. When ~~his~~ the guardianship ceases, actions 4698
or proceedings then pending shall not abate, if the right 4699
survives. ~~His~~ The guardian's successor as guardian, the executor 4700
or administrator of the ward, or the ward ~~himself~~, if the 4701
guardianship has terminated other than by the ward's death, shall 4702
be made party to the suit or other proceeding as the case 4703
requires, in the same manner an executor or administrator is made 4704
a party to a similar suit or proceeding ~~where~~ if the plaintiff 4705
dies during its pendency. 4706

Sec. 2111.181. ~~When~~ If personal injury, damage to tangible or 4707
intangible property, or damage or loss on account of personal 4708
injury or damage to tangible or intangible property is caused to a 4709
minor, who claims to be emancipated, by wrongful act, neglect, or 4710
default ~~which~~ that would entitle the minor to maintain an action 4711
and recover damages for the injury, damage, or loss, and ~~when~~ if 4712
any minor who claims to be emancipated is entitled to maintain an 4713
action for damages or any other relief based on any claim, or is 4714
subject to any claim to recover damages or any other relief based 4715
on any claim, the minor, who claims to be emancipated, may file an 4716
application in the probate court in the county where ~~he~~ the minor 4717
then resides, praying for a finding by the court that the minor is 4718
in fact emancipated, and authorizing, approving, and consenting to 4719
the settlement of the claim by the minor without the appointment 4720
of a guardian. Upon hearing on the application, after five days' 4721
written notice of the time and place of the hearing has been given 4722
to each of the living parents of the minor, whose name and address 4723
is known, provided the parent is free from disability other than 4724
minority, or, if there is no living parent, after ~~such~~ that notice 4725
to the next of kin of the minor known to reside in the county, the 4726
court may find the minor to be emancipated ~~and~~, may authorize, 4727
approve, and consent to the settlement of the claim by the minor 4728

without the appointment of a guardian ~~and~~, may authorize the minor 4729
to receive and receipt for the settlement, and, upon the minor 4730
executing and delivering a full and complete release for the 4731
injuries, damages, losses, or claims, may authorize the delivery 4732
and payment of ~~such~~ the moneys to the minor, to a trustee or 4733
guardian of the estate of the minor appointed by the court for the 4734
benefit of the minor, or to a depository authorized to receive 4735
fiduciary funds to hold the moneys payable to the ward when ~~he~~ the 4736
ward attains majority, or for the benefit of the minor, as the 4737
court may direct. 4738

Upon the finding of the probate court that the minor was, at 4739
the time of the injury, damage, loss, or claim, an emancipated 4740
minor, and provided the notice required by this section has been 4741
given to each living parent, whose name and address is known, then 4742
the release executed by the emancipated minor shall be a full and 4743
complete discharge and release of any claim ~~which~~ that either or 4744
both of the parents might have by reason of the personal injury, 4745
damage to tangible or intangible property, damage or loss on 4746
account of personal injury, or damage to tangible or intangible 4747
property, or any other claim of the minor. 4748

Sec. 2111.19. A guardian, whether appointed by a court in 4749
this state or elsewhere, may complete the contracts of ~~his~~ the 4750
ward for the purchase or sale of real estate property or any 4751
authorized contract relating to real estate property entered into 4752
by a guardian who has died or been removed. ~~Said~~ The appointed 4753
guardian shall proceed in the manner provided by sections 2113.48 4754
to 2113.50, ~~inclusive~~, of the Revised Code. 4755

Sec. 2111.20. The guardian of the person and estate, or of 4756
the estate only, may sell all or any part of the personal estate 4757
property of the ward ~~when such~~ if the sale is for the interest of 4758
the ward. 4759

Sec. 2111.21. The guardian of a ward who has or is claimed to 4760
have a right of dower, or a contingent right to it, in ~~lands or~~ 4761
~~tenements~~ real property of which the spouse of ~~such the~~ ward was 4762
or is seized as an estate of inheritance, ~~where if~~ the dower has 4763
not been assigned, may sell, compromise, or adjust ~~such the~~ dower 4764
or may release ~~such the~~ contingent right of dower in the event the 4765
spouse of ~~such the~~ ward desires to mortgage ~~such the~~ property upon 4766
~~such the~~ terms ~~as such that the~~ guardian ~~deems~~ considers for the 4767
interest of ~~such the~~ ward and upon ~~such the~~ terms ~~as that~~ the 4768
probate court of the county in which the guardian was appointed 4769
approves, or if ~~such the~~ guardian was appointed to a foreign 4770
state, upon ~~such the~~ terms ~~as that~~ the probate court of the county 4771
wherein in which the land real property is situated approves. 4772
After ~~such the~~ approval, the guardian may execute and deliver all 4773
the necessary deeds, mortgages, releases, and agreements for the 4774
sale, compromise, assignment, or mortgage of ~~such the~~ dower or 4775
contingent right to dower. As a basis for computing the value of 4776
an inchoate dower right in any sale, compromise, or adjustment 4777
pursuant to this section, the value of the ~~lands or tenements~~ real 4778
property may be considered to be the sale price or, if there is no 4779
sale, the appraised value. ~~Such The~~ sale, compromise, adjustment, 4780
or mortgage may be made upon application and entry in the pending 4781
proceedings. 4782

Sec. 2111.22. When a ward has title to real estate property 4783
by tax title only, the guardian, by deed of release and quitclaim, 4784
may convey ~~such the~~ ward's interest or title to the person 4785
entitled to redeem ~~such the~~ real estate property, upon receiving 4786
from ~~such that~~ person the amount paid for ~~such the~~ tax title with 4787
the forfeiture and interest allowed by sections 319.52 and 323.121 4788
of the Revised Code. If the guardian tenders ~~such that~~ deed to the 4789
person entitled to redeem ~~such the~~ real estate property and he the 4790

person so entitled refuses to accept and pay for it, ~~he~~ the person
entitled shall not recover costs in any proceeding thereafter
instituted to redeem ~~such~~ the real estate property.

Sec. 2111.25. A guardian⁷ of the person and estate or of the
estate only, without application to the probate court, may lease
the possession or use of any real estate property of ~~his~~ the ward
for a term not exceeding three years, provided ~~such~~ the term does
not extend beyond the minority, if the ward is a minor. If the
lease extends beyond the death of the ward or beyond the removal
of the disability of a ward other than a minor, ~~such~~ the lease
shall terminate on ~~such~~ that death or removal of disability,
unless confirmed by the ward or ~~his~~ the ward's legal
representatives. In the event of such determination, the tenant
shall have a lien on the premises for any sum expended by ~~him~~ the
tenant in pursuance of the lease in making improvements for which
compensation was not made in rent or otherwise.

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

~~Such~~ The lease, or modification or change in a lease
previously made, may be made when the guardian of the person and
estate or of the estate only applies to the court by which ~~he~~ the
guardian was appointed and ~~such~~ the court finds that the lease or

modification or change is necessary for the support of the ward or 4822
of ~~his~~ the ward's family, for the payment of the just debts of the 4823
ward, for the ward's education, if a minor, to secure the 4824
improvement of the real ~~estate~~ property of the ward and increase 4825
the rent, to pay any liens or claims against ~~said~~ the real estate 4826
property, ~~or~~ if ~~such~~ the court finds that ~~such~~ the real estate 4827
property is suffering unavoidable waste, or that in any other 4828
respect it will be for the best interests of the ward or those 4829
persons for whom the ward is required by law to provide. 4830

Sec. 2111.27. A guardian's application for authority to lease 4831
real ~~estate~~ property of a ward shall be by petition setting forth 4832
the following: 4833

(A) The legal capacity of the petitioner; 4834

(B) The name of the ward, the character of ~~his~~ the ward's 4835
disability, and if it is ~~idiocy, imbecility, or lunacy~~ 4836
incompetence, whether ~~such~~ the disability is curable or not, 4837
temporary, or confirmed, and its duration; 4838

(C) The number, names, ages, and residence of the family of 4839
the ward, including the spouse and those residents of the county 4840
who have the next estate of inheritance from ~~such~~ the ward, all of 4841
whom, as well as the ward, ~~must~~ shall be made defendants; 4842

(D) The indebtedness of the ward, the expense of supporting 4843
and maintaining ~~him~~ the ward, the expense of educating ~~him~~ the 4844
ward if ~~he~~ the ward is a minor, and any other expense of the ward; 4845

(E) The value of all the property and effects of the ward 4846
including the real ~~estate~~ property proposed to be leased; 4847

(F) The income of the ward and the net annual value to the 4848
ward of the real ~~estate~~ property proposed to be leased; 4849

(G) A description of the real ~~estate~~ property proposed to be 4850
leased and the probable amount for which ~~such~~ the real estate 4851

property can be leased; 4852

(H) A detailed statement of the improvements proposed to be 4853
made to the real ~~estate~~ property sought to be leased; 4854

(I) The reasons for the proposed lease and the terms, 4855
covenants, conditions, and stipulations ~~thereof~~ of the proposed 4856
lease, including the time for which it is proposed the real ~~estate~~ 4857
property should be leased; 4858

(J) ~~Such~~ Any other facts necessary to apprise the court fully 4859
of the necessity or benefit to the ward or the estate of the 4860
proposed lease, or ~~such~~ any other facts ~~as~~ that may be required by 4861
the court; 4862

(K) A prayer for the proper authority. 4863

Sec. 2111.28. In an application for authority to lease real 4864
~~estate~~ property of a ward under sections 2111.26 and 2111.27 of 4865
the Revised Code, the guardian may act for two or more wards and 4866
two or more guardians of different wards may unite, ~~when~~ if all 4867
the wards are jointly or in common interested in the real ~~estate~~ 4868
property. ~~When~~ If the same person is guardian of two or more wards 4869
owning lands in common, ~~such~~ the wards may be joined as defendants 4870
in the same petition under section 2111.27 of the Revised Code. 4871

The ward's spouse shall be made a defendant to ~~such~~ the 4872
petition, and if the proposed lease is for the purpose of mining 4873
or removing mineral or other substances, ~~and if~~ ~~such~~ the spouse 4874
files an answer consenting to the lease, free and discharged of 4875
all right and expectancy of dower ~~therein~~, ~~such~~ the answer shall 4876
be a full release of ~~such~~ the spouse's expectancy of dower when 4877
the lease is confirmed. Unless in ~~such~~ the answer an allowance in 4878
lieu of dower is waived, the court shall allow, out of the 4879
proceeds of the lease, ~~such~~ a sum in money ~~as~~ that is the just and 4880
reasonable value of ~~such~~ the expectancy of dower. 4881

Sec. 2111.29. When a guardian files an application for 4882
authority to lease the real estate property of a ward, the same 4883
rules shall apply as to the parties and, upon the filing of the 4884
petition described in section 2111.27 of the Revised Code, ~~like~~ 4885
similar proceedings shall be had as in an action to sell real 4886
estate property belonging to the ward under sections 2127.01 to 4887
2127.43, ~~inclusive,~~ of the Revised Code, including services of 4888
summons, notice, appraisal, pleading, rule days, and proof. 4889

Sec. 2111.30. When a guardian applies for authority to lease 4890
the real estate property of a ward, the duties of the appraisers 4891
shall be the same as in proceedings to sell real estate property 4892
belonging to the ward under sections 2127.22 and 2127.23 of the 4893
Revised Code, except that they shall appraise not only the value 4894
of the real estate property but also the value of the annual 4895
rental upon the terms, covenants, conditions, and stipulations of 4896
the proposed lease. If ~~said~~ the proposed lease is for the mining 4897
or removal of mineral or other substances, the appraisers shall 4898
report in writing to the probate court their opinion as to the 4899
probability of the lands containing ~~such~~ those substances, the 4900
probable quantity of ~~such~~ the substances, and the terms upon which 4901
it would be advantageous to the ward to lease the lands for mining 4902
or removing ~~such~~ the substances. In their report the appraisers 4903
shall state whether in their opinion, the proposed lease will be 4904
for the best interests of the ward, those whom ~~he~~ the ward is 4905
required by law to support, or the estate. They may also suggest 4906
any change in the terms, covenants, and stipulations proposed in 4907
the petition. The report of the appraisers shall be returned on or 4908
before the day named in the order for the final hearing of the 4909
case. On the return of the appraisal, the guardian need not 4910
give an additional bond, but in case of sale under the terms of 4911
the lease, ~~such~~ the guardian ~~must~~ shall give ~~such~~ the additional 4912

bond before the confirmation of the sale. 4913

Sec. 2111.31. If the report of the appraisers under section 4914
2111.30 of the Revised Code is favorable to the lease and on the 4915
final hearing the court is of the opinion that it will be to the 4916
advantage of the ward, those whom ~~he~~ the ward is required by law 4917
to support, or the estate to lease the real estate property, the 4918
probate court shall make an order authorizing the lease to be made 4919
by public or private letting, as it ~~deems~~ considers best, on ~~such~~ 4920
the terms, covenants, conditions, and stipulations, either in 4921
accordance with those set forth in the petition or otherwise, ~~as~~ 4922
that it directs, provided ~~such~~ the terms, covenants, 4923
and stipulations are not less favorable to the ward than those 4924
reported by the appraisers. The lease shall not take effect until 4925
~~such~~ the lease and the security, if any, ~~therein~~ prescribed in the 4926
lease are approved and confirmed. 4927

~~In the~~ The lease made ~~in pursuance of such~~ pursuant to the 4928
court order ~~it may be provided~~ provide that the improvements shall 4929
be made by the tenant as part of the rent, or by the guardian, 4930
either out of the rent or other means of the ward as the court 4931
directs. 4932

If the lease is for the mining or removal of mineral or other 4933
substances and the guardian is unable to lease the lands upon the 4934
terms ordered, ~~he~~ the guardian may report the fact to the court 4935
and ~~such~~ the court may change the terms of leasing, but not below 4936
the customary royalty in the vicinity of ~~such~~ the lands. 4937

Sec. 2111.33. (A) A guardian may use the moneys and personal 4938
estate property of ~~his~~ the guardian's ward to improve ~~his~~ the 4939
ward's real estate property. ~~Such~~ The guardian shall file in the 4940
probate court in which ~~he~~ the guardian was appointed a petition 4941
containing the following: 4942

(A) (1) A description of the premises to be improved;	4943
(B) (2) The amount of rent the premises yield at the time the petition is filed;	4944 4945
(C) (3) In what manner it <u>the improvement</u> is proposed to make <u>such improvement be made</u> ;	4946 4947
(D) (4) The proposed expenditures for such <u>the</u> improvement;	4948
(E) What (5) <u>The</u> rent the premises will probably yield when so improved;	4949 4950
(F) (6) A statement of the value of the ward's personal estate <u>property</u> ;	4951 4952
(G) (7) Other facts which <u>that</u> are pertinent to the question whether the improvement should be made;	4953 4954
(H) (8) A prayer that such <u>the</u> guardian be authorized to use so much of his <u>the</u> ward's money and personal estate <u>as property</u> <u>that</u> is necessary to make such <u>the</u> improvement;	4955 4956 4957
(I) (9) The character of the disability of the ward, and if it is incompetency, whether such <u>the</u> disability is curable or not, temporary, or confirmed, and its duration;	4958 4959 4960
(J) (10) The names, ages, and residence of the family of the ward, including the spouse and those known to be residents of the county who have the next estate of inheritance from the ward. All such <u>of those</u> persons, as well as the ward, must <u>shall</u> be made defendants and notified of the pendency and prayer of the petition in such <u>the</u> manner as <u>that</u> the court directs.	4961 4962 4963 4964 4965 4966
(B) If the property is so situated that, to the best interests of the ward's estate, it can be advantageously improved in connection with the improvement of property adjacent to it, the petition shall show this and have a prayer in accordance therewith <u>to so improve the property</u> .	4967 4968 4969 4970 4971

Sec. 2111.34. Upon the filing of the petition described in 4972
section 2111.33 of the Revised Code, like similar proceedings 4973
shall be had as to pleadings and proof as on petition by a 4974
guardian to sell the real estate property of a ward under sections 4975
2127.01 to 2127.43, ~~inclusive~~, of the Revised Code. The probate 4976
court shall appoint three disinterested freeholders of the county 4977
as commissioners to examine the premises to be improved, to 4978
examine the surroundings, and to report to the court their opinion 4979
whether the improvement proposed will be advantageous to the 4980
estate of the ward. 4981

Sec. 2111.35. On the final hearing of a guardian's proceeding 4982
to improve the real estate property of ~~his~~ the guardian's ward, if 4983
the prayer of the petition is granted, the probate court shall fix 4984
the amount of money and personal estate property that may be used 4985
in making ~~such~~ the improvement. ~~Such~~ The court may authorize ~~such~~ 4986
the guardian to unite with the owners of adjacent property, upon 4987
~~such~~ equitable terms and conditions ~~as~~ that the court approves, 4988
for the improvement of the premises of ~~his~~ the ward and for the 4989
proper management and repair of the property when so improved. 4990
4991

Sec. 2111.36. A guardian shall distinctly report to the 4992
probate court the amount of money and personal property expended 4993
in making an improvement to the ward's real property under section 4994
2111.35 of the Revised Code, within forty days after the 4995
improvement is completed. If the ward dies before the removal of 4996
the disability and there are heirs who inherit real property only 4997
from ~~him~~ the ward, the money expended shall descend and pass in 4998
the same manner as ~~his~~ the ward's other personal property and 4999
shall be a charge on the premises improved in favor of the heirs 5000
who inherit the personal property. 5001

Sec. 2111.37. ~~When~~ If a nonresident minor, incompetent, or 5002
person confined in a state, charitable, or correctional 5003
institution has real ~~estate, chattels,~~ property or rights, 5004
credits, ~~or~~ moneys, or other personal property in this state, the 5005
probate court of the county in which the property or a part of it 5006
is situated may appoint a resident guardian of the ward to manage, 5007
collect, lease, and take care of the ward's property. The 5008
appointment may be made whether or not a ward has a guardian, 5009
trustee, or other conservator in the state of the ward's 5010
residence, and, if the ward has a guardian, trustee, or other 5011
conservator in the state of the ward's residence, the control and 5012
authority of the resident guardian appointed in ~~Ohio~~ this state 5013
shall be superior as to all property of the ward in ~~Ohio~~ this 5014
state. 5015

The first appointment of a resident guardian of a nonresident 5016
ward shall extend to all the property and effects of the ward in 5017
this state and exclude the jurisdiction of the probate court of 5018
any other county. 5019

Sec. 2111.38. The resident guardian of a nonresident ward 5020
shall give bond and be bound and controlled by all the statutes of 5021
~~Ohio~~ this state as though ~~he~~ the resident guardian were a guardian 5022
of a ward resident in this state, and shall have all of the 5023
authority of a guardian of a resident ward including the authority 5024
to lease or sell real ~~estate~~ property belonging to the ward. 5025

Unless removed by the probate court, a resident guardian of a 5026
nonresident minor shall hold ~~his~~ that appointment until ~~such~~ the 5027
minor dies or arrives at the age of majority, whether or not ~~such~~ 5028
the minor is over fourteen years of age at the time of 5029
appointment. A resident guardian of any other nonresident ward 5030
shall hold ~~his~~ that appointment until the death of the ward or 5031
until the court is satisfied that the necessity for the 5032

guardianship no longer exists. 5033

All moneys due to ~~such the~~ nonresident ward while ~~such the~~ 5034
resident guardianship continues shall be paid over to ~~his the~~ 5035
ward's foreign guardian so far as necessary or proper for the 5036
ward's support and maintenance. If the ward dies, ~~such the~~ moneys 5037
shall be paid to ~~his the ward's~~ ancillary administrator or other 5038
legal representative, provided that the court ~~which that~~ appointed 5039
~~such the~~ resident guardian has satisfactory proof, as provided by 5040
section 2111.39 of the Revised Code, of the authority of ~~such the~~ 5041
foreign guardian, administrator, or other legal representative to 5042
receive the moneys or ~~estates~~ properties of ~~such the~~ nonresident 5043
ward, that the security given by ~~such the~~ foreign guardian, 5044
administrator, or other legal representative is sufficient to 5045
protect ~~such the~~ ward's interest or estate, and ~~provided such that~~ 5046
the court deems considers it best for ~~him the ward~~ or ~~his the~~ 5047
ward's estate. 5048

Sec. 2111.39. When a foreign legal representative of a 5049
nonresident ward applies to have all or any of the moneys or 5050
property in the ~~hands~~ possession or under the control of the 5051
resident guardian of ~~such the~~ ward paid or delivered to ~~him the~~ 5052
foreign representative, he must the foreign representative shall 5053
file ~~his~~ a petition or motion in the probate court by which ~~such~~ 5054
the resident guardian was appointed. ~~Such The~~ resident guardian 5055
~~must shall~~ be given thirty days' notice of the time of hearing 5056
~~thereon on the petition or motion,~~ and ~~such the~~ foreign 5057
representative ~~must shall~~ produce an exemplification under the 5058
seal of the office, if there ~~be is~~ a seal, of the proper court of 5059
the state of ~~his the foreign representative's~~ residence containing 5060
all the entries on record in relation to ~~his the foreign~~ 5061
representative's appointment and qualification, authenticated as 5062
required by the act of congress in ~~such those~~ cases. Upon the 5063
hearing ~~thereof,~~ the court shall make ~~such an~~ order ~~as that~~ it 5064

~~deems~~ considers for the best interests of ~~such~~ the nonresident 5065
ward or ~~his~~ the nonresident ward's estate. 5066

Sec. 2111.40. ~~When~~ If a nonresident ward for whom a resident 5067
guardian was appointed has become a resident since the appointment 5068
and a guardian has been appointed for ~~such~~ the ward, the probate 5069
court shall remove the resident guardian previously appointed and 5070
require an immediate settlement of ~~his~~ the account of the resident 5071
guardian previously appointed. 5072

Sec. 2111.41. ~~When~~ If a ward for whom a guardian has been 5073
appointed in this state removes to another state or territory, and 5074
a guardian of the ward is there appointed, the guardian in this 5075
state may be removed and required to settle ~~his~~ that guardian's 5076
account. 5077

~~Such a~~ That removal of the guardian in this state shall not 5078
be made unless the guardian appointed in another state or 5079
territory applies to the probate court in this state that made the 5080
former appointment, and files an exemplification from the record 5081
of the court making the foreign appointment containing all the 5082
entries and proceedings relating to ~~his~~ the foreign guardian's 5083
appointment, ~~his~~ and giving bond, with a copy ~~thereof,~~ of the bond 5084
and of the letters of guardianship, all authenticated as required 5085
by the act of congress. Before ~~such an~~ the application is heard or 5086
action taken by the court, at least thirty days' written notice 5087
shall be served on the guardian appointed in this state specifying 5088
the object of the application, and the time it is to be heard. 5089

No ~~such~~ removal of a guardian under this section shall be 5090
made in favor of a foreign guardian, unless at the time of the 5091
hearing the state or territory in which ~~he~~ the foreign guardian 5092
was appointed has a similar provision as to wards removing from 5093
that state or territory. The court shall grant the application 5094

unless it makes an affirmative finding that the removal of the guardian appointed in this state would not be in the interest of the ward.

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

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

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

Upon the termination of a guardianship of the person, estate, or both of a minor before ~~such the~~ minor reaches eighteen years of age, if a successor guardian is not appointed and if the court finds that ~~such the~~ minor is without proper care, the court shall

certify a copy of its finding together with as much of the record 5125
and ~~such~~ any further information ~~as that~~ the court ~~deems~~ considers 5126
necessary, or as the juvenile court may request, to the juvenile 5127
court for further proceedings ~~and thereupon such~~. Upon that 5128
certification, the juvenile court shall have exclusive 5129
jurisdiction respecting ~~such child~~ the minor. 5130

Sec. 2111.48. All sales, leases, encumbrances, or liens made 5131
or created on any real ~~estate~~ property located in ~~Ohio~~ this state 5132
by guardians for persons who are incompetent by reason of advanced 5133
age or mental or physical disability since August 17, 1919, by 5134
order of any court of this state shall not be declared invalid for 5135
the reason that ~~such~~ the guardians for the incompetents were not 5136
vested with all the statutory powers given to guardians of ~~idiots,~~ 5137
~~imbeciles, and lunatics~~ incompetents. ~~Such~~ Those acts of guardians 5138
for incompetents are legal and effective. 5139

Sec. 2111.50. (A)(1) At all times, the probate court is the 5140
superior guardian of wards who are subject to its jurisdiction, 5141
and all guardians who are subject to the jurisdiction of the court 5142
shall obey all orders of the court that concern their wards or 5143
guardianships. 5144

(2)(a) Subject to divisions (A)(2)(b) and (c) of this 5145
section, the control of a guardian over the person, the estate, or 5146
both of ~~his~~ the guardian's ward is limited to the authority that 5147
is granted to the guardian by the Revised Code, relevant decisions 5148
of the courts of this state, and orders or rules of the probate 5149
court. 5150

(b) Except for the powers specified in division (E) of this 5151
section and unless otherwise provided in or inconsistent with 5152
another section of the Revised Code, the probate court may confer 5153
upon a guardian any power that this section grants to the probate 5154

court in connection with wards. 5155

(c) For good cause shown, the probate court may limit or 5156
deny, by order or rule, any power that is granted to a guardian by 5157
a section of the Revised Code or relevant decisions of the courts 5158
of this state. 5159

(B) In connection with any person whom the probate court has 5160
found to be an incompetent or a minor subject to guardianship and 5161
for whom the court has appointed a guardian, the court has, 5162
subject to divisions (C) to (E) of this section, all the powers 5163
that relate to the person and estate of the ~~person~~ ward and that 5164
~~he~~ the ward could exercise if present and not a minor or under a 5165
disability, except the power to make or revoke a will. These 5166
powers include, but are not limited to, the power to do any of the 5167
following: 5168

(1) Convey or release the present, contingent, or expectant 5169
interests in real or personal property of the ~~person~~ ward, 5170
including, but not limited to, dower and any right of survivorship 5171
incident to a survivorship tenancy, joint tenancy, or tenancy by 5172
the entirety; 5173

(2) Exercise or release powers as a trustee, personal 5174
representative, custodian for a minor, guardian, or donee of a 5175
power of appointment; 5176

(3) Enter into contracts, or create revocable trusts of 5177
property of the estate of the ~~person~~ ward, that may not extend 5178
beyond the minority, disability, or life of the ~~person~~ or ward; 5179

(4) Exercise options to purchase securities or other 5180
property; 5181

(5) Exercise rights to elect options under annuities and 5182
insurance policies, and to surrender an annuity or insurance 5183
policy for its cash value; 5184

(6) Exercise the right to an elective share in the estate of 5185
the deceased spouse of the ~~person~~ ward pursuant to section ~~2107.45~~ 5186
2106.08 of the Revised Code; 5187

(7) Make gifts, in trust or otherwise, to relatives of the 5188
~~person~~ ward and, consistent with any prior pattern of the ~~person~~ 5189
ward of giving to charities or of providing support for friends, 5190
to charities and friends of the ~~person~~ ward. 5191

(C) Except for the powers specified in division (D) of this 5192
section, all powers of the probate court that are specified in 5193
this chapter and that relate either to any person whom it has 5194
found to be an incompetent or a minor subject to guardianship and 5195
for whom it has appointed a guardian and all powers of a guardian 5196
that relate to ~~his~~ the guardian's ward or guardianship as 5197
described in division (A)(2) of this section, shall be exercised 5198
in the best interest, as determined in the court's or guardian's 5199
judgment, of the following: 5200

(1) The ~~person~~ ward whom the probate court has found to be an 5201
incompetent or a minor subject to guardianship; 5202

(2) The dependents of the ~~person~~ ward; 5203

(3) The members of the household of the ~~person~~ ward. 5204

(D) If the court is to exercise or direct the exercise, 5205
pursuant to division (B) of this section, of the power to make 5206
gifts in trust or otherwise, the following conditions shall apply: 5207

(1) The exercise of the particular power shall not impair the 5208
financial ability of the estate of the ~~person~~ ward whom the 5209
probate court has found to be an incompetent or a minor subject to 5210
guardianship and for whom the court has appointed a guardian, to 5211
provide for ~~his~~ the ward's foreseeable needs for maintenance and 5212
care; 5213

(2) If applicable, the court shall consider any of the 5214

following: 5215

(a) The estate, income, and other tax advantages of the 5216
exercise of a particular power to the estate of a ~~person~~ ward whom 5217
the probate court has found to be an incompetent or a minor 5218
subject to guardianship and for whom the court has appointed a 5219
guardian; 5220

(b) Any pattern of giving of, or any pattern of support 5221
provided by, the ~~person~~ ward prior to ~~his~~ the ward's incompetence; 5222

(c) The disposition of property made by the ward's will ~~of~~ 5223
~~the person~~; 5224

(d) If there is no knowledge of a will of the ~~person~~ ward, 5225
~~his~~ the ward's prospective heirs; 5226

(e) Any relevant and trustworthy statements of the ~~person~~ 5227
ward, whether established by hearsay or other evidence. 5228

(E)(1) The probate court shall cause notice as described in 5229
division (E)(2) of this section to be given and a hearing to be 5230
conducted prior to its exercise or direction of the exercise of 5231
any of the following powers pursuant to division (B) of this 5232
section: 5233

(a) The exercise or release of powers as a donee of a power 5234
of appointment; 5235

(b) Unless the amount of the gift is no more than one 5236
thousand dollars, the making of a gift, in trust or otherwise. 5237

(2) The notice required by division (E)(1) of this section 5238
shall be given to the following persons: 5239

(a) Unless a guardian of a ward has applied for the exercise 5240
of a power specified in division (E)(1) of this section, to the 5241
guardian; 5242

(b) To the ~~person~~ ward whom the probate court has found to be 5243
an incompetent or a minor subject to guardianship; 5244

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

(d) To any other persons the court orders.

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

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

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

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

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

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

(a) The decedent devised and bequeathed in a valid will all 5274
of the assets of the decedent's estate to a person who is named in 5275
the will as the decedent's spouse, and the decedent is survived by 5276
that person. 5277

(b) The decedent is survived by a spouse whose marriage to 5278
the decedent was solemnized in a manner consistent with Chapter 5279
3101. of the Revised Code or with a similar law of another state 5280
or nation, the decedent died without a valid will, and the 5281
decedent's surviving spouse is entitled to receive all of the 5282
assets of the decedent's estate under section 2105.06 of the 5283
Revised Code or by the operation of that section and division 5284
(B)(1) or (2) of section 2106.13 of the Revised Code. 5285

(B) Upon the application of any interested party, after 5286
notice of the filing of the application has been given to the 5287
surviving spouse and heirs at law in the manner and for the length 5288
of time the probate court directs, and after notice to all 5289
interested parties by publication in a newspaper of general 5290
circulation in the county, unless the notices are waived or found 5291
unnecessary, the court, when satisfied that division (A)(1) or (2) 5292
of this section is satisfied, may enter an order relieving the 5293
estate from administration and directing delivery of personal 5294
property and transfer of real ~~estate~~ property to the persons 5295
entitled to the personal property or real ~~estate~~ property. 5296

(C) For the purposes of this section, the value of an estate 5297
that reasonably can be considered to be in an amount specified in 5298
division (A)(1) or (2) of this section and that is not composed 5299
entirely of money, stocks, bonds, or other property the value of 5300
which is readily ascertainable, shall be determined by an 5301
appraiser selected by the applicant, subject to the approval of 5302
the court. The appraiser's valuation of the property shall be 5303
reported to the court in the application to relieve the estate 5304
from administration. The appraiser shall be paid in accordance 5305

with section 2115.06 of the Revised Code. 5306

(D) For the purposes of this section, the amount of property 5307
to be delivered or transferred to the surviving spouse, minor 5308
children, or both, of the decedent as the allowance for support 5309
shall be established in accordance with section 2106.13 of the 5310
Revised Code. 5311

~~When a delivery, sale, or transfer of personal property has~~ 5312
~~been ordered from an estate that has been relieved from~~ 5313
~~administration, the~~ (E) The court may appoint a commissioner to 5314
execute all necessary instruments of conveyance, including the 5315
instruments of conveyance and other documents required for the 5316
transfer of title upon the sale of real property pursuant to 5317
section 2127.011 of the Revised Code. The commissioner shall 5318
receipt for the property, distribute the proceeds of the 5319
conveyance upon court order, and report to the court after 5320
~~distribution the delivery, sale, or transfer of personal or real~~ 5321
~~property from an estate that has been relieved from~~ 5322
~~administration.~~ 5323

~~When~~ (F) If the decedent died testate, the will shall be 5324
presented for probate, and, if admitted to probate, the court may 5325
relieve the estate from administration and order distribution of 5326
the estate under the will. 5327

(G) An order of the court relieving an estate from 5328
administration shall have the same effect as administration 5329
proceedings in freeing ~~land~~ real property in the ~~hands~~ possession 5330
or under the control of an innocent purchaser for value from 5331
possible claims of unsecured creditors. 5332

~~(C)~~(H) Any delivery of personal property or transfer of real 5333
~~estate~~ property pursuant to an order relieving an estate from 5334
administration is made subject to the limitations pertaining to 5335
the claims of creditors set forth in divisions (B) and (C) of 5336

section 2117.06 of the Revised Code. 5337

~~(D)~~(I) The release of an estate from administration under 5338
this section does not affect any duty of any person to file an 5339
estate tax return and certificate under division (A) of section 5340
5731.21 of the Revised Code and does not affect the duties of a 5341
probate court set forth in that division. 5342

~~(E)~~(J) This section does not affect the ability of qualified 5343
persons to file an application for a summary release from 5344
administration under section 2113.031 of the Revised Code or to 5345
file an application for the grant of letters testamentary or 5346
letters of administration. 5347

Sec. 2113.04. (A) Any employer, including the state or a 5348
political subdivision, at any time after the death of ~~his or its~~ 5349
an employee, may pay all wages or personal earnings due to the 5350
deceased employee to: ~~(A) the surviving spouse; (B) any one or~~ 5351
~~more of the children eighteen years of age or older; or (C) the~~ 5352
~~father or mother of the deceased employee~~ the following, 5353
preference being given in the order named, without requiring 5354
letters testamentary or letters of administration to be issued 5355
upon the estate of the deceased employee, and without requiring an 5356
Ohio estate tax release ~~where~~ if the wages or personal earnings do 5357
not exceed ~~two~~ five thousand ~~five hundred~~ dollars. ~~The:~~ 5358

(1) The surviving spouse; 5359

(2) Any one or more of the children eighteen years of age or 5360
older; 5361

(3) The father or mother of the deceased employee. 5362

(B) The payment of wages or personal earnings under division 5363
(A) of this section is a full discharge and release to the 5364
employer from any claim for the wages or personal earnings. If 5365
letters testamentary or letters of administration are thereafter 5366

issued upon the estate of the deceased employee, any person 5367
receiving payment of wages or personal earnings under ~~this section~~ 5368
that division is liable to the executor or administrator for the 5369
sum received by ~~him~~ the person. 5370

Sec. 2113.05. When a will is approved and allowed, the 5371
probate court shall issue letters testamentary to the executor 5372
named in the will or to the executor nominated by holders of a 5373
power as described in section 2107.65 of the Revised Code, or to 5374
the executor named in the will and to a coexecutor nominated by 5375
holders of ~~such a~~ that power, if ~~he~~ the executor or coexecutor is 5376
suitable, competent, accepts the appointment, and gives bond if 5377
that is required. 5378

If no executor is named in a will and no power as described 5379
in section 2107.65 of the Revised Code is conferred in the will, 5380
or if the executor named in a will or nominated pursuant to ~~such a~~ 5381
that power dies, fails to accept the appointment, resigns, or is 5382
otherwise disqualified and the holders of ~~such a~~ the power do not 5383
have authority to nominate another executor or ~~no such~~ the power 5384
is not conferred in the will, or if ~~such a~~ the power is conferred 5385
in a will but the power cannot be exercised because of the death 5386
of a holder of the power, letters of administration with the will 5387
annexed shall be granted to a suitable person or persons, named as 5388
 devisees or legatees in the will, who would have been entitled to 5389
administer the estate if the decedent had died intestate, unless 5390
the will indicates an intention that the person or persons shall 5391
not be granted letters of administration. Otherwise, the court 5392
shall grant letters of administration with the will annexed to 5393
some other suitable person. 5394

Sec. 2113.06. (A) Administration of the estate of an 5395
intestate shall be granted to persons mentioned in this ~~section~~ 5396
division, in the following order: 5397

~~(A)(1)~~ To the surviving spouse of the deceased, if resident 5398
of the state; 5399

~~(B)(2)~~ To one of the next of kin of the deceased, resident of 5400
the state. 5401

(B) If the persons entitled to administer the estate under 5402
division (A) of this section fail to take or renounce 5403
administration voluntarily, ~~they shall be cited by the probate~~ 5404
~~court for that purpose~~ the matter shall be set for hearing and 5405
notice given to the persons. 5406

(C) If there are no persons entitled to administration, ~~or~~ if 5407
they are for any reason unsuitable for the discharge of the trust, 5408
or if without sufficient cause they neglect to apply within a 5409
reasonable time for the administration of the estate, their right 5410
to priority shall be lost, and the court shall commit the 5411
administration to some suitable person who is a resident of the 5412
state, or to the attorney general or the attorney general's 5413
designee, if the department of job and family services is seeking 5414
to recover medical assistance from the deceased pursuant to 5415
section 5111.11 or 5111.111 of the Revised Code. ~~Such~~ The person 5416
granted administration may be a creditor of the estate. 5417

(D) This section applies to the appointment of an 5418
administrator de bonis non. 5419

Sec. 2113.07. Before being appointed executor or 5420
administrator, every person shall make and file an application 5421
that shall contain the names of the surviving spouse and all the 5422
next of kin of the deceased known to the applicant, their 5423
~~post-office~~ addresses of usual residence if known, a statement in 5424
general terms ~~as to~~ of what the estate consists ~~of~~ and its 5425
probable value, and a statement of any indebtedness the deceased 5426
had against the applicant. 5427

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 ~~has no~~ knowledge of a ~~last will and testament~~ of the intestate.

Sec. 2113.12. If a person named as executor in the will of a decedent, or nominated as an executor by holders of a power as described in section 2107.65 of the Revised Code, refuses to accept the trust, or, if after being ~~cited~~ served notice for that purpose, neglects to appear and accept, or if ~~he~~ the person named or nominated as executor neglects for twenty days after the probate of the will to give any required bond, the probate court shall grant letters testamentary to the other executor, if there is one capable and willing to accept the trust, and if there is no ~~such~~ other executor named in the will or nominated by holders of a power as described in section 2107.65 of the Revised Code, the court shall commit administration of the estate, with the will annexed, to some suitable and competent person, pursuant to section 2113.05 of the Revised Code.

Sec. 2113.13. When a person ~~appointed~~ nominated as executor is under the age of eighteen years at the time of ~~proving~~ admitting the will to probate, administration may be granted with the will annexed during ~~his~~ the nominee's minority, unless there is another executor who will accept the trust. If there is ~~such an~~

that other executor, the estate shall be administered by ~~him~~ that 5459
executor until the minor arrives at full age when ~~such~~ the former 5460
minor may be admitted as executor ~~with him~~ upon giving bond as 5461
provided in section 2109.04 of the Revised Code. 5462

Sec. 2113.14. The executor of an executor has no authority, 5463
as such, to administer the estate of the first testator. On the 5464
death of the sole or surviving executor of a ~~last~~ will, 5465
administration of that part of the estate of the first testator 5466
not already administered may be granted, with the will annexed, to 5467
~~such~~ the person ~~as~~ that the probate court appoints. 5468

Sec. 2113.15. When there is delay in granting letters 5469
testamentary or of administration, the probate court may appoint a 5470
special administrator to collect and preserve the effects of the 5471
deceased and grant the special administrator any other authority 5472
that the court considers appropriate. 5473

~~Such~~ The special administrator ~~must~~ shall collect the 5474
~~chattels~~ assets and debts of the deceased and preserve them for 5475
the executor or administrator who thereafter is appointed. For 5476
that purpose ~~such~~ the special administrator may begin ~~and,~~ 5477
maintain, or defend suits as administrator and also sell ~~such~~ 5478
~~goods~~ as any assets the court orders sold. ~~He~~ The special 5479
administrator shall be allowed ~~such~~ the compensation for ~~his~~ the 5480
special administrator's services ~~as~~ that the court thinks 5481
reasonable, if ~~he forthwith delivers the property and effects of~~ 5482
~~the estate to the executor or administrator who supersedes him~~ the 5483
special administrator faithfully fulfills the fiduciary duties. 5484

Sec. 2113.16. Upon granting of letters testamentary or of 5485
administration, the power of a special administrator appointed 5486
under section 2113.15 of the Revised Code shall ~~cease~~ terminate 5487
and ~~he forthwith must deliver~~ the special administrator shall 5488

transfer to the executor or administrator all the ~~chattels and~~ 5489
~~moneys assets~~ of the deceased in ~~his hands~~ the possession or under 5490
the control of the special administrator. The special 5491
administrator shall file an account of the special administration 5492
within thirty days of the appointment of the executor or 5493
administrator. The account shall be in conformance with section 5494
2109.30 of the Revised Code. The executor or administrator may be 5495
admitted to prosecute any suit begun by the special administrator, 5496
as an administrator de bonis non is authorized to prosecute a suit 5497
commenced by a former executor or administrator. 5498

If ~~such~~ the special administrator neglects or refuses to 5499
~~deliver over~~ transfer the ~~property assets~~ and estate to the 5500
executor or administrator, the probate court may compel ~~him to do~~ 5501
~~so~~ the transfer by citation and attachment. The executor or 5502
administrator also may proceed, by civil action, to recover the 5503
value of the assets from ~~such~~ the special administrator and ~~his~~ 5504
the special administrator's sureties. 5505

Sec. 2113.17. A creditor's claim may be presented in 5506
accordance with section 2117.06 of the Revised Code to a special 5507
administration appointed under section 2113.15 of the Revised 5508
Code. 5509

Sec. 2113.18. (A) The probate court may remove any executor 5510
or administrator if there are unsettled claims existing between 5511
~~him~~ the executor or administrator and the estate, ~~which~~ that the 5512
court thinks may be the subject of controversy or litigation 5513
between ~~him~~ the executor or administrator and the estate or 5514
persons interested ~~therein~~ in the estate. 5515

(B) The probate court may remove any executor or 5516
administrator upon motion of the surviving spouse, children, or 5517
other next of kin of the deceased person whose estate is 5518

administered by the executor or administrator if both of the 5519
following apply: 5520

(1) The executor or administrator refuses to bring an action 5521
for wrongful death in the name of the deceased person~~+~~. 5522

(2) The court determines that a prima-facie case for a 5523
wrongful death action can be made from the information available 5524
to the executor or administrator. 5525

Sec. 2113.19. When a sole executor or administrator dies 5526
without having fully administered the estate, the probate court 5527
shall grant letters of administration, with the will annexed or 5528
otherwise as the case requires, to some suitable person pursuant 5529
to section 2113.05 or 2113.06 of the Revised Code. ~~Such That~~ 5530
person shall administer the ~~goods and estate~~ assets of the 5531
deceased not previously administered, ~~in case there is personal~~ 5532
~~estate to be administered to the amount of twenty dollars or debts~~ 5533
~~to that amount due from the estate.~~ 5534

Sec. 2113.20. If a will of a deceased is proved and allowed 5535
after letters of administration have been granted as of an 5536
intestate estate, the first administration shall be revoked, 5537
unless before ~~such the~~ revocation a ~~petition~~ complaint contesting 5538
the probate of ~~such the~~ will is filed in the probate court ~~of~~ 5539
~~common pleas~~. If ~~such a~~ petition complaint of that nature is 5540
filed, the probate court may allow the administration to be 5541
continued ~~in the hands of~~ by the original administrators until the 5542
final determination of ~~such the~~ contest. If the will is sustained, 5543
the first administration ~~must~~ shall be revoked. In either case, 5544
upon revocation of the first administration and the appointment of 5545
an executor or administrator with the will annexed, ~~such that~~ 5546
executor or administrator shall be admitted to prosecute or defend 5547
any suit, proceeding, or matter begun by or against the original 5548

administrator, in ~~like~~ the same manner as an administrator de 5549
bonis non is authorized to prosecute or defend a suit commenced by 5550
a former executor or administrator. 5551

Sec. 2113.21. (A) When a will is contested, the executor, the 5552
administrator de bonis non, with the will annexed, or the 5553
testamentary trustee may, during the contest, do the following: 5554

~~(A)~~(1) Control all the real ~~estate which is included in the~~ 5555
~~will but not specifically devised~~ property and all the personal 5556
~~estate~~ property of the testator not administered before ~~such~~ the 5557
contest; 5558

~~(B)~~(2) Collect the debts and convert all assets into money, 5559
except those ~~which~~ that are specially bequeathed; 5560

~~(C)~~(3) Pay all taxes on ~~such~~ the real and personal property 5561
and all debts; 5562

~~(D)~~(4) Repair buildings and make other improvements if 5563
necessary to preserve the real property from waste; 5564

~~(E)~~(5) Insure ~~such~~ those buildings upon an order first 5565
obtained from the probate court having jurisdiction of ~~such~~ the 5566
executor, administrator, or testamentary trustee; 5567

~~(F)~~(6) Advance or borrow money on the credit of ~~such~~ the 5568
estate for ~~such~~ the repairs, taxes, and insurance ~~which~~ that shall 5569
be a charge ~~thereon~~ on the estate; 5570

~~(G)~~(7) Receive and receipt for a distributive share of an 5571
estate or trust to which ~~such~~ the testator would have been 5572
entitled, if living. 5573

(B) The court may require ~~such~~ additional bonds ~~as~~ that from 5574
time to time ~~seems~~ seem proper. 5575

Sec. 2113.22. An ~~administrator or~~ executor or administrator 5576
appointed in the place of an executor or administrator who has 5577

resigned or been removed, whose letters have been revoked, or 5578
whose authority has been extinguished is entitled to the 5579
possession of all the unadministered personal effects and assets 5580
of the estate ~~unadministered~~, and all other funds collected and 5581
unaccounted for by ~~such the former~~ executor or administrator, and 5582
may maintain a suit against the former executor or administrator 5583
and ~~his the former executor's or administrator's~~ sureties on the 5584
administration bond to recover ~~such those~~ effects, assets, and 5585
funds and for all damages arising from the maladministration or 5586
omissions of the former executor or administrator. 5587

Sec. 2113.25. ~~So far as the executor or administrator is~~ 5588
~~able, the~~ The executor or administrator of an estate shall collect 5589
the assets and complete the administration of that estate within 5590
~~thirteen~~ six months after the date of appointment unless an 5591
extension of the time to file a final and distributive account is 5592
authorized under division (B) of section 2109.301 of the Revised 5593
Code. 5594

~~Upon application of the executor or administrator and notice~~ 5595
~~to the interested parties, if the probate court considers that~~ 5596
~~notice necessary, the court may allow further time in which to~~ 5597
~~collect assets, to convert assets into money, to pay creditors, to~~ 5598
~~make distributions to legatees or distributees, to file partial,~~ 5599
~~final, and distributive accounts, and to settle estates. The~~ 5600
~~court, upon application of any interested party, may authorize the~~ 5601
~~examination under oath in open court of the executor or~~ 5602
~~administrator upon any matter relating to the administration of~~ 5603
~~the estate~~ For good cause shown, the court may grant an extension 5604
of the time to file the inventory and accounts. 5605

Sec. 2113.26. The court, upon application of any interested 5606
party, may authorize the examination of the executor or 5607
administrator under oath in open court on any matter relating to 5608

the administration of the estate. 5609

Sec. 2113.30. (A) Except as otherwise directed by the 5610
decedent in the decedent's ~~last will and testament~~, an executor or 5611
administrator, without personal liability for losses incurred, may 5612
continue the decedent's business during four months next following 5613
the date of the appointment of that executor or administrator, 5614
unless the probate court directs otherwise, and for any further 5615
time that the court may authorize upon a hearing and after notice 5616
to the surviving spouse and distributees. In either case, no debts 5617
incurred or contracts entered into shall involve the estate beyond 5618
the assets used in that business immediately prior to the death of 5619
the decedent without first obtaining the approval of the court. 5620
During the time the business is continued, the executor or 5621
administrator shall file monthly reports in the court, setting 5622
forth the receipts and expenses of the business for the preceding 5623
month and any other pertinent information that the court may 5624
require. The executor or administrator may not bind the estate 5625
without court approval beyond the period during which the business 5626
is continued. 5627

(B) As used in this section, "decedent's business" means a 5628
business that is owned by the decedent as a sole proprietor at the 5629
time of the decedent's death. "Decedent's business" does not 5630
include a business that is owned in whole or in part by the 5631
decedent as a shareholder of a corporation, a member of a limited 5632
liability company, or a partner of a partnership, or under any 5633
other form of ownership other than a sole proprietorship. 5634

Sec. 2113.31. Every executor or administrator is chargeable 5635
with all ~~chattels, rights, and credits~~ assets of the deceased 5636
~~which that~~ come into ~~his hands~~ the possession or under the control 5637
of the executor or administrator and are to be administered, 5638

although not included in the inventory required by section 2115.02 5639
of the Revised Code. ~~Such~~ The executor or administrator is also 5640
chargeable with all the proceeds of personal property and real 5641
~~estate~~ property sold for the payment of debts or legacies, and all 5642
the interest, profit, and income that in any way comes ~~to his~~ 5643
~~hands~~ into the possession or under the control of the executor or 5644
administrator from the personal ~~estate~~ property of the deceased. 5645

Sec. 2113.311. (A) If, within a reasonable time after the 5646
appointment of the executor or administrator, no one in authority 5647
has taken over the management and rental of any real ~~estate~~ 5648
property of which the decedent died seized, the executor or 5649
administrator, or an heir or devisee may, unless the will 5650
otherwise provides, make application to the probate court for an 5651
order authorizing the executor or administrator to assume ~~such~~ 5652
those duties. ~~Such~~ The application shall contain the following: 5653

(1) A brief statement of the facts upon which the application 5654
is based and ~~such~~ any other pertinent information ~~as~~ that the 5655
court may require; 5656

(2) A description or identification of the real ~~estate~~ 5657
property and the interest owned by the decedent at the time of ~~his~~ 5658
death; 5659

(3) The names and addresses, if known to the applicant, of 5660
the persons to whom ~~such~~ the real ~~estate~~ property passed by 5661
descent or devise. 5662

(B) Notice of the time of hearing on ~~such~~ the application 5663
shall be given to the persons designated in ~~sub-paragraph~~ division 5664
(A)(3) of this section, unless for good cause the court dispenses 5665
with ~~such~~ that notice, and also to the executor or administrator, 5666
unless the executor or administrator is the applicant. 5667

(C) If the court finds that the statements contained in the 5668

application are true and that it would be for the best interest of 5669
~~such~~ those heirs or devisees that the application be granted, it 5670
may authorize the executor or administrator to assume the 5671
management and rental of ~~such~~ the real estate property. 5672

(D) The court may require bond, new or additional, in an 5673
amount to be fixed by the court and conditioned that the executor 5674
or administrator will faithfully and honestly discharge the duties 5675
devolving ~~upon him by~~ from the provisions of this section. 5676

~~(B)~~(E) In the exercise of ~~such~~ the authority granted under 5677
this section, the executor or administrator shall be authorized to 5678
do the following: 5679

(1) Collect rents; 5680

(2) From the rents collected: 5681

(a) Pay all taxes and assessments due on ~~such~~ the real estate 5682
property, and all ~~such~~ usual operating expenses in connection with 5683
the its management thereof; 5684

(b) Make repairs when necessary to preserve ~~such~~ the real 5685
estate property from waste, provided that an order of the court 5686
shall first be obtained if the cost of ~~such~~ repairs exceeds one 5687
hundred dollars; 5688

(c) Insure buildings against loss by fire or other casualty 5689
and against public liability; 5690

(3) Advance money upon an order first obtained from the 5691
court, for ~~such~~ the repairs, taxes, insurance, and all usual 5692
operating expenses, ~~which that~~ shall be a charge on ~~such~~ the real 5693
estate property; 5694

(4) Rent the property on a month-to-month basis, or, upon an 5695
order first obtained from the court, for a period not to exceed 5696
one year; 5697

(5) Prosecute actions for forcible entry and ~~detention~~ 5698

detainer of ~~such~~ the real estate property. 5699

(F) The executor or administrator shall, at intervals not to 5700
exceed twelve months, pay over to the heirs or devisees, if known, 5701
their share of the net rents, and shall account for all money 5702
received and paid out under authority of this section in ~~his~~ the 5703
executor's or administrator's regular accounts of the 5704
administration of the estate, but in a separate schedule. If any 5705
share of the net rents remains unclaimed, it may be disposed of in 5706
the same manner as ~~is~~ provided for unclaimed money under section 5707
2113.64 of the Revised Code. 5708

(G) The authority granted under this section shall terminate 5709
upon the transfer of the real estate property to the heirs or 5710
devisees in accordance with section 2113.61 of the Revised Code, 5711
~~or~~ upon a sale ~~thereof~~ of the real property, ~~or~~ upon application 5712
of the executor or administrator, or for a good cause shown, upon 5713
the application of an heir or devisee. 5714

(H) Upon application the court may allow compensation to the 5715
executor or administrator for extraordinary services, ~~which~~ that 5716
shall be charged against the rents, and if ~~said~~ the rents ~~be~~ are 5717
insufficient, shall be a charge against ~~such~~ the real estate 5718
property. 5719

Upon application the court may allow reasonable attorney fees 5720
paid by the executor or administrator when an attorney is employed 5721
in connection with the management and rental of ~~such~~ the real 5722
estate, ~~which~~ property that shall be charged against the rents, 5723
and if ~~said~~ the rents ~~be~~ are insufficient, shall be a charge 5724
against ~~such~~ the real estate property. 5725

Sec. 2113.33. An executor or administrator is not accountable 5726
for debts inventoried as due to the decedent, if it appears to the 5727
probate court that, without ~~his~~ the executor's or administrator's 5728
fault, they remain uncollected. 5729

Sec. 2113.34. If an executor or administrator neglects to 5730
sell personal property ~~which he~~ that is required to ~~sell be sold~~, 5731
and retains, consumes, or disposes of it for ~~his~~ the executor's or
administrator's own benefit, ~~he~~ the executor or administrator 5732
shall be charged ~~therewith~~ with the personal property at double 5733
the value affixed ~~thereto~~ to the property by the appraisers. 5734
5735

Sec. 2113.35. (A) Executors and administrators shall be 5736
allowed ~~commissions~~ fees upon the amount of all the personal 5737
estate property, including the income from the personal estate 5738
property, that is received and accounted for by them and upon the 5739
proceeds of real estate property that is sold, as follows: ~~(A)~~ 5740

(1) For the first one hundred thousand dollars, at the rate 5741
of four per cent; ~~(B)~~ 5742

(2) All above one hundred thousand dollars and not exceeding 5743
four hundred thousand dollars, at the rate of three per cent; ~~(C)~~ 5744

(3) All above four hundred thousand dollars, at the rate of 5745
two per cent. ~~Executors~~ 5746

(B) Executors and administrators ~~also~~ shall be allowed a 5747
~~commission~~ fee of one per cent on the value of real estate 5748
property that is not sold. Executors and administrators also shall 5749
be allowed a ~~commission~~ fee of one per cent on all property that 5750
is not subject to administration and that is includable for 5751
purposes of computing the Ohio estate tax, except joint and 5752
survivorship property. ~~The~~ 5753

(C) The basis of valuation for the allowance of ~~such~~ 5754
~~commissions~~ the fees on real estate property sold shall be the 5755
gross proceeds of sale, and for all other property the fair market 5756
value of the other property as of the date of death of the 5757
decedent. The ~~commissions~~ fees allowed to executors and 5758
administrators in this section shall be received in full 5759

compensation for all their ordinary services. ~~If~~ 5760

(D) If the probate court finds, after a hearing, that an 5761
executor or administrator, in any respect, has not faithfully 5762
discharged ~~his~~ the duties as executor or administrator, the court 5763
may deny the executor or administrator any compensation whatsoever 5764
or may allow the executor or administrator the reduced 5765
compensation that the court thinks proper. 5766

Sec. 2113.36. Allowances, in addition to those provided by 5767
section 2113.35 of the Revised Code for an executor or 5768
administrator, ~~which~~ that the probate court considers just and 5769
reasonable shall be made for actual and necessary expenses and for 5770
extraordinary services not required of an executor or 5771
administrator in the common course of ~~his duty~~ the executor's or 5772
administrator's duties. 5773

Upon the application of an executor or administrator for 5774
further allowances for extraordinary services rendered, the court 5775
shall review both ordinary and extraordinary services claimed to 5776
have been rendered. If the ~~commissions~~ fees payable pursuant to 5777
section 2113.35 of the Revised Code, exceed the reasonable value 5778
of ~~such~~ the ordinary services rendered, the court ~~must~~ shall 5779
adjust any allowance made for extraordinary services so that the 5780
total ~~commissions~~ fees and allowances to be made fairly reflect 5781
the reasonable value of both ordinary and extraordinary services. 5782

~~When~~ If an attorney has been employed in the administration 5783
of the estate, reasonable attorney fees paid by the executor or 5784
administrator shall be allowed as a part of the expenses of 5785
administration. The court may at any time during administration 5786
fix the amount of ~~such~~ those fees and, on application of the 5787
executor or administrator or the attorney, shall fix the amount 5788
~~thereof~~ of the fees. ~~When~~ If provision is made by the will of the 5789
deceased for compensation to an executor, the amount provided 5790

shall be a full satisfaction for ~~his~~ the executor's or 5791
administrator's services, in lieu of ~~such commissions~~ the fees or 5792
~~his~~ share ~~thereof~~ of the fees, unless by an instrument filed in 5793
the court within four months after ~~his~~ appointment ~~he~~ the executor 5794
or administrator renounces all claim to the compensation given by 5795
the will. 5796

Sec. 2113.39. If a qualified executor, administrator, or 5797
testamentary trustee is authorized by will or devise to sell any 5798
class of personal property ~~whatsoever~~ or real estate property, no 5799
order shall be required from the probate court ~~to enable him for~~ 5800
the executor, administrator, or testamentary trustee to act in 5801
pursuance of the power vested in him proceed with the sale. A 5802
power to sell authorizes a sale for any purpose ~~deemed~~ considered 5803
by ~~such~~ the executor, administrator, or testamentary trustee to be 5804
for the best interest of the estate, unless the power is expressly 5805
limited by ~~such~~ the will or devise. 5806

Sec. 2113.40. (A) At any time after the appointment of an 5807
executor or administrator, the probate court, ~~when~~ if satisfied 5808
that it would be for the best interests of the estate, may 5809
authorize ~~such~~ the executor or administrator to sell at public or 5810
private sale, at a fixed price or for the best price obtainable, 5811
and for cash or on ~~such~~ the terms ~~as~~ that the court may determine, 5812
any part or all of the personal property belonging to the estate, 5813
except the following: 5814

~~(A)~~ Such property as (1) Property that the surviving spouse 5815
desires to take at the appraised value; 5816

~~(B)~~ (2) Property specifically bequeathed, when if the sale of 5817
~~such~~ that property is not necessary for the payment of debts, 5818
provided that ~~such~~ the property may be sold with the consent of 5819
the person entitled ~~thereto~~ to the property, including executors, 5820

administrators, guardians, and trustees; 5821

~~(C)~~(3) Property as to which distribution in kind has been 5822
demanded prior to the sale by the surviving spouse or other 5823
beneficiary entitled to ~~such~~ the distribution in kind; 5824

~~(D)~~(4) Property ~~which~~ that the court directs shall not be 5825
sold pursuant to a wish expressed by the decedent in ~~his~~ the 5826
decedent's will; but at any later period, on application of a 5827
party interested, the court may, and for good cause shall, require 5828
~~such~~ the sale to be made. 5829

(B) In case of a sale before expiration of the time within 5830
which the surviving spouse may elect to take at the appraised 5831
value, not less than ten days' notice of ~~such~~ the sale shall be 5832
given to the surviving spouse, unless ~~such~~ the surviving spouse 5833
consents to ~~such~~ the sale or waives notice ~~thereof~~ of the sale. 5834
~~Such~~ The notice shall not be required as to perishable property. 5835

(C) The court may permit the itemized list of personal 5836
property being sold to be incorporated in documents and records 5837
relating to the sale, by reference to other documents and records 5838
~~which~~ that have been filed in the court. ~~Provided, provided~~ that a 5839
court order shall not be required to permit the public sale of 5840
personal ~~goods and chattels~~ property. 5841

Sec. 2113.41. (A) Public sales of personal property ~~mentioned~~ 5842
as provided in section 2113.40 of the Revised Code shall be at 5843
public auction and, unless otherwise directed by the probate 5844
court, after notice of ~~such~~ the sale has been given by any of the 5845
following methods: 5846

~~(A)~~(1) By advertisement appearing at least three times in a 5847
newspaper of general circulation in the county during a period of 5848
fifteen days next preceding ~~such~~ the sale; 5849

~~(B)~~(2) By advertisement posted not less than fifteen days 5850

next preceding ~~such~~ the sale in at least five public places in the 5851
township or municipal corporation where ~~such~~ the sale is to take 5852
place; 5853

~~(C)~~(3) By both ~~such~~ forms of advertisement specified in 5854
divisions (A)(1) and (2) of this section. 5855

~~Such~~ (B) The advertisement published or posted as described 5856
in divisions (A)(1) and (2) of this section shall specify 5857
generally the property to be sold and the date, place, and terms 5858
of the sale. The executor or administrator, if considered in the 5859
best interests of the estate, may employ an auctioneer or clerk, 5860
or both, to conduct ~~such~~ the sale, and their reasonable fees and 5861
charges shall be deducted from the proceeds of the sale. The court 5862
for good cause may extend the time for sale. 5863

Sec. 2113.45. When a mortgagee of real ~~estate~~ property, or an 5864
assignee of ~~such~~ the mortgagee, dies without foreclosing the 5865
mortgage, the mortgaged premises and the debts secured ~~thereby~~ by 5866
the mortgage shall be considered personal assets in the ~~hands~~ 5867
possession or under the control of the executor or administrator 5868
of ~~such~~ the estate of the mortgagee or assignee, and shall be 5869
administered and accounted for as such. 5870

If the mortgagee or assignee did not obtain possession of the 5871
mortgaged premises in ~~his~~ the mortgagee's or assignee's lifetime, 5872
~~his~~ the executor or administrator of the estate of the deceased 5873
mortgagee or assignee may take possession of the premises by open 5874
and peaceable entry or by action, as the deceased might have done 5875
if living. 5876

Sec. 2113.46. In case of the redemption of a mortgage 5877
belonging to the estate of a decedent, the money paid ~~thereon~~ must 5878
on the redemption shall be received by the executor or 5879
administrator, ~~and thereupon~~ he the executor or administrator 5880

shall release and discharge the mortgage. Until ~~such that~~ 5881
redemption, if the executor, administrator, or decedent has taken 5882
possession of the mortgaged premises, the executor or 5883
administrator, ~~if possession has been taken by him or by the~~ 5884
~~decedent,~~ shall be seized of the mortgaged premises in trust for 5885
the same persons who would be entitled to the money if the 5886
premises had been redeemed. 5887

Sec. 2113.48. When a person who has entered into a written 5888
contract for the sale and conveyance of an interest in real ~~estate~~ 5889
property dies before its completion, ~~his~~ the executor or 5890
administrator ~~when~~ of the decedent's estate, if not required to 5891
otherwise dispose of ~~such the~~ contract, may, with the consent of 5892
the purchaser, obtain authority to complete ~~such the~~ contract by 5893
filing an application ~~therefor~~ for that authority in the probate 5894
court of the county in which ~~he~~ the executor or administrator was 5895
appointed. Notice of the time of hearing on ~~such the~~ application 5896
shall be given to the surviving spouse and heirs, if the decedent 5897
died intestate, and to the surviving spouse, ~~and~~ devisees or 5898
legatees having an interest in ~~such the~~ contract, if the decedent 5899
died testate. If the court is satisfied that it would be for the 5900
best interests of the estate, it may authorize the executor or 5901
administrator to complete ~~said the~~ contract and to execute and 5902
deliver to the purchaser ~~such the~~ instruments ~~as~~ that are required 5903
to make the order of the court effective. 5904

Sec. 2113.49. When a person who has entered into a written 5905
contract for the sale and conveyance of an interest in real ~~estate~~ 5906
property dies before its completion, ~~his~~ the executor or 5907
administrator of the decedent's estate, ~~when~~ if not required to 5908
otherwise dispose of the contract, may file a petition complaint 5909
for the alteration or cancellation of the contract, ~~in~~ the probate 5910
court of the county in which ~~he~~ the executor or administrator was 5911

appointed, or in which the real ~~estate~~ property or any part of it 5912
is situated. If the decedent died intestate, the surviving spouse 5913
and heirs, and if the decedent died testate, the surviving spouse, 5914
and devisees or legatees having an interest in the contract, ~~when~~ 5915
if not the plaintiffs, shall, together with the purchaser, be made 5916
parties defendant. 5917

If, upon hearing, the court is satisfied that it is for the 5918
best interests of the estate, it may, with the consent of the 5919
purchaser, authorize the executor or administrator to agree to the 5920
alteration or cancellation of the contract, and to execute and 5921
deliver to the purchaser the instruments required to make the 5922
order of the court effective. Before making ~~such an~~ its order, the 5923
court shall cause to be secured, to and for the benefit of the 5924
estate of the deceased, its just part of the consideration of the 5925
contract. The instruments executed and delivered pursuant to ~~such~~ 5926
~~an~~ the court's order shall recite the order, and be as binding on 5927
the heirs and other parties in interest, as if made by the 5928
deceased ~~in his lifetime~~ prior to death. 5929

Sec. 2113.50. When a person who has entered into a written 5930
contract for the purchase of an interest in real ~~estate~~ property 5931
dies before a the conveyance ~~thereof of the interest~~ to ~~him~~ the 5932
person, ~~his~~ the executor or administrator of the decedent's 5933
estate, ~~or the~~ surviving spouse, ~~or~~ any heir, or any devisee or 5934
legatee having an interest in ~~such the~~ contract, may file an 5935
application for authority to complete ~~such the~~ contract in the 5936
probate court of the county in which the executor or administrator 5937
was appointed. Notice of the time of the hearing on ~~such the~~ 5938
application shall be given to the surviving spouse and heirs, if 5939
the decedent died intestate, and to the surviving spouse, and 5940
devisees or legatees having an interest in ~~such the~~ contract, if 5941
the decedent died testate, to the executor or administrator, if 5942
not the applicant, and to all other persons having an interest in 5943

~~such~~ the real estate property that is the subject of the contract. 5944
If the court is satisfied that it would be for the best interests 5945
of the estate, it may, with the consent of the vendor, authorize 5946
the executor or administrator to complete the contract, pay to the 5947
vendor the amount due on the contract, and authorize a conveyance 5948
of the interest in the real ~~estate~~ property to the persons 5949
entitled ~~thereto~~ to it. If, however, the court finds that the 5950
condition of the estate at the time of the hearing does not 5951
warrant the payment out of the estate of the amount due under the 5952
contract, it may authorize the persons entitled to the interest of 5953
the decedent in the contract to pay to the vendor the amount due 5954
on the contract. The real ~~estate~~ property so conveyed shall 5955
thereafter be chargeable with the debts of the estate to the 5956
extent of the equitable interest of the estate ~~therein~~ in the real 5957
property, and may be sold in land sale proceedings, except that in 5958
the event of ~~such~~ that sale, the persons to whom the real ~~estate~~ 5959
property shall have been conveyed shall have a prior lien on the 5960
proceeds as against the estate to the extent of any portion of the 5961
purchase price paid by them. 5962

The executor or administrator, ~~or~~ surviving spouse, ~~or~~ any 5963
heir, or any devisee or legatee having an interest in ~~such a~~ the 5964
contract, may file a ~~petition~~ complaint for the alteration or 5965
cancellation of the contract in the probate court of the county in 5966
which the executor or administrator was appointed. If the decedent 5967
died intestate, the surviving spouse and heirs, and if the 5968
decedent died testate, the surviving spouse, and devisees or 5969
legatees having an interest in ~~such~~ the contract, and the executor 5970
or administrator, ~~when~~ if not the plaintiff, together with the 5971
vendor, and all other persons having an interest in the real 5972
~~estate which~~ property that is subject to the contract, shall be 5973
made parties defendant. If the court is satisfied that it would be 5974
for the best interests of the estate, the court, with the consent 5975
of the vendor, may authorize the executor or administrator to 5976

agree to the alteration or cancellation of the contract and to 5977
execute and deliver ~~such~~ the deeds or other instruments to the 5978
vendor ~~as~~ that are required to make the order of the court 5979
effective. ~~Such~~ The deeds or other instruments ~~as~~ that are 5980
executed and delivered pursuant to ~~such~~ the court's order shall 5981
recite the order and be as binding on the parties to the suit as 5982
if made by the deceased ~~in his lifetime~~ prior to death. 5983

Sec. 2113.51. The property of an estate ~~which~~ that is 5984
specifically bequeathed may be delivered over to the legatee 5985
entitled ~~thereto~~ to the property. ~~Such~~ The legatee ~~must~~ shall 5986
secure its redelivery on demand to the executor or administrator. 5987
Otherwise, ~~such~~ the property ~~must~~ shall remain in the ~~hands~~ 5988
possession or under the control of the executor or administrator 5989
to be distributed or sold, as required by law and the condition of 5990
the estate. 5991

Sec. 2113.52. (A) A devisee taking real estate property under 5992
a devise in a will, unless the will otherwise provides, or an heir 5993
taking real estate property under the statutes of descent and 5994
distribution shall take the real estate property subject to all 5995
taxes, penalties, interest, and assessments ~~which~~ that are a lien 5996
against that real estate property. 5997

(B) If real estate property devised in a will is subject to a 5998
mortgage lien that exists on the date of the testator's death, the 5999
person taking the real estate property under the devise has no 6000
right of exoneration for the mortgage lien, regardless of a 6001
general direction in the will to pay the testator's debts, unless 6002
the will specifically provides a right of exoneration that extends 6003
to that lien. 6004

Sec. 2113.54. When five months have expired after the 6005
appointment of an executor or administrator and the surviving 6006

spouse has made an election under section 2106.01 of the Revised Code, a legatee or distributee may apply to the probate court for an order requiring the executor or administrator to distribute the assets of the estate, either in whole or in part, in cash or in kind. Upon notice to the executor or administrator, the court shall inquire into the condition of the estate, and if all claims have been paid, or adequate provision has been or can be made for their payment, the court shall make ~~such~~ that order with reference to distribution of the estate as the condition of the estate and the protection of all parties interested in the estate may demand. The order of the court shall provide that assets be set aside for the payment of claims rejected within two months or in suit, and each claimant for whom assets are to be set aside shall be entitled to be fully heard as to the nature and amount of the assets to be set aside for payment of ~~his~~ the claim, and as to all other conditions in connection with the claim. Each legatee or distributee receiving distribution from the estate shall be liable to return the assets distributed to ~~him~~ the legatee or distributee, or the proceeds from the assets, if they are necessary to pay ~~such~~ those claims. The court, upon its own motion or upon application of the executor or administrator, as a condition precedent to any distribution, may require any legatee or distributee to give bond to the state with surety approved and in an amount fixed by the court, conditioned as provided in section 2113.53 of the Revised Code or as may be directed by the court. ~~Such~~ The bond may be in addition to the assets to be set aside or partially or wholly in lieu of those assets, as the court shall determine.

Sec. 2113.58. ~~When~~ If by a ~~last will and testament~~ the use or income of personal property is given to a person for a term of years or for life and some other person has ~~an~~ a remainder interest in ~~such~~ the property ~~as remainderman~~, the probate court,

unless ~~such last~~ the will and ~~testament~~ otherwise provides, may 6039
~~deliver such~~ authorize delivery of the personal property to the 6040
person having the limited estate, with or without bond, as the 6041
court may determine; or the court may order that ~~such~~ the property 6042
be held by the executor or some other trustee, with or without 6043
bond, for the benefit of the person having the limited estate. If 6044
bond is required of the person having the limited estate, or of 6045
the trustee, it may be increased or decreased, and if bond is not 6046
required in the first instance it may be required by the court at 6047
any time prior to the termination of the limited estate. 6048

Sec. 2113.61. (A)(1) When real property passes by the laws of 6049
intestate succession or under a will, the administrator or 6050
executor shall file in probate court, at any time after the filing 6051
of an inventory that includes the real property but prior to the 6052
filing of the administrator's or executor's final account, an 6053
application requesting the court to issue a certificate of 6054
transfer as to the real property. Real property sold by an 6055
executor or administrator or land registered under Chapters 5309. 6056
and 5310. of the Revised Code is excepted from the application 6057
requirement. Cases in which an order has been made under section 6058
2113.03 of the Revised Code relieving an estate from 6059
administration and in which the order directing transfer of real 6060
property to the person entitled to it may be substituted for the 6061
certificate of transfer also are excepted from the application 6062
requirement. 6063

(2) In accordance with division (C)(3)(b) of section 2113.031 6064
of the Revised Code, an application for a certificate of transfer 6065
of an interest in real property included in the assets of the 6066
decedent's estate shall accompany an application for a summary 6067
release from administration under that section. This section 6068
applies to the application for and the issuance of the requested 6069
certificate of transfer except to the extent that the probate 6070

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;

~~(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;

~~(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;

~~(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;

(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;

(7) Other pertinent information that the court requires.

(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:

(1) The name and date of death of the decedent;

(2) Whether the decedent died testate or intestate ~~and, if testate, the volume and page of the record of the will;~~

(3) The ~~volume and page~~ case number of the probate court record of the administration of the estate;

(4) The names and places of residence of the devisees, the interests passing to them, the names and places of residence of the persons inheriting intestate, and the interests inherited by them, in each parcel of real property ~~described in division (B)(4) of this section~~ being transferred;

(5) A description of each parcel of real property ~~described in division (B)(4) of this section~~ being transferred;

(6) Other information that in the opinion of the court should be included.

(D) If an executor or administrator has failed to file an application for a certificate of transfer before being discharged, the application may be filed by an heir or devisee, or a successor in interest, in the probate court in which the testator's will was probated or, in the case of intestate estates, in the probate court in which administration was had. If no administration was had on an estate and if no administration is contemplated, except in the case of the grant of or contemplated application for the grant of an order of a summary release from administration under section 2113.031 of the Revised Code, an application for a certificate of transfer may be filed by an heir or devisee, or a successor in interest, in the probate court of the county in which

the decedent was a resident at the time of death or in which the 6132
real property of the decedent is located. 6133

(E) A foreign executor or administrator, ~~when~~ if no ancillary 6134
administration proceedings have been had or are being had in this 6135
state, may file in accordance with this section an application for 6136
a certificate of transfer in the probate court of any county of 6137
this state in which real property of the decedent is located. 6138

(F) When a person who has entered into a written contract for 6139
the sale and conveyance of an interest in real property dies 6140
before its completion, the interest of the decedent in the 6141
contract and the record title to the real property described in 6142
the contract may be transferred to the ~~persons, legatees,~~ 6143
~~devisees,~~ or heirs at law entitled to the interest of the decedent 6144
in the real property, in the same manner as provided in this 6145
section and ~~sections~~ section 2113.62 ~~and 2113.63~~ of the Revised 6146
Code for the transfer of real property. The application for the 6147
certificate of transfer and the certificate itself also shall 6148
recite that the real property described in the application or 6149
certificate is subject to a written contract for its sale and 6150
conveyance. 6151

Sec. 2113.62. Upon receipt of the certificate provided for in 6152
section 2113.61 of the Revised Code, the county recorder shall 6153
record it in the books provided for the recording of deeds and 6154
index ~~such~~ those records in the name of the decedent as grantor 6155
and the person to whom the real ~~estate~~ property passes as grantee 6156
in the index provided for the record of deeds. 6157

Sec. 2113.67. When a person entitled to the money invested or 6158
turned into the county treasury under section 2113.64 of the 6159
Revised Code satisfies the probate court of ~~his~~ the person's right 6160
to receive it, the court shall order it to be paid over and 6161

transferred to ~~him~~ the person. In case it has been turned into the 6162
treasury, the county auditor shall give to ~~him~~ the person a 6163
warrant ~~therefor~~ for the money upon the certificate of the probate 6164
judge. 6165

Sec. 2113.68. The probate judge with whom the certificates or 6166
evidences of title required by section 2113.65 of the Revised Code 6167
are deposited and each succeeding judge to whom they come, and ~~his~~ 6168
the judges' sureties, shall be responsible for their safekeeping 6169
and application, as provided in sections 2113.64 to 2113.67~~7~~, 6170
~~inclusive~~, of the Revised Code. 6171

Sec. 2113.69. When newly discovered assets come into the 6172
~~hands~~ possession or under the control of an executor or 6173
administrator after the filing of the original inventory required 6174
by section 2115.02 of the Revised Code, ~~he~~ the executor or 6175
administrator shall administer, account for, and distribute ~~such~~ 6176
those assets in ~~like~~ the same manner as if received prior to the 6177
filing of ~~such~~ the inventory. Within thirty days, ~~he~~ the executor 6178
or administrator shall file in the probate court an itemized 6179
report of ~~such~~ those assets, with an estimate of ~~the~~ their value 6180
~~thereof~~, but shall not be required to make an inventory or 6181
appraisal of the ~~same~~ assets unless ordered to do so by the 6182
court, either upon its own motion or upon the application of any 6183
interested party. 6184

Sec. 2113.70. An executor or administrator appointed in any 6185
other state or country, or ~~his~~ the executor's or administrator's 6186
legal representatives, may be prosecuted in any appropriate court 6187
in this state in ~~his~~ the capacity of executor or administrator. 6188

Sec. 2113.72. Any court of common pleas may compel a foreign 6189
administrator or executor residing in this state, or having assets 6190

or property ~~herein~~ in this state, to account at the suit of an 6191
heir, distributee, or legatee, who is resident in this state, and 6192
make distribution of the amount found in ~~his hands~~ the possession 6193
or under the control of the foreign administrator or executor to 6194
the respective heirs, distributees, or legatees according to the 6195
law of the state granting ~~such~~ the letters of administration. ~~When~~ 6196
If suits are pending or there are unsettled demands against ~~such~~ 6197
the estate, the court also may require a refunding bond to be 6198
given to ~~such~~ the foreign executor or administrator by the heirs, 6199
distributees, or legatees entitled ~~thereto~~ to that distribution in 6200
case the amount paid is needed to pay debts of the estate. 6201

Sec. 2113.73. ~~When~~ If a foreign administrator or executor has 6202
wasted, misapplied, or converted assets of an estate, or has 6203
insufficient property to discharge ~~his~~ the foreign administrator's 6204
or executor's liability on account of the trust, or ~~his~~ the 6205
foreign administrator's or executor's sureties are irresponsible, 6206
the distributees, heirs, or legatees, in any court of common pleas 6207
or probate court may compel ~~him~~ the foreign administrator or 6208
executor to secure the amounts respectively due to them and any of 6209
~~his~~ the foreign administrator's or executor's sureties may require 6210
indemnity on account of their liability as bail. 6211

Sec. 2113.74. The several provisional remedies and 6212
proceedings authorized by sections 2113.70 to 2113.73, ~~inclusive,~~ 6213
of the Revised Code, against a foreign executor or administrator 6214
also apply to the person and property of a foreign administrator 6215
or executor. The probate court or the court of common pleas may 6216
make any order or decree touching ~~his~~ a foreign executor's or 6217
administrator's property and effects, or the assets of ~~such~~ the 6218
estate, necessary for the security of those interested ~~therein~~ in 6219
the property, effects, or assets. 6220

Sec. 2113.75. An executor or administrator appointed in any 6221
other state or country may commence and prosecute an action or 6222
proceeding in any court in this state, in ~~his~~ the capacity as 6223
executor or administrator, in ~~like the same~~ manner and under ~~like~~ 6224
the same restrictions as a ~~non-resident~~ nonresident is permitted 6225
to sue. 6226

Sec. 2113.81. ~~Where~~ If it appears that a legatee or a 6227
distributee, or a beneficiary of a trust not residing within the 6228
United States or its territories will not have the benefit ~~or,~~ 6229
use, or control of the money or other property due ~~him~~ the legatee 6230
or distributee from ~~an~~ the estate or due the beneficiary from the 6231
trust, because of circumstances prevailing at the place of 6232
residence of ~~such~~ the legatee, or distributee, or a the 6233
beneficiary of a the trust, the probate court may direct that ~~such~~ 6234
the money be paid into the county treasury to be held in trust or 6235
the probate court may direct that ~~such~~ the money or other property 6236
be delivered to a trustee ~~which.~~ The trustee shall have the same 6237
powers and duties provided in section 2119.03 of the Revised Code 6238
for ~~such~~ that legatee, distributee, beneficiary of a the trust, or 6239
~~such~~ the persons who may thereafter be entitled ~~thereto~~ to the 6240
money or other property. ~~Such~~ The money or other property held in 6241
trust by ~~such~~ the county treasurer or trustee shall be paid out by 6242
order of the probate judge in accordance with section 2113.82 of 6243
the Revised Code. 6244

The county treasury shall not be liable for interest on ~~such~~ 6245
the money held in trust. 6246

Sec. 2113.82. When a person entitled to money or other 6247
property invested or turned into the county treasurer or to a 6248
trustee under section 2113.81 of the Revised Code satisfies the 6249
probate court of ~~his~~ the person's right to receive it, the court 6250

shall order the county treasurer or the trustee to pay it over to 6251
~~such~~ the person. 6252

Sec. 2113.85. As used in sections 2113.85 to 2113.90 of the 6253
Revised Code: 6254

(A) "Estate" means the gross estate of a decedent who is 6255
domiciled in this state, as determined for federal estate tax 6256
purposes under Subtitle B of the Internal Revenue Code of 1954, 26 6257
U.S.C. 2001, as amended, for Ohio estate tax purposes under 6258
Chapter 5731. of the Revised Code, and for estate tax purposes of 6259
any other jurisdiction that imposes a tax on the transfer of 6260
property by a decedent who is domiciled in this state. 6261

(B) "Person interested in the estate" means any person who is 6262
entitled to receive, or who has received, any property or property 6263
interest included in the decedent's estate. A "person interested 6264
in the estate" includes, but is not limited to, a personal 6265
representative, guardian, ~~and~~ or trustee. A "person interested in 6266
the estate" does not include a creditor of the decedent or of ~~his~~ 6267
the decedent's estate. 6268

(C) "Tax" means the federal estate tax determined under 6269
Subtitle B of the Internal Revenue Code of 1954, 26 U.S.C. 2001, 6270
as amended, an Ohio estate tax determined under Chapter 5731. of 6271
the Revised Code, and the estate tax determined by any other 6272
jurisdiction that imposes a tax on the transfer of property by a 6273
decedent who is domiciled in this state. 6274

(D) "Fiduciary" means an executor, administrator, or other 6275
person who, by virtue of ~~his representation of~~ representing the 6276
decedent's estate, is required to pay the tax. 6277

Sec. 2113.86. (A) Unless a will or another governing 6278
instrument otherwise provides, and except as otherwise provided in 6279
this section, a tax shall be apportioned equitably in accordance 6280

with the provisions of this section among all persons interested 6281
in an estate in proportion to the value of the interest of each 6282
person as determined for estate tax purposes. 6283

(B) Except as otherwise provided in this division, any tax 6284
that is apportioned against a gift made in a clause of a will 6285
other than a residuary clause or in a provision of an inter vivos 6286
trust other than a residuary provision, shall be reapportioned to 6287
the residue of the estate or trust. It shall be charged in the 6288
same manner as a general administration expense. However, when a 6289
portion of the residue of the estate or trust is allowable as a 6290
deduction for estate tax purposes, the tax shall be reapportioned 6291
to the extent possible to the portion of the residue that is not 6292
so allowable. 6293

(C)(1) A tax shall not be apportioned against an interest 6294
that is allowable as an estate tax marital or charitable 6295
deduction, except to the extent that the interest is a part of the 6296
residue of an estate or trust against which tax is reapportioned 6297
pursuant to division (B) of this section. 6298

(2) Estate tax of this state or another jurisdiction shall 6299
not be reapportioned against an interest that is allowable as a 6300
deduction for federal estate tax purposes, to the extent that 6301
there is other property in the estate or trust that is not 6302
allowable as a deduction for federal estate tax purposes and 6303
against which estate tax of this state or another jurisdiction can 6304
be apportioned. 6305

(D) A tax shall not be apportioned against property that 6306
passes to a surviving spouse as an elective share under section 6307
2106.01 of the Revised Code or as an intestate share under section 6308
2105.06 of the Revised Code, to the extent that there is other 6309
property in the estate that is not allowable as a deduction for 6310
estate tax purposes against which the tax can be apportioned. 6311

(E)(1) Any federal estate tax credit for state or foreign death taxes on property that is includible in an estate for federal estate tax purposes, shall inure to the benefit of the persons chargeable with the payment of the state or foreign death taxes in proportion to the amount of the taxes paid by each person, but any federal estate tax credit for state or foreign death taxes inuring to the benefit of a person cannot exceed the federal estate tax apportioned to that person.

(2) Any federal estate tax credit for gift taxes paid by a donee of a gift shall inure to the benefit of that donee for purposes of this section.

(3) Credits against tax not covered by division (E)(1) or (2) of this section shall be apportioned equitably among persons in the manner in which the tax is apportioned among them.

(F) Any additional estate tax that is due because a qualified heir has disposed of qualified farm property in a manner not authorized by law or ceased to use any part of the qualified farm property for a qualified use, shall be apportioned against the interest of the qualified heir.

(G) If both a present interest and a future interest in property are involved, a tax shall be apportioned entirely to the principal. This shall be the case even if the future interest qualifies for an estate tax charitable deduction, even if the holder of the present interest also has rights in the principal, and even if the principal is otherwise exempt from apportionment.

(H) Penalties shall be apportioned in the same manner as a tax, and interest on tax shall be apportioned to the income of the estate or trust, unless a court directs a different apportionment of penalties or interest based on a finding that special circumstances make an apportionment as provided in this division inequitable.

(I) If any part of an estate consists of property, the value 6343
of which is included in the gross estate of the decedent by reason 6344
of section 2044 of the "Internal Revenue Code of 1986," 100 Stat. 6345
2085, 26 N 2044, as amended, or of section 5731.131 of the Revised 6346
Code, the estate is entitled to recover from the persons holding 6347
or receiving the property any amount by which the estate tax 6348
payable exceeds the estate tax that would have been payable if the 6349
value of the property had not been included in the gross estate of 6350
the decedent. This division does not apply if ~~a decedent provides~~ 6351
~~otherwise in his~~ the decedent's will or another governing 6352
instrument provides otherwise and the will or instrument refers to 6353
either section mentioned in this division or to qualified 6354
terminable interest marital deduction property. 6355

Sec. 2113.87. (A) The fiduciary, or any person interested in 6356
the estate who objects to the manner of apportionment of a tax, 6357
may apply to the court that has jurisdiction of the estate and 6358
request the court to determine the apportionment of the tax. If 6359
there are no probate proceedings, the probate court of the county 6360
in which the decedent was domiciled at death, upon application by 6361
the fiduciary or any other person interested in the estate who 6362
objects to the manner of apportionment of a tax, shall determine 6363
the apportionment of the tax. 6364

(B) The fiduciary may notify any person interested in the 6365
estate of the manner of the apportionment of tax determined by the 6366
fiduciary. Upon receipt of ~~such a~~ that notice, a person interested 6367
in the estate, within thirty days after the date of receipt of the 6368
notice, may indicate ~~his~~ the person's objection to the manner of 6369
apportionment by application to a probate court as described in 6370
division (A) of this section. If the person interested in the 6371
estate fails to make the application within the thirty-day period, 6372
~~he~~ the person is bound by the manner of apportionment determined 6373
by the fiduciary. The notice described in this division shall 6374

state the name and address of the probate court with jurisdiction 6375
over the apportionment and include the following statement: 6376

"If you fail to file an objection to this proposed 6377
apportionment with the probate court within thirty days of the 6378
receipt of this notice, you are bound by the proposed 6379
apportionment." 6380

(C) If a probate court finds that an assessment of penalties 6381
and interest assessed with respect to a tax is due to delay caused 6382
by the negligence of the fiduciary, the court may charge the 6383
fiduciary with the amount of the assessed penalties and interest. 6384
In any suit or judicial proceeding to recover from any person 6385
interested in the estate the amount of the tax apportioned to that 6386
person, the determination of the probate court is conclusive. 6387

Sec. 2113.88. (A) The fiduciary may withhold from any 6388
property distributable to any person interested in the estate the 6389
amount of tax attributable to the person's interest. If the 6390
property in possession of the fiduciary and distributable to any 6391
person interested in the estate is insufficient to satisfy the 6392
proportionate amount of the tax determined to be due from that 6393
person, the fiduciary may recover the deficiency from that person. 6394
If the property is not in the possession of the fiduciary, the 6395
fiduciary may recover from any person interested in the estate the 6396
amount of the tax apportioned to that person in accordance with 6397
this section by filing a complaint to recover the tax in the 6398
probate court that has jurisdiction of the administration of the 6399
estate. 6400

(B) If the property held by the fiduciary is distributed 6401
prior to final apportionment of the tax, the distributee shall 6402
provide a bond or other security for the apportionment liability 6403
in the form and amount prescribed by the fiduciary, with the 6404
approval of the probate court that has jurisdiction of the 6405

administration of the estate. 6406

Sec. 2115.02. Within three months after the date of the 6407
executor's or administrator's appointment, unless the probate 6408
court grants an extension of time for good cause shown, the 6409
executor or administrator shall file with the court an inventory 6410
of the decedent's interest in real ~~estate~~ property located in this 6411
state and of the tangible and intangible personal property of the 6412
decedent that is to be administered and that has come to the 6413
executor's or administrator's possession or knowledge. The 6414
inventory shall set forth values as of the date of death of the 6415
decedent. If a prior executor or administrator has done so, a 6416
successor executor or administrator need not file an inventory, 6417
unless, in the opinion of the court, it is necessary. 6418

Any asset, the value of which is readily ascertainable, is 6419
not required to be appraised but shall be included in the 6420
inventory. 6421

Sec. 2115.03. If an executor or administrator neglects or 6422
refuses to return an inventory as provided by section 2115.02 of 6423
the Revised Code, the probate court shall issue an order requiring 6424
~~him~~ the executor or administrator, at an early day specified in 6425
the order, to return an inventory. After personal service of the 6426
order by a person authorized to make the service, if the executor 6427
or administrator, by the day appointed, does not return the 6428
inventory or fails to obtain further time from the court to return 6429
it, or if the order cannot be served personally by reason of ~~his~~ 6430
the executor or administrator absconding or concealing ~~himself~~ 6431
self, the court may remove the executor or administrator and new 6432
letters shall be granted. The letters shall supersede all former 6433
letters testamentary or of administration, deprive the former 6434
executor or administrator of all power, authority, or control over 6435
the estate of the deceased, and entitle the person appointed to 6436

take, demand, and receive the effects of the deceased wherever 6437
they are found. 6438

In every case of the revocation of letters under this 6439
section, the bond given by the former executor or administrator 6440
shall be prosecuted and a recovery had on the bond to the full 6441
extent of any injury sustained by the estate of the deceased by 6442
the former executor's or administrator's acts or omissions, and to 6443
the full value of all the property of the deceased received and 6444
not administered by ~~him~~ the former executor or administrator. 6445

Sec. 2115.06. The real ~~estate~~ property and personal property 6446
comprised in the inventory required by section 2115.02 of the 6447
Revised Code, unless an appraisement ~~thereof~~ of that real property 6448
or personal property has been dispensed with by an order of the 6449
probate court, shall be appraised by one suitable disinterested 6450
person appointed by the executor or administrator, subject to the 6451
approval of the court and sworn to a faithful discharge of ~~his~~ the 6452
trust. The executor or administrator, subject to the approval of 6453
the court, may appoint separate appraisers of property located in 6454
any other county and appoint separate appraisers for each asset. 6455

In lieu of the appointment of an appraiser for real property, 6456
the executor or administrator may accept the valuation of the real 6457
property by the county auditor. 6458

If appraisers fail to attend to the performance of their 6459
duty, the executor or administrator, subject to the approval of 6460
the probate judge, may appoint others to supply the place of ~~such~~ 6461
~~delinquents~~ the delinquent appraisers. 6462

Each appraiser shall be paid ~~such an~~ an amount for ~~his~~ the 6463
appraiser's services ~~as~~ that is determined by the executor or 6464
administrator, subject to the approval of the probate judge, 6465
taking into consideration ~~his~~ the appraiser's training, 6466
qualifications, experience, time reasonably required, and the 6467

value of the property appraised. The amount of ~~such~~ the fees may 6468
be charged against the estate as part of the cost of the 6469
proceeding. 6470

Sec. 2115.09. The inventory required by section 2115.02 of 6471
the Revised Code shall contain a particular statement of all 6472
securities for the payment of money that belong to the deceased 6473
and are known to the executor or administrator. ~~Such~~ The inventory 6474
shall specify the name of the debtor in each security, the date, 6475
the sum originally payable, the ~~indorsements thereon~~ endorsements 6476
on the securities with their dates, the serial numbers or other 6477
identifying data as to each security, and the sum that, in the 6478
judgment of the appraisers, can be collected on each claim. 6479

~~Such~~ The inventory shall contain a statement of all debts and 6480
accounts belonging to the deceased that are known to ~~such~~ the 6481
executor or administrator and specify the name of the debtor, the 6482
date, the balance or thing due, and the value or sum that can be 6483
collected ~~thereon~~ on the debt, in the judgment of the appraisers. 6484

~~Such~~ The inventory shall contain an account of all moneys 6485
that belong to the deceased and have come ~~to~~ into the ~~hands~~ 6486
possession or under the control of the executor or administrator. 6487
If none has come ~~to~~ into the ~~executor's or administrator's hands~~ 6488
possession or under the control of the executor or administrator, 6489
the fact shall be stated in the inventory. 6490

The inventory shall contain a statement whether or not, 6491
insofar as it can be ascertained, the filing of an Ohio estate tax 6492
return will be required. 6493

Sec. 2115.10. The emblements raised by labor, whether severed 6494
or not from the land of the deceased at the time of ~~his~~ the 6495
decedent's death, are assets in the ~~hands~~ possession or under the 6496
control of the executor or administrator and shall be included in 6497

the inventory required by section 2115.02 of the Revised Code. 6498

The executor or administrator, or the person to whom ~~he~~ the 6499
executor or administrator sells ~~such~~ the emblements, at all 6500
reasonable times may enter upon the lands to cultivate, sever, and 6501
gather them. 6502

Sec. 2115.11. The discharge or bequest, in a will, of a debt 6503
or demand of a testator against an executor named ~~therein~~ in the 6504
will, or against any other person, is not valid as against the 6505
decedent's creditors, but is only a specific bequest of ~~such~~ that 6506
debt or demand. The amount ~~thereof~~ must of the debt or demand 6507
shall be included in the inventory of the credits and effects of 6508
the deceased and, if necessary, ~~such~~ that amount ~~must~~ shall be 6509
applied in the payment of ~~his~~ the decedent's debts. If not 6510
necessary for that purpose, ~~such~~ the amount shall be paid in the 6511
same manner and proportion as other specific legacies. 6512

Sec. 2115.12. The naming of a person as executor in a will 6513
shall not operate as a discharge or bequest of a just claim ~~which~~ 6514
that the testator had against ~~such~~ that executor. ~~Such~~ The claim 6515
shall be included among the assets of the deceased in the 6516
inventory required by section 2115.02 of the Revised Code. The 6517
executor shall be liable for it as for so much money in ~~his hands~~ 6518
the possession or under the control of the executor at the time 6519
~~such~~ that debt or demand becomes due, and ~~must~~ shall apply and 6520
distribute it as part of the personal ~~estate~~ property of the 6521
deceased. 6522

Sec. 2115.16. Upon the filing of the inventory required by 6523
section 2115.02 of the Revised Code, the probate court ~~forthwith~~ 6524
shall set a day, not later than one month after the day the 6525
inventory was filed, for a hearing on the inventory. 6526

The executor or administrator may serve notice of the 6527

hearing, or may cause the notice to be served, upon any person who 6528
is interested in the estate. The probate court, after notice to 6529
the executor or administrator, either upon the motion of any 6530
interested party for good cause shown or at its own instance, may 6531
order that notice of the hearing is to be served upon persons the 6532
court designates. 6533

For good cause, the hearing may be continued for the time 6534
that the court considers reasonable. Exceptions to the inventory 6535
or to the allowance for support provided by section 2106.13 of the 6536
Revised Code may be filed at any time prior to five days before 6537
the date set for the hearing or the date to which the hearing has 6538
been continued by any person interested in the estate or in any of 6539
the property included in the inventory, but the time limit for the 6540
filing of exceptions shall not apply in case of fraud or 6541
concealment of assets. When exceptions are filed, notice of them 6542
and the time of the hearing on them ~~forthwith~~ shall be given to 6543
the executor or administrator and ~~his~~ the attorney of the executor 6544
or administrator by certified mail or by personal service, unless 6545
the notice is waived. At the hearing, the executor or 6546
administrator and any witness may be examined under oath. The 6547
court shall enter its finding on the journal and tax the costs as 6548
may be equitable. 6549

Sec. 2115.17. When the inventory required by section 2115.02 6550
of the Revised Code has been approved by the probate court, the 6551
appraisal of the real ~~estate~~ property as set forth ~~therein~~ in 6552
the inventory shall be conclusive for all purposes except estate 6553
tax, unless a reappraisal is ordered by the court. 6554

Sec. 2117.01. No part of the assets of a deceased shall be 6555
retained by an executor or administrator in satisfaction of ~~his~~ 6556
the executor's or the administrator's own claim, until it has been 6557
proved to and allowed by the probate court. ~~Such~~ That debt is not 6558

entitled to preference over others of the same class. 6559

Sec. 2117.02. An executor or administrator within three 6560
months after the date of ~~his~~ appointment shall present any claim 6561
~~he~~ the executor or administrator has against the estate to the 6562
probate court for allowance. The claim shall not be paid unless 6563
allowed by the court. When an executor or administrator presents a 6564
claim amounting to five hundred dollars or more, the court shall 6565
fix a day not less than four nor more than six weeks from its 6566
presentation, when the testimony touching it shall be heard. The 6567
court ~~forthwith~~ shall issue an order directed to the executor or 6568
administrator requiring ~~him~~ the executor or administrator to give 6569
notice in writing to all the heirs, legatees, or devisees of the 6570
decedent interested in the estate, and to the creditors named in 6571
the order. The notice shall contain a statement of the amount 6572
claimed, designate the time fixed for hearing the testimony, and 6573
be served upon the persons named in the order at least twenty days 6574
before the time for hearing. If any persons mentioned in the order 6575
are not residents of the county, service of notice may be made 6576
upon them by publication for three consecutive weeks in a 6577
newspaper published or circulating in the county, or as the court 6578
may direct. All persons named in the order shall be parties to the 6579
proceeding, and any other person having an interest in the estate 6580
may be made a party. 6581

Sec. 2117.03. At any time after the presentation by an 6582
executor or administrator of a claim ~~which he~~ that the executor or 6583
administrator owns against the estate ~~he~~ the executor or 6584
administrator represents to the probate court for allowance, the 6585
court on its own motion, or on motion by any interested party, may 6586
appoint an attorney to represent the estate, who shall receive 6587
~~such~~ the compensation from the estate ~~as~~ that may be fixed by the 6588
court. The court shall ~~thereupon~~ require the executor or 6589

administrator to make available to ~~such~~ the attorney, for use in 6590
connection with the proceeding, all documents belonging to the 6591
estate relating to the subject matter of ~~such~~ the claim. 6592

Sec. 2117.04. Upon the hearing as to the allowance of an 6593
executor's or administrator's claim against the estate ~~he~~ the 6594
executor or administrator represents, an appeal may be taken from 6595
a final order or judgment of the probate court upon a matter of 6596
law by any person affected by the order or judgment. 6597

Sec. 2117.061. (A) As used in this section: 6598

(1) "Medicaid estate recovery program" means the program 6599
instituted under section 5111.11 of the Revised Code. 6600

(2) ~~"Permanently institutionalized individual" has the same~~ 6601
~~meaning as in section 5111.11 of the Revised Code.~~ 6602

~~(3)~~ "Person responsible for the estate" means the executor, 6603
administrator, commissioner, or person who filed pursuant to 6604
section 2113.03 of the Revised Code for release from 6605
administration of an estate. 6606

(B) The person responsible for the estate of a decedent 6607
subject to the medicaid estate recovery program or the estate of a 6608
decedent who was the spouse of a decedent subject to the medicaid 6609
estate recovery program shall submit a properly completed medicaid 6610
estate recovery ~~reporting notice~~ form ~~prescribed under division~~ 6611
~~(D) of this section~~ to the administrator of the medicaid estate 6612
recovery program not later than thirty days after the occurrence 6613
of any of the following: 6614

(1) The granting of letters of administration or letters 6615
testamentary; 6616

(2) ~~The administration of the estate;~~ 6617

~~(3)~~ The filing of an application for release from 6618

administration or summary release from administration. 6619

(C) The person responsible for the estate shall mark the 6620
appropriate box on the appropriate probate form that gives notice 6621
to the administrator of the medicaid estate recovery program to 6622
indicate compliance with the requirements of division (B) of this 6623
section. 6624

~~The probate court shall send a copy of the completed probate 6625
form to the administrator of the medicaid estate recovery program. 6626~~

~~(D) The administrator of the medicaid estate recovery program 6627
shall prescribe a medicaid estate recovery reporting form for the 6628
purpose of division (B) of this section. In the case of a decedent 6629
subject to the medicaid estate recovery program, the form shall 6630
require, at a minimum, that the person responsible for the estate 6631
list all of the decedent's real and personal property and other 6632
assets that are part of the decedent's estate as defined in 6633
section 5111.11 of the Revised Code. In the case of a decedent who 6634
was the spouse of a decedent subject to the medicaid estate 6635
recovery program, the form shall require, at a minimum, that the 6636
person responsible for the estate list all of the decedent's real 6637
and personal property and other assets that are part of the 6638
decedent's estate as defined in section 5111.11 of the Revised 6639
Code and were also part of the estate, as so defined, of the 6640
decedent subject to the medicaid estate recovery program. The 6641
administrator shall include on the form a statement printed in 6642
bold letters informing the person responsible for the estate that 6643
knowingly making a false statement on the form is falsification 6644
under section 2921.13 of the Revised Code, a misdemeanor of the 6645
first degree. 6646~~

~~(E) The administrator of the medicaid estate recovery program 6647
shall present a claim for estate recovery to the person 6648
responsible for the estate of the decedent or the person's legal 6649
representative not later than ninety days after the date on which 6650~~

the medicaid estate recovery ~~reporting~~ notice form is received 6651
under division (B) of this section or one year after the 6652
decedent's death, whichever is later. 6653

Sec. 2117.08. When a claim is presented against the estate of 6654
a deceased person, the executor or administrator may require 6655
satisfactory written proof in support of it and also the affidavit 6656
of the claimant that ~~such~~ the claim is justly due, that no 6657
payments have been made ~~thereon~~ on the claim, and that there are 6658
no counterclaims against it to ~~his~~ the claimant's knowledge. ~~Such~~ 6659
The affidavit shall set forth any security held for the payment of 6660
~~said~~ the claim and, if the claim is not due, the date of maturity. 6661
If ~~said~~ the claim arises out of tort, or if preference in payment 6662
is claimed, the facts in connection with the alleged tort or 6663
showing the right to ~~such~~ that preference shall be briefly set 6664
forth. 6665

Sec. 2117.09. If an executor or administrator doubts the 6666
justice of any claim presented against the estate ~~he~~ the executor 6667
or administrator represents, ~~he~~ the executor or administrator may 6668
enter into an agreement in writing with the claimant to refer the 6669
matter in controversy to three disinterested persons, who ~~must~~ 6670
shall be approved by the probate judge. 6671

Upon filing the agreement of reference in the probate court 6672
of the county in which the letters testamentary or of 6673
administration were issued, the judge shall docket the cause and 6674
make an order referring the matter in controversy to the referees 6675
selected. 6676

The referees ~~thereupon must~~ shall proceed to hear and 6677
determine the matter and make their report to the court. The 6678
referees shall have the same powers and be entitled to the same 6679
compensation and the same proceedings shall be followed as if the 6680

reference were made under the provisions for arbitrations under a 6681
rule of the court of common pleas. The court may set aside the 6682
report of the referees, appoint others in their places, or confirm 6683
~~such~~ the report and adjudge costs as in actions against executors 6684
and administrators. The judgment of the court ~~thereupon~~ shall be 6685
valid and effectual. 6686

Sec. 2117.10. The failure of the holder of a valid lien upon 6687
any of the assets of an estate to present ~~his~~ the lienholder's 6688
claim upon the indebtedness secured by ~~such~~ the lien, as provided 6689
in ~~Chapter 2117. of the Revised Code~~ this chapter, shall not 6690
affect ~~such~~ the lien if the same is evidenced by a document 6691
admitted to public record, or is evidenced by actual possession of 6692
the real or personal property ~~which~~ that is subject to ~~such~~ the 6693
lien. 6694

Sec. 2117.13. If a devisee, legatee, heir, creditor, or other 6695
interested party files in the probate court a written requisition 6696
on the executor or administrator to reject a claim presented for 6697
allowance against the estate ~~he~~ the executor or administrator 6698
represents, whether the claim has been allowed or not, but which 6699
claim has not been paid in full, and enters into a sufficient bond 6700
running to ~~such~~ the executor or administrator, the amount, terms, 6701
and surety of which are to be approved by the probate judge, the 6702
claim shall be rejected by the executor or administrator. The 6703
notice of rejection shall inform the claimant of the filing of the 6704
requisition and of the name of the party filing the same. The 6705
condition of the bond shall be to pay all costs and expenses of 6706
contesting ~~such~~ the claim, including ~~such~~ any reasonable fee ~~as~~ 6707
that the court allows to the attorney for the executor or 6708
administrator, in case the claim finally is allowed in whole, and 6709
if ~~such~~ the claim is allowed only in part, to pay ~~such~~ that part 6710
of the expenses ~~as~~ that the court may determine, including ~~such~~ 6711

any reasonable fee ~~as~~ that the court may allow to the attorney for 6712
the executor or administrator. 6713

Sec. 2117.15. An executor or administrator may proceed to pay 6714
the debts due from the estate in accordance with Chapters 2113. to 6715
2125. of the Revised Code. If it appears at any time that the 6716
estate is insolvent, the executor or administrator may report that 6717
fact to the court, and apply for any order that ~~he~~ the executor or 6718
administrator considers necessary because of the insolvency. In 6719
case of insolvency, a creditor who has been paid according to law 6720
shall not be required to make any refund. 6721

Sec. 2117.17. (A) The probate court on its own motion may, 6722
and on motion of the executor or administrator shall, assign all 6723
claims against the estate that have been presented and any other 6724
known valid debts of the estate for hearing on a day certain. 6725
~~Forthwith upon such~~ Upon the assignment, and in no case less than 6726
ten days before the date fixed for hearing or ~~such a~~ longer period 6727
~~as~~ that the court may order, the executor or administrator shall 6728
cause written notice of the hearing to be served upon the 6729
following persons who have not waived the notice in writing or 6730
otherwise voluntarily entered their appearance: 6731

~~(A)(1)~~ If it appears that the estate is fully solvent, ~~such~~ 6732
the notice shall be given to the surviving spouse and all other 6733
persons having an interest in the estate as devisees, legatees, 6734
heirs, and distributees. 6735

~~(B)(2)~~ If it appears probable that there will not be 6736
sufficient assets to pay all of the valid debts of the estate in 6737
full, then ~~such~~ the notice also shall be given to all creditors 6738
and claimants whose claims have been rejected and whose rights 6739
have not been finally determined by judgment, reference, or lapse 6740
of time. 6741

(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 of the executor or administrator in allowing and classifying claims will be confirmed at ~~such~~ the hearing unless cause to the contrary is shown. The notice shall be served personally or by certified mail in the manner specified for service of notice of the rejection of a claim under section 2117.11 of the Revised Code. Proof of service of the notice to the satisfaction of the court, by affidavit or otherwise, and all waivers of service shall be filed in court at the time of the hearing. At any time before hearing, any interested person may file exceptions in writing to the allowance or classification of any specific claim. The court may cause or permit other interested persons to be served with notice and witnesses to be subpoenaed as may be required to present the issues fully.

(C) The court, upon the hearing, shall determine whether the executor or administrator acted properly in allowing and classifying each claim and shall make an order confirming or disapproving ~~such~~ that action.

(D) An order of the court disapproving the allowance of a claim shall have the same effect as a rejection of the claim on the date on which the claimant is served with notice of the court's order. Notice of the court's order shall be served personally or by certified mail in the manner specified for service of notice of the rejection of a claim under section 2117.11 of the Revised Code. An order of the court confirming the allowance or classification of a claim shall constitute a final order and shall have the same effect as a judgment at law or decree in equity, and shall be final as to all persons having notice of the hearing and as to claimants subsequently presenting their claims, though without notice of ~~such~~ the hearing. In the

absence of fraud, the allowance and classification of a claim and 6774
the subsequent payment of it in good faith shall not be subject to 6775
question upon exceptions to the executor's or administrator's 6776
accounts. The confirmation of a claim by the court shall not 6777
preclude the executor or administrator from thereafter rejecting 6778
the claim on discovery of error in ~~his~~ the executor's or 6779
administrator's previous action or on requisition as provided in 6780
sections 2117.13 and 2117.14 of the Revised Code. 6781

Sec. 2117.18. Taxes, penalties, and interest placed on a 6782
duplicate or added by the county auditor or the tax commissioner 6783
because of a failure to make a return or because of a false or 6784
incomplete return for taxation shall be a debt of a decedent and 6785
have the same priority and be paid as other taxes. ~~Such~~ Those 6786
taxes, penalties, and interest shall be collectible out of the 6787
property of the estate either before or after distribution, by any 6788
means provided for collecting other taxes. No distribution or 6789
payment of inferior debts or claims shall defeat ~~such~~ that 6790
collection~~;~~, but ~~no such~~ the tax, penalty, or interest ~~can~~ shall 6791
not be added before notice to the executor or administrator, and 6792
before an opportunity is given ~~him~~ to the executor or 6793
administrator to be heard. All taxes omitted by the deceased ~~must~~ 6794
shall be charged on the tax lists and duplicate in ~~his~~ the 6795
deceased's name. 6796

In all ~~such~~ additions to the personal tax lists and duplicate 6797
under this section, each succeeding tax year shall be considered 6798
as beginning at the time of the completion of the annual 6799
settlement of the duplicate for the previous year with the county 6800
treasurer. 6801

Sec. 2117.30. (A) No suit shall be brought against an 6802
executor or administrator by a creditor of the decedent or by any 6803
other party interested in the estate until after five months from 6804

the time of the appointment of the executor or administrator, or 6805
the expiration of the further time allowed by the probate court 6806
for the collection of the assets of the estate, except in the 6807
following cases: 6808

~~(A)~~(1) On claims rejected in whole or in part; 6809

~~(B)~~(2) For the enforcement of a lien against or involving 6810
title to specific property; 6811

~~(C)~~(3) For the recovery of a claim that would not be affected 6812
by the insolvency of the estate; 6813

~~(D)~~(4) On account of fraud, conversion, or concealment of 6814
assets; 6815

~~(E)~~(5) Any other action as to which a different rule is 6816
prescribed by statute. 6817

(B) When an executor or administrator dies, resigns, or is 6818
removed without having fully administered the estate of the 6819
deceased, the time between ~~his~~ the executor's or administrator's 6820
death, resignation, or removal and the appointment of a successor 6821
shall be excluded in computing the five months or longer period 6822
provided in division (A) of this section. In any event, ~~his~~ the 6823
executor's or administrator's successor shall not be held to 6824
answer the suit until after the expiration of four months from the 6825
date of the successor's appointment, or a further time allowed ~~him~~ 6826
the executor or administrator by the court for the collection of 6827
the assets of the estate. 6828

Sec. 2117.31. When two or more persons are indebted in a 6829
joint contract, or upon a judgment founded on ~~such~~ the joint 6830
contract, and either of them dies, ~~his~~ the decedent's estate shall 6831
be liable ~~therefor~~ for the debt as if the contract had been joint 6832
and several, or as if the judgment had been against ~~himself~~ the 6833
decedent alone. This section shall not affect the rights of a 6834

surety, when certified as such, in a judgment rendered jointly 6835
against ~~him~~ the surety and ~~his~~ the surety's principal. 6836

Sec. 2117.34. No execution against the assets of an estate 6837
shall issue upon a judgment against an executor or administrator 6838
unless upon the order of the probate court ~~which that~~ appointed 6839
~~him~~ the executor or administrator. If an account has been rendered 6840
by ~~such the~~ executor or administrator and settled by the court, 6841
~~such the~~ execution shall issue only for the sum that appeared, on 6842
settlement of ~~such the~~ account, to be a just proportion of the 6843
assets applicable to the judgment. The order of the court allowing 6844
~~such the~~ execution shall fix the amount for which ~~the same~~ 6845
execution shall issue. 6846

Sec. 2117.35. All executions against executors and 6847
administrators for debts due from the deceased shall run against 6848
the ~~goods and~~ assets of the estate of the deceased in ~~their hands~~ 6849
the possession or under the control of the executors and 6850
administrators. 6851

Sec. 2117.36. No real ~~estate~~ property of a deceased person 6852
~~which that~~ has been aliened or encumbered by the decedent's heirs 6853
prior to the issuing of letters testamentary or of administration 6854
shall be liable while in the ~~hands~~ possession or under the control 6855
of a bona fide purchaser for value or to the prejudice of a bona 6856
fide lessee or encumbrancer for value for debts of the deceased 6857
person unless letters testamentary or of administration are 6858
granted within four years from the date of death of ~~such the~~ 6859
deceased person. No real ~~estate~~ property of a deceased person 6860
~~which that~~ has been aliened or encumbered by the decedent's heirs 6861
or devisees after the ~~issue~~ issuance of letters testamentary or of 6862
administration shall be liable while in the ~~hands~~ possession or 6863
under the control of a bona fide purchaser for value or to the 6864

prejudice of a bona fide lessee or encumbrancer for value for 6865
debts of a deceased person unless suit is brought to subject ~~such~~ 6866
~~the~~ real estate property to the payment of ~~such~~ those debts prior 6867
to the settlement of the executor's or administrator's final 6868
account or what purports to be ~~his~~ the executor's or 6869
administrator's final account; provided that if ~~such~~ the final 6870
account is not filed and settled within four years after the 6871
granting of letters testamentary or of administration, but 6872
excluding for ~~the~~ these purposes hereof the time that any action 6873
is pending against the executors or administrators for the 6874
establishment or collection of any claim against the deceased, 6875
~~such~~ the real estate property so aliened shall not be liable for 6876
the debts of the deceased unless suit is brought to subject ~~such~~ 6877
~~the~~ real estate ~~thereto~~ property to those debts within ~~such~~ that 6878
four-year period. The heir or devisee aliening ~~such~~ the real 6879
estate property shall be liable for ~~the~~ its value thereof, with 6880
legal interest from the time of alienation, to the creditors of 6881
the deceased in the manner and within the limitations provided by 6882
law. This section does not enlarge or extend the right of the 6883
creditors of any deceased person against ~~his~~ the deceased person's 6884
real estate property, ~~or~~ repeal any limitations contained in other 6885
sections of the Revised Code, or apply to mortgages or liens of 6886
record at the time of the death of ~~such~~ the deceased person. 6887

Sec. 2117.37. If a claim is contingent at the time of a 6888
decedent's death and a cause of action subsequently accrues on the 6889
claim, it shall be presented to the executor or administrator, in 6890
the same manner as other claims, before the expiration of ~~one year~~ 6891
six months after the date of death of the decedent, or before the 6892
expiration of two months after the cause of action accrues, 6893
whichever is later, except as provided in section 2117.39 of the 6894
Revised Code. The executor or administrator shall allow or reject 6895
the claim in the same manner as other claims are allowed or 6896

rejected. If the claim is allowed, the executor or administrator 6897
shall proceed to pay it. If the claim is rejected, the claimant 6898
shall commence an action on the claim within two months after the 6899
rejection or be forever barred from maintaining an action on the 6900
claim. 6901

Sec. 2117.41. A claimant whose cause of action accrues as 6902
provided in section 2117.37 of the Revised Code may bring suit to 6903
recover ~~thereon~~ on the claim against the heirs, next of kin, 6904
surviving spouse as next of kin, devisees, and legatees under the 6905
decedent's will, each of whom shall be liable to the claimant in 6906
an amount not exceeding the value of the real and personal ~~estate~~ 6907
property that ~~he~~ the person received under the will or on 6908
distribution of the estate. If, by the will of the deceased, any 6909
part of the estate or any one or more of the devisees and legatees 6910
is made exclusively liable for the debt, in exoneration of the 6911
residue of the estate or of the other devisees or legatees, the 6912
terms of the will shall be complied with in that respect and the 6913
persons and estate so exempt by the will shall be liable for only 6914
so much of the debt ~~as~~ that cannot be recovered from those first 6915
chargeable ~~therewith~~ with the debt. 6916

No ~~such~~ suit shall be maintained under this section unless 6917
commenced within six months next after the time when the cause of 6918
action first accrues, except in case the suit is for the balance 6919
due after a payment by the executor or administrator, in which 6920
case suit shall be brought within two months after the final 6921
payment by the executor or administrator. If the person entitled 6922
to bring ~~such~~ the suit is under legal disability, ~~he~~ the person 6923
may bring ~~such~~ the action within one year after ~~his~~ the person's 6924
disability is removed. 6925

If any of ~~such~~ those heirs, next of kin, surviving spouse as 6926
next of kin, devisees, or legatees dies without having paid ~~his~~ 6927

the person's just proportion of ~~such the~~ debt, ~~his the~~ executors 6928
or administrators of that deceased person's estate shall be liable 6929
~~therefor~~ for that proportion to the extent ~~he~~ the deceased person 6930
would have been if living. 6931

Sec. 2117.42. If, in the cases specified in section 2117.41 6932
of the Revised Code, more than one person is liable for the debt, 6933
the creditor shall proceed by one action to recover ~~such the~~ debt 6934
against all so liable, or as many of them ~~as~~ who are within the 6935
reach of process. ~~Thereupon, by~~ By the verdict of a jury if either 6936
party requires it, the court ~~must~~ shall determine what sum is due 6937
to the plaintiff. ~~They~~ The jury also, according to the equities of 6938
the case, shall decide how much each of the defendants is liable 6939
to pay toward the satisfaction of the debt and the court shall 6940
render judgment accordingly. 6941

No suit shall be dismissed or debarred for not making all the 6942
persons defendants who might have been included as ~~such~~ 6943
defendants. In any stage of the cause the court may award process 6944
to bring in other parties and allow amendments necessary to charge 6945
them, as defendants, upon ~~such the~~ terms ~~as~~ that it ~~deems~~ 6946
considers reasonable. 6947

If any of the persons who were originally liable for the debt 6948
is insolvent or unable to pay ~~his the person's~~ proportion, or is 6949
beyond the reach of process, the others nevertheless shall be 6950
liable to the creditor for the whole amount of ~~his the~~ debt; 6951
except that no one shall be compelled to pay more than the amount 6952
received by ~~him~~ the person from the decedent's estate. 6953

If, in consequence of insolvency, absence, or other cause, 6954
any of the persons liable for ~~such the~~ debt fails to pay ~~his the~~ 6955
person's just proportion to the creditor, ~~he~~ the person shall be 6956
liable to indemnify all who, by reason of ~~such that person's~~ 6957
failure ~~on his part~~, have paid more than their just proportion of 6958

the debt, such indemnity to be recovered by all of them jointly or 6959
in separate actions, by any one or more of them for ~~his or~~ their 6960
respective parts ~~respectively~~, at their election. 6961

Sec. 2119.01. When a person owning property in this state has 6962
disappeared and has not been heard from, after diligent inquiry 6963
and for at least three months, under circumstances that afford 6964
reasonable ground to believe that ~~he~~ the person is dead, cannot 6965
return, or refuses to return to ~~his~~ the person's home, and ~~his~~ the 6966
person's estate requires attention, supervision, and care, or is 6967
needed for the maintenance of ~~his~~ the person's dependents, the 6968
probate court ~~may~~, on application of the spouse or of one of the 6969
next of kin, may appoint a trustee to take possession and charge 6970
of the property of ~~such~~ the person, other than the property with 6971
respect to which ~~such~~ the person has made provision by written 6972
instrument designating an agent or attorney in fact. ~~Such~~ The 6973
application shall be filed in the county in which ~~such~~ the person 6974
last resided or if ~~his~~ the person's last known residence was 6975
~~without outside~~ this state, ~~such~~ the application may be filed in 6976
any county in which ~~any such~~ that property is situated. 6977

Sec. 2119.02. The probate court, before appointing a trustee 6978
for an absentee, shall cause notice of the filing of the 6979
application under section 2119.01 of the Revised Code and of the 6980
time and place of hearing ~~thereon~~ on the application to be 6981
published once a week for four consecutive weeks in ~~some a~~ 6982
newspaper of general circulation in the county and shall cause 6983
copies of ~~such~~ the notice to be mailed to the spouse and next of 6984
kin of the absentee residing within the state, ~~excepting~~ except 6985
the applicant, and to the absentee residing at ~~his~~ the absentee's 6986
last known address. The court may order notice to be given to ~~such~~ 6987
any other persons in ~~such~~ the manner ~~as~~ that it ~~deems~~ considers 6988
best. 6989

Sec. 2119.03. ~~(A)~~ (A) The trustee appointed under section 2119.01 6990
of the Revised Code may proceed without order of the probate court 6991
to do the following: 6992

~~(A) To take~~ (1) Take possession of the property of the 6993
absentee wherever situated within the state; 6994

~~(B) To collect~~ (2) Collect all debts due to the absentee; 6995

~~(C) To retain~~ (3) Retain and invest the estate in accordance 6996
with Chapters 2113. to 2125. of the Revised Code. 6997

(B) The trustee may pay ~~such~~ that part or all of the income 6998
or principal of the estate as the court, from time to time, may 6999
direct for the maintenance and support of the absentee's 7000
dependents and, under the order of the court, may bring and defend 7001
suits on behalf of the absentee, compromise claims in favor of and 7002
against the absentee, and pay ~~such~~ any debts of the absentee ~~as~~ 7003
that the court finds necessary for the protection of ~~his~~ the 7004
absentee's dependents, including insurance premiums, orders for an 7005
award of spousal support, and other obligations. The court may 7006
make ~~such~~ any other orders ~~as~~ that it ~~deems~~ considers proper for 7007
the care and custody of the property and its proceeds. 7008

Sec. 2119.04. In order to provide money for the payments 7009
authorized by section 2119.03 of the Revised Code, proceedings may 7010
be had for the mortgaging, leasing, or sale of the real ~~estate~~ 7011
property of an absentee in the same manner as provided by sections 7012
2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code, for sales of 7013
real ~~estate~~ property by executors and administrators. The probate 7014
court, upon notice to the spouse and ~~such~~ any other persons and in 7015
~~such~~ the manner ~~as~~ that the court directs, may order all or any 7016
part of the personal ~~estate~~ property to be sold. 7017

Sec. 2119.05. If at any time the absentee returns and makes 7018

application to the probate court for the termination of the trust 7019
established under section 2119.01 of the Revised Code, the court 7020
shall, on notice to the trustee and other interested parties, 7021
order the trustee to file ~~his~~ a final account and on settlement 7022
~~thereof of the account~~ shall terminate the trust and order all 7023
remaining property returned. If an executor, administrator, or 7024
guardian is appointed for the estate of ~~such~~ the absentee, the 7025
court shall ~~thereupon~~ order the trustee to file ~~his~~ a final 7026
account and on settlement ~~thereof~~ of the account shall terminate 7027
the trust and order all of the property remaining in the ~~hands~~ 7028
possession or under the control of the trustee to be delivered to 7029
the fiduciary entitled ~~thereto~~ to the property. 7030

Sec. 2121.01. (A) Except as provided in division (B) of this 7031
section, a presumption of the death of a person arises upon either 7032
of the following: 7033

(1) When the person has disappeared and been continuously 7034
absent from ~~his~~ the person's place of last domicile for a 7035
five-year period without being heard from during the period; 7036

(2) When the person has disappeared and been continuously 7037
absent from ~~his~~ the person's place of last domicile without being 7038
heard from and was at the beginning of ~~his~~ the person's absence 7039
exposed to a specific peril of death, even though the absence has 7040
continued for less than a five-year period. 7041

(B) When a person who is on active duty in the armed services 7042
of the United States has been officially determined to be absent 7043
in a status of "missing" or "missing in action," a presumption of 7044
death arises when the head of the federal department concerned has 7045
made a finding of death pursuant to the "Federal Missing Persons 7046
Act," 80 Stat. 625 (1966), 37 U.S.C.A. 551, as amended and 7047
hereafter amended. 7048

Sec. 2121.02. (A) When ~~such~~ a presumption of death arises 7049
under section 2121.01 of the Revised Code with respect to a person 7050
who at the time of disappearance was domiciled in this state, the 7051
attorney general of this state or any person entitled under the 7052
~~last~~ will of ~~such~~ the presumed decedent or under Chapter 2105. of 7053
the Revised Code to any share in the presumed decedent's property 7054
within this state, or any person or entity who, under the terms of 7055
any contract, beneficiary designation, trust, or otherwise, may be 7056
entitled to any property, right, or interest by reason of the 7057
death of the presumed decedent, may file a complaint setting forth 7058
the facts ~~which~~ that raise the presumption of death in the probate 7059
court of the county of the presumed decedent's last residence. 7060

(B) When a presumption of death arises pursuant to section 7061
2121.01 of the Revised Code with respect to a person who at the 7062
time of the person's disappearance was domiciled at a place other 7063
than within the state, and the presumed decedent owns real 7064
property within this state, the complaint may be filed in the 7065
county where any part of the real property of the presumed 7066
decedent is located by any of the persons or entities referred to 7067
in division (A) of this section, or by any domiciliary executor or 7068
administrator of the decedent. A foreign fiduciary shall include 7069
with the complaint an exemplified copy of the domiciliary 7070
proceedings pursuant to which the foreign fiduciary was appointed. 7071

(C) In the case of a presumed decedent who was domiciled in 7072
this state, the complainant shall name as parties defendant the 7073
presumed decedent and each of the following that do not join in 7074
the complaint: 7075

(1) The presumed decedent's surviving spouse, if any; 7076

(2) All persons known to the complainant who are entitled 7077
under the presumed decedent's ~~last~~ will and all persons who are 7078
entitled under Chapter 2105. of the Revised Code to any share of 7079

the presumed decedent's property; 7080

(3) All persons or entities known to the complainant who have 7081
or would have by reason of the presumed decedent's death any right 7082
or interest under any contract, beneficiary designation, trust, or 7083
otherwise; 7084

(4) All contract obligors known to the complainant whose 7085
rights or obligations would be affected by a determination that 7086
the presumed decedent is in fact dead. 7087

(D) In the case of a presumed decedent who was not domiciled 7088
in this state but who owned real ~~estate~~ property in this state, 7089
the complainant shall name as parties defendant each of the 7090
following that do not join in the complaint: 7091

(1) The presumed decedent's surviving spouse, if any; 7092

(2) All persons known to the complainant who are entitled 7093
under the presumed decedent's ~~last~~ will and all persons who are 7094
entitled under Chapter 2105. of the Revised Code to any share of 7095
the presumed decedent's real property within this state. 7096

(E) All parties defendant, other than the presumed decedent, 7097
shall be served with summons in the same manner as provided by the 7098
Rules of Civil Procedure. 7099

(F) The complainant shall cause to be advertised once a week 7100
for four consecutive weeks in a newspaper published in the county, 7101
the fact that the complaint has been filed together with a notice 7102
that on a day certain, ~~which~~ that shall be at least four weeks 7103
after the last appearance of the advertisement, or after the final 7104
publication where any defendant is being served by publication, 7105
whichever is later, the probate court will hear evidence relevant 7106
to the allegations of the complaint. 7107

(G) No guardian ad litem, trustee for the suit, or other 7108
representative shall be required to be appointed to represent the 7109

presumed decedent in the proceeding. 7110

Sec. 2121.05. (A) Except as provided otherwise in ~~Chapter~~ 7111
~~2121. of the Revised Code~~ this chapter, all of the proceedings for 7112
the probate of the decedent's ~~last~~ will, if any, and all the 7113
proceedings, domiciliary or ancillary, for the administration of 7114
the decedent's estate that are set forth in the Revised Code for 7115
use upon the death of a decedent, shall upon the signing of the 7116
decree of presumed death be instituted and carried on in the same 7117
manner as if the presumed decedent were in fact dead. All acts 7118
pursuant to these proceedings shall be as valid as if the presumed 7119
decedent were in fact dead. 7120

(B) Following the decree the court may make ~~such~~ any 7121
supplementary orders ~~as~~ that in its discretion are necessary to 7122
consummate any right or interest arising by reason of the death of 7123
the presumed decedent under any contract, trust, or other 7124
nonprobate property interest of any person or entity who was a 7125
party to the proceedings. The court may condition the granting of 7126
~~any such~~ that order by requiring any person or entity who would 7127
benefit ~~thereby~~ by the order to furnish bond for a three-year 7128
period after the decree in the form and amount, with or without 7129
sureties, as the court shall order. If any supplementary order is 7130
directed to the holder of assets of the presumed decedent ~~which~~ 7131
that were created by the decree of presumed death, the court, at 7132
the request of the party defendant to whom the order is directed, 7133
shall condition the granting of ~~any such~~ that order by requiring 7134
any person or entity who would benefit ~~thereby~~ by the order to 7135
furnish a suretyship bond for a three-year period after the decree 7136
in the amount of the assets so created by the decree with interest 7137
for the period of the bond at the rate specified in the order. 7138

(C) The term "assets of the presumed decedent ~~which~~ that were 7139
created by the decree of presumed death" as used in division (B) 7140

of this section and division (D) of section 2121.08 of the Revised Code, means those potential assets of the presumed decedent in which the presumed decedent had a contractual or other right, contingent upon the presumed decedent's death, to have ~~such~~ those assets paid to ~~his~~ the presumed decedent's designee and the decree of presumed death would fulfill the contingency. Only that portion of the proceeds of life insurance policies on the life of the presumed decedent that exceeds any net cash surrender value of ~~such~~ the policies on the date of the decree is within the definition of the term "assets of the presumed decedent ~~which~~ that were created by the decree of presumed death."

(D) The bond shall provide that, if within the three-year period after the decree is entered by the court it is established that the presumed decedent is alive, ~~such~~ the person or entity shall on the subsequent order of the court refund or return any sums, with interest as provided in the court order, or property received by virtue of ~~such~~ the order, to the presumed decedent or to the person or entity who, by reason of the erroneous finding of death of the presumed decedent, made ~~such~~ the payment or delivered ~~such~~ the property. The bond shall be further conditioned on returning the fair value of the property if the same shall have been sold or otherwise disposed of in the interim.

(E) If the person or entity who would benefit by an order, as provided in division (B) of this section, fails to provide a bond for the amount of the assets of the presumed decedent ~~which~~ that were created by the decree, with interest as specified in the order, the holder shall hold those assets for the three-year period they would have been bonded. In that event, the holder shall pay interest at the same rate specified in the order as a condition of the bond and the interest shall accumulate and be held throughout that period.

(F) Nothing in this section shall preclude ~~such~~ the person or

entity from selling, encumbering, or otherwise disposing of any 7173
property so received and any purchaser, transferee, or mortgagee 7174
acquires good title to ~~such~~ the property free and clear of any 7175
claim of the presumed decedent. 7176

Sec. 2121.06. Upon the signing of the decree establishing the 7177
death of the presumed decedent, the real ~~estate~~ property of the 7178
presumed decedent passes and ~~devolves~~ devolves as in the case of 7179
actual death, and the persons entitled by will, or under Chapter 7180
2105. of the Revised Code, may enter and take possession. Persons 7181
taking the real ~~estate~~ property may sell or mortgage it and the 7182
purchaser or mortgagee takes a good title, free and discharged of 7183
any interest or claim of the presumed decedent. The persons taking 7184
~~such~~ the real ~~estate~~ property shall not sell, convey, or mortgage 7185
any part ~~thereof~~ of the property within the three-year period 7186
specified in section 2121.08 of the Revised Code without first 7187
giving bond in an amount to be fixed by the probate court and with 7188
sureties to be approved by the court. In the discretion of the 7189
court the bond may be taken without sureties. ~~Such~~ The bond shall 7190
be conditioned to account for and pay over to the presumed 7191
decedent, in case within the three-year period after the decree is 7192
entered by the court it is established that the presumed decedent 7193
is still alive, the value of the real ~~estate~~ property sold or 7194
conveyed, or in the case of the making of a mortgage, to pay the 7195
amount of the mortgage and interest ~~thereon~~ on the mortgage, or in 7196
case of a foreclosure of ~~such~~ that mortgage, to account for and 7197
pay over the value of the real ~~estate~~ property mortgaged. 7198

Sec. 2121.08. (A) The probate court may at any time within a 7200
three-year period from the date of the decree establishing the 7201
death of a presumed decedent, upon proof satisfactory to the court 7202
that the presumed decedent is in fact alive, vacate the decree 7203

establishing the presumption of ~~his~~ death. After the decree has 7204
been vacated all the powers of the executor or administrator of 7205
the presumed decedent cease, but all proceedings had and steps 7206
taken with respect to the administration of the estate of the 7207
presumed decedent prior to the vacating of ~~such the~~ decree remain 7208
valid. The executor or administrator of the estate of ~~such the~~ 7209
presumed decedent who is found to be alive shall settle ~~his the~~ 7210
account of ~~his the executor's or administrator's~~ administration 7211
down to the time of the vacating of the decree and shall transfer 7212
all assets remaining in ~~his hands~~ the possession or under the 7213
control of the executor or administrator to the person ~~as whose~~ 7214
for whom the executor or administrator ~~he has acted~~ is acting, or 7215
to ~~such that~~ person's authorized agent or attorney. 7216

(B) The title of any person to any money, property, right, or 7217
interest as surviving spouse, next of kin, heir, legatee, devisee, 7218
co-owner with right of survivorship, beneficiary or other 7219
contractual payee, successor to a trust interest, or otherwise of 7220
the presumed decedent shall be subject to this section, and upon 7221
vacating of ~~such the~~ decree as provided in this section any 7222
property, money, right, or interest, or ~~the its~~ fair value ~~thereof~~ 7223
if the same shall have been sold or otherwise disposed of, may be 7224
recovered from the person who had received ~~any such that~~ property, 7225
money, right, or interest. 7226

(C) Except as provided in division (D) of this section, in 7227
any action against a beneficiary for the recovery of property or 7228
the value ~~thereof~~ of the property, or upon the bond given as 7229
condition for delivery of money, other personal property, or sale 7230
or encumbrance of real property, the beneficiary may set off as 7231
against ~~such that~~ claim, an allowance for services rendered in 7232
maintaining or preserving the property, and for any moneys or 7233
other considerations made or given by the beneficiary for the 7234
preservation, care, or maintenance of the property during the 7235

period of absence of the person erroneously presumed to be dead, 7236
and the reasonable value of any part of the property used for 7237
support by those whom the person erroneously presumed to be dead 7238
had a legal obligation to support during ~~his~~ the person's absence. 7239

(D) There shall be no set off as against those assets defined 7240
in division (C) of section 2121.05 of the Revised Code to be 7241
assets of the presumed decedent ~~which that~~ were created by the 7242
decree of presumed death. Those assets created by the erroneous 7243
decree of presumed death shall be returned with interest to the 7244
person entitled ~~thereto~~ to them. 7245

(E) Any net cash surrender value on any policies of life 7246
insurance on the life of a person erroneously presumed to be dead 7247
are subject to the set off provision in division (C) of this 7248
section. The person erroneously presumed to be dead, or persons 7249
claiming under ~~him~~ the person erroneously presumed to be dead, may 7250
recover whatever remains of cash values from the person to whom 7251
paid. ~~Such~~ The claimants have no recourse against the insurance 7252
company ~~which that~~ made ~~such the~~ payments, and it is discharged 7253
from liability on the policies affected. 7254

Sec. 2121.09. After vacation of the decree of the presumption 7255
of death has been established, as provided by section 2121.08 of 7256
the Revised Code, the person erroneously presumed to be dead ~~may~~, 7257
on motion filed of record stating the facts, may be substituted as 7258
plaintiff or petitioner in all actions or proceedings brought by 7259
the executor or administrator, whether prosecuted to judgment or 7260
decree or otherwise. ~~Such~~ That person ~~may~~, in all actions or 7261
proceedings previously brought against the executor or 7262
administrator, may be substituted as defendant or respondent, on 7263
motion filed by ~~him~~ the person or on ~~his~~ the person's behalf, but 7264
shall not be compelled to go to trial in less than three months 7265
from the time of filing of ~~such~~ the motion. Judgments or decrees 7266

recovered against the executor or administrator, before the 7267
vacation of the decree, may be opened on application made by the 7268
person erroneously presumed to be dead within three months after 7269
the vacating of the decree, provided it is supported by an 7270
affidavit alleging the existence of facts ~~which~~ that would be a 7271
valid defense. If the application is not made within the three 7272
months or is made but the supporting alleged facts are adjudged an 7273
insufficient defense, the judgment or decree is conclusive to all 7274
intents, saving the defendant's right to review as in other cases 7275
on appeal. 7276

Sec. 2123.02. In a situation described in section 2123.01 of 7277
the Revised Code, the executor or administrator may file in the 7278
probate court of the county where the estate is being administered 7279
a ~~petition~~ complaint signed by ~~such~~ the executor or administrator 7280
or ~~his~~ the executor's or administrator's attorney, which ~~petition~~ 7281
complaint shall be verified. The surviving spouse and the legatees 7282
and devisees, or the heirs and distributees of the decedent, 7283
including those whose names are unknown, shall be made parties 7284
defendant. The ~~petition~~ complaint shall contain a concise 7285
statement of the pertinent facts and shall conclude with a prayer, 7286
for the determination of the heirs and distributees of ~~such~~ the 7287
decedent or of the devisees or legatees not named in the will and 7288
their respective interests in the estate. 7289

Sec. 2123.03. Upon the filing of the ~~petition~~ complaint 7290
mentioned in section 2123.02 of the Revised Code, the same 7291
proceedings, pleadings, and rule days as in civil actions in the 7292
court of common pleas shall apply. All parties defendant who are 7293
known to be residents of the state and whose ~~place~~ places of 7294
residence ~~is~~ are known shall be served with summons, as provided 7295
for the service of summons in civil actions in ~~such~~ that court. 7296

Sec. 2123.05. At the time assigned for the hearing of a 7297
proceeding set forth under section 2123.01 of the Revised Code, or 7298
at any time to which ~~said~~ the hearing may be adjourned, the 7299
probate court may hear proof taken by commission, or by witnesses 7300
produced in open court, of the facts set forth in the ~~petition~~ 7301
complaint, and shall, if satisfied from the evidence, find and 7302
adjudge who are or were the heirs or next of kin of the decedent, 7303
and entitled by the laws of this state to inherit the estate of 7304
the deceased, or the devisees or legatees named or unnamed in the 7305
will, ~~which~~. The finding and adjudication shall be entered on the 7306
journal of the court, which entry, or a certified copy ~~thereof~~ of 7307
the entry, shall be prima facie evidence of the facts ~~therein~~ 7308
found. 7309

Sec. 2123.06. Whenever it is necessary for any person other 7310
than an executor or administrator to determine who are or were the 7311
heirs at law of a deceased person, on the ~~petition~~ complaint of 7312
any interested party and proceedings ~~like~~ similar to those set 7313
forth in sections 2123.01 to 2123.05, ~~inclusive~~, of the Revised 7314
Code, the probate court may make a determination ~~thereof~~ of who 7315
are or were the heirs at law of the deceased person. 7316

Sec. 2127.011. (A) In addition to the other methods provided 7317
by law or in the will and unless expressly prohibited by the will, 7318
an executor or administrator may sell at public or private sale, 7319
grant options to sell, exchange, re-exchange, or otherwise dispose 7320
of any parcel of real ~~estate~~ property belonging to the estate at 7321
any time at prices and upon terms ~~as~~ that are consistent with this 7322
section and may execute and deliver deeds and other instruments of 7323
conveyance if all of the following conditions are met: 7324

(1) The surviving spouse, all of the legatees and devisees in 7325
the case of testacy, and all of the heirs in the case of 7326

intestacy, give written consent to a power of sale for a 7327
particular parcel of real ~~estate~~ property or to a power of sale 7328
for all the real ~~estate~~ property belonging to the estate. Each 7329
consent to a power of sale provided for in this section shall be 7330
filed in the probate court. 7331

(2) Any sale under a power of sale authorized pursuant to 7332
this section shall be made at a price of at least eighty per cent 7333
of the appraised value, as set forth in an approved inventory. 7334

(3) No power of sale provided for in this section is 7335
effective if the surviving spouse, or any legatee, devisee, or 7336
heir is a minor. No person may give the consent of the minor that 7337
is required by this section. 7338

(B) A surviving spouse who is the executor or administrator 7339
may sell real ~~estate~~ property to ~~himself~~ self pursuant to this 7340
section. 7341

Sec. 2127.02. As soon as an executor or administrator 7342
ascertains that the personal property in ~~his hands~~ the possession 7343
or under the control of the executor or administrator is 7344
insufficient to pay all the debts of the decedent, together with 7345
the allowance for support to the surviving spouse, minor children, 7346
or surviving spouse and minor children of the decedent as provided 7347
in section 2106.13 of the Revised Code, and the costs of 7348
administering the estate, ~~he~~ the executor or administrator shall 7349
commence a civil action in the probate court for authority to sell 7350
the decedent's real property. 7351

Sec. 2127.04. (A) With the consent of all persons entitled to 7352
share in an estate upon distribution, the executor, administrator, 7353
or administrator with the will annexed may, and upon the request 7354
of these persons shall, commence an action in the probate court 7355
for authority to sell any part or all of the decedent's real 7356

estate property, even though the real estate property is not 7357
required to be sold to pay debts or legacies. A guardian may make 7358
a request under this division, or give consent, on behalf of the 7359
guardian's ward. 7360

(B) An executor, administrator, or administrator with the 7361
will annexed may commence an action in the probate court, on the 7362
executor or administrator's own motion, to sell any part or all of 7363
the decedent's real estate property, even though the real estate 7364
property is not required to be sold to pay debts or legacies. The 7365
court shall not issue an order of sale in the action unless one of 7366
the categories specified in divisions (B)(1)(a), (b), and (c), 7367
(B)(2)(a), (b), and (c), and (B)(3) of this section applies: 7368

(1)(a) At least fifty per cent of all the persons interested 7369
in the real estate property proposed to be sold have consented to 7370
the sale. 7371

(b) Prior to the issuance of the order, no written objection 7372
is filed with the court by any person or persons who hold 7373
aggregate interests in the interest of the decedent in the real 7374
estate property proposed to be sold, that total in excess of 7375
twenty-five per cent. 7376

(c) The court determines that the sale is in the best 7377
interest of the decedent's estate. 7378

(2)(a) No person's interest in the interest of the decedent 7379
in the real estate property proposed to be sold exceeds ten per 7380
cent. 7381

(b) Prior to the issuance of the order, no written objection 7382
is filed with the court by any person or persons who hold 7383
aggregate interests in the interest of the decedent in the real 7384
estate property proposed to be sold, that total in excess of 7385
twenty-five per cent. 7386

(c) The court determines that the sale is in the best interest of the decedent's estate. 7387
7388

(3) The real ~~estate~~ property proposed to be sold escheats to the state under division (K) of section 2105.06 of the Revised Code. 7389
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(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. 7392
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If a sale is ordered under this division, the costs of its administration shall be taken from the proceeds of the sale. 7401
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(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. 7403
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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 wherever~~ 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 7407
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civil action in the probate court for authority to sell all or any 7418
part of the real estate property of the ward. If it appears to the 7419
advantage of the ward to lay out all or any part of the ~~land~~ real 7420
property in town lots, application for ~~such~~ that authority may 7421
also be made in the action. 7422

When the same person is guardian for two or more wards whose 7423
real estate property is owned by them jointly or in common, the 7424
actions may be joined, and in one complaint the guardian may ask 7425
for the sale of the interest of all or any number of ~~his~~ the 7426
guardian's wards in the real estate property. If different persons 7427
are guardians of wards interested jointly or in common in the same 7428
real estate property, they may join as parties plaintiff in the 7429
same action. On the hearing, in either case, the court may 7430
authorize the sale of the interest of one or more of the wards. 7431

Sec. 2127.06. If the fiduciary who brings an action under 7432
section 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code, dies, 7433
resigns, or is removed, or ~~his~~ the fiduciary's powers cease at any 7434
time before the real estate property sold is conveyed, a successor 7435
fiduciary may be substituted as a party to the action and may 7436
convey ~~land~~ real property, whether sold before or after ~~his~~ the 7437
successor fiduciary's appointment. ~~He~~ The successor fiduciary may 7438
also be required to give an additional bond. 7439

Sec. 2127.07. Any interest in real estate property, whether 7440
legal or equitable, ~~which~~ that the deceased had a right to sell or 7441
dispose of at the time of ~~his~~ the deceased's death, or of 7442
which the ward was seized at the time the action was brought, 7443
including coal, iron ore, limestone, fireclay, or other mineral 7444
upon or under ~~such~~ the real estate property, or the right to mine 7445
them, may be sold by an executor, administrator, or guardian under 7446
sections 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code. This 7447
section does not give an executor or administrator with the will 7448

annexed authority to sell real estate property for the payment of 7449
legacies, other than as charged by the testator or by operation of 7450
law. This section does not give a guardian authority to sell an 7451
equitable estate in real estate property placed by deed of trust, 7452
beyond the power of the ward to sell, convey, or assign. 7453

Sec. 2127.08. When the interest of a decedent or ward in real 7454
estate property is fractional and undivided, the action for 7455
authority to sell ~~such the~~ real estate property shall include only 7456
~~such the~~ undivided fractional interest, except that the executor, 7457
administrator, or guardian, ~~or~~ the owner of any other fractional 7458
interest, or any lien holder may, by pleading filed in the cause 7459
setting forth all interests in the property and liens ~~thereon on~~ 7460
the property, require that the action include the entire interest 7461
in the property, and the owner of ~~said the~~ interests and liens 7462
shall receive ~~his~~ the owner's respective share of the proceeds of 7463
sale after payment has been made of the expenses of sale including 7464
reasonable attorney fees for services in the case, ~~which. Those~~ 7465
fees ~~must~~ shall be paid to the plaintiff's attorney unless the 7466
court awards some part ~~thereof~~ of the fees to other counsel for 7467
services in the case for the common benefit of all the parties, 7468
having regard to the interest of the parties, the benefit each may 7469
derive from the sale, and the equities of the case. The fees of 7470
the executor, administrator, or guardian shall be a charge only 7471
against ~~such the~~ portion of the proceeds of sale as that 7472
represents the interests of the decedent or ward. 7473

Sec. 2127.09. An action by an executor, administrator, or 7474
guardian to obtain authority to sell real estate property shall be 7475
brought in the county in which ~~he~~ the executor, administrator, or 7476
guardian was appointed or in which the real estate property 7477
subject to sale or any part ~~thereof~~ of the property is situated. 7478
If the action is brought in a county other than that in which the 7479

real estate property or a part thereof of the property is 7480
situated, a certified transcript of the record of all proceedings 7481
had ~~therein~~ in that county shall be filed with and recorded by the 7482
probate court of each county in which ~~such~~ the real estate 7483
property or any part thereof of the property is situated. 7484

Sec. 2127.10. An action to obtain authority to sell real 7485
~~estate~~ property shall be commenced by the executor, administrator, 7486
or guardian by filing a complaint with the probate court. 7487

The complaint shall contain a description of the real estate 7488
property proposed to be sold and its value, as near as can be 7489
ascertained, a statement of the nature of the interest of the 7490
decedent or ward in the real estate property, a recital of all 7491
mortgages and liens upon and adverse interests in the real estate 7492
property, the facts showing the reason or necessity for the sale, 7493
and any additional facts necessary to constitute the cause of 7494
action under the section of the Revised Code on which the action 7495
is predicated. 7496

Sec. 2127.11. When the actual market value of a decedent's or 7497
ward's real estate property to be sold is less than three thousand 7498
dollars, and the court so finds, it may by summary order authorize 7499
the sale and conveyance of the ~~land~~ real property at private sale, 7500
on ~~such~~ the terms as that it ~~deems~~ considers proper, and in ~~such~~ a 7501
that proceeding, all requirements of sections 2127.01 to 2127.43 7502
of the Revised Code, as to service of summons, appraisal, and 7503
additional bond, shall be waived. 7504

Sec. 2127.12. In an action by an executor or administrator to 7505
obtain authority to sell real estate property, the following 7506
persons shall be made parties defendant: 7507

(A) The surviving spouse; 7508

(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;

(D) If the interest subject to sale is equitable, all persons holding legal title to the interest or any part of it, and those who are entitled to the purchase money for it, other than creditors;

(E) If a fraudulent transfer is sought to be set aside, all persons holding or claiming under the transfer;

(F) All other persons having an interest in the real estate property.

Sec. 2127.13. In an action by a guardian to obtain authority to sell the real estate property of ~~his~~ the guardian's ward the following persons shall be made parties defendant:

(A) The ward;

(B) The spouse of the ward;

(C) All persons entitled to the next estate of inheritance from the ward in ~~such~~ the real estate property who are known to reside in Ohio, but their spouses need not be made parties defendant;

(D) All lienholders whose claims affect ~~such~~ the real estate property or any part ~~thereof~~ of the property;

(E) If the interest subject to ~~such~~ the sale is equitable, all persons holding legal title ~~thereto~~ to the real property or any part ~~thereof~~ of the property;

(F) All other persons having an interest in ~~such~~ the real

estate property, other than creditors. 7538

Sec. 2127.14. Service of summons, actual or constructive, in 7539
an action to sell the real estate property of a decedent or a ward 7540
shall be had as in other civil actions, but if any competent 7541
person in interest enters appearance or consents in writing to the 7542
sale, service on ~~such that~~ person shall not be necessary. If all 7543
parties consent in writing to the sale, an order ~~therefor~~ for the 7544
sale may issue forthwith. 7545

Sec. 2127.15. All pleadings and proceedings in an action to 7546
obtain authority to sell the real estate property of a decedent or 7547
a ward in the probate court shall be the same as in other civil 7548
actions, except as otherwise provided in sections 2127.01 to 7549
2127.43 of the Revised Code. 7550

Sec. 2127.16. In a sale of real estate property by an 7551
executor, administrator, or guardian, ~~such the~~ real estate 7552
property shall be sold free of all right and expectancy of dower 7553
therein in the property, but out of the proceeds of the sale, in 7554
lieu of dower, the court shall allow to the person having any 7555
dower interest in the property ~~such a~~ sum in money ~~as~~ that is the 7556
just and reasonable value of ~~such the~~ dower, unless the answer of 7557
~~such the~~ person waives ~~such that~~ allowance. 7558

Sec. 2127.17. In an action to obtain authority to sell real 7559
estate property, if a party in ~~his~~ the party's answer objects to 7560
an order for the sale of real estate property by an executor, 7561
administrator, or guardian, and on hearing it appears to the court 7562
that either the complaint or the objection is unreasonable, it may 7563
award costs to the party prevailing on that issue. 7564

Sec. 2127.18. Upon the hearing of an action to obtain 7565

authority to sell real ~~estate~~ property by an executor, 7566
administrator, or guardian, if satisfied that all necessary 7567
parties defendant are properly before the court, and that the 7568
demand for relief ought to be granted, the court may determine the 7569
equities among the parties and the priorities of lien of the 7570
several lien holders on the real ~~estate~~ property, and order a 7571
distribution of the money arising from the sale in accordance with 7572
its determination. The court may in the same cause order 7573
contributions among all parties in interest. 7574

Sec. 2127.19. When an action to obtain authority to sell real 7575
~~estate~~ property is determined by the probate court, the probate 7576
judge shall make the necessary order for an entry of release and 7577
satisfaction of all mortgages and other liens upon the real ~~estate~~ 7578
property except ~~such the~~ mortgage ~~as that~~ is assumed by the 7579
purchaser. The executor, administrator, or guardian shall 7580
~~thereupon~~ enter ~~such the~~ release and satisfaction, together with a 7581
memorandum of the title of the case, the character of the 7582
proceedings, and the volume and page of record where recorded, 7583
upon the record of ~~such the~~ mortgage, judgment, or other lien in 7584
the office where it appears as matter of record. If the executor, 7585
administrator, or guardian fails to enter ~~such the~~ release and 7586
satisfaction, the court ~~may~~, on the application of an interested 7587
party, may enter ~~such the~~ release and satisfaction and tax in ~~his~~ 7588
the executor's, administrator's, or guardian's cost bill the fee 7589
provided by law for entering ~~such the~~ release and satisfaction, 7590
and a fee of twenty-five cents to the court. 7591

Sec. 2127.21. If a guardian's complaint in an action to 7592
obtain authority to sell real ~~estate~~ property seeks to have ~~land~~ 7593
real property laid out in town lots, and the court finds it to the 7594
advantage of the ward, it shall authorize the survey and platting 7595
of the ~~land~~ real property as provided by law. Upon subsequent 7596

return of the survey and plat, the court, if it approves it, shall 7597
authorize the guardian on behalf of ~~his~~ the guardian's ward to 7598
sign, seal, and acknowledge the plat in that behalf for record. 7599

Sec. 2127.22. If an appraisalment of the real ~~estate~~ property 7600
is contained in the inventory required of an executor or 7601
administrator by section 2115.02 of the Revised Code, and of a 7602
guardian by section 2111.14 of the Revised Code, the probate court 7603
may order a sale in accordance with the appraisalment, or order a 7604
new appraisalment. If a new appraisalment is not ordered, the value 7605
set forth in the inventory shall be the appraised value of the 7606
real ~~estate~~ property. If the court orders a new appraisalment, the 7607
value returned shall be the appraised value of the real ~~estate~~ 7608
property. 7609

If the interest of the deceased or ward in the real ~~estate~~ 7610
property is fractional and undivided, and if a party requests and 7611
the court orders the entire interest in the real ~~estate~~ property 7612
to be sold, a new appraisalment of the entire interest in the real 7613
~~estate~~ property shall be ordered. 7614

If the relief requested is granted and new appraisalment is 7615
ordered, the court shall appoint one, or on request of the 7616
executor, administrator, or guardian, not exceeding three 7617
judicious and disinterested persons of the vicinity, not next of 7618
kin of the complainant, to appraise the real ~~estate~~ property in 7619
whole and in parcels at its true value in money. ~~Where~~ If the real 7620
~~estate~~ property lies in two or more counties the court may appoint 7621
appraisers in any or all of the counties in which the real ~~estate~~ 7622
property or a part of it is situated. 7623

Sec. 2127.23. The appraisers appointed under section 2127.22 7624
of the Revised Code shall agree to truly and impartially appraise 7625
the real ~~estate~~ property at its fair cash value upon actual view 7626

and to perform the duties required of them by the order of the 7627
court. The appraisalment shall be signed by the appraisers, and the 7628
officer to whom it is issued shall make return of it to the court 7629
for confirmation. 7630

Sec. 2127.24. ~~When~~ If a person appointed by the court under 7631
section 2127.22 of the Revised Code as an appraiser fails to 7632
discharge ~~his~~ the person's duties, the probate judge on ~~his~~ the 7633
judge's own motion or on the motion of the executor, 7634
administrator, or guardian may appoint another appraiser. 7635

Sec. 2127.27. Upon the return and approval of the 7636
appraisalment provided for by section 2127.22 of the Revised Code, 7637
the court shall require the executor, administrator, or guardian 7638
to execute a bond with two or more personal sureties, or one or 7639
more corporate sureties, whose qualifications shall be those 7640
provided by section 2109.17 of the Revised Code. ~~Such~~ The bond 7641
shall be payable to the state in an amount ~~which~~ that the court 7642
~~deems~~ considers sufficient, having regard to the amount of real 7643
~~estate~~ property to be sold, its appraised value, the amount of the 7644
original bond given by the executor, administrator, or guardian, 7645
and the distribution to be made of the proceeds arising from the 7646
sale, ~~and such~~. The bond shall be conditioned for the faithful 7647
discharge of ~~his~~ the executor's, administrator's, or guardian's 7648
duties and the payment of, and accounting for, all moneys arising 7649
from ~~such~~ the sale according to law. ~~Such~~ The bond shall be 7650
additional to that given by the executor, administrator, or 7651
guardian at the time of ~~his~~ appointment. If the court finds the 7652
amount of the original bond given by the executor, administrator, 7653
or guardian is sufficient, having regard for the amount of real 7654
~~estate~~ property to be sold, its appraised value, and the 7655
distribution to be made of the proceeds arising from the sale, the 7656
giving of additional bond may be dispensed with by order of the 7657

court. ~~Such~~ The bond shall be given in the court from which the 7658
executor, administrator, or guardian ~~received his appointment was~~ 7659
appointed. 7660

If the action to obtain authority to sell real ~~estate~~ 7661
property is pending in another court, the latter shall proceed no 7662
further until there is filed ~~therein~~ in that court a certificate 7663
from the court ~~wherein~~ in which the executor, administrator, or 7664
guardian ~~received his appointment was appointed~~, under its seal, 7665
that ~~such~~ the bond has been given or that the original bond is 7666
sufficient. This section does not prevent the court in an action 7667
to sell real ~~estate~~ property from ordering the sale of ~~such that~~ 7668
real ~~estate~~ property without bond in cases where the testator had 7669
provided by ~~his~~ the testator's will that the executor need not 7670
give bond. 7671

Sec. 2127.28. The probate court may, after notice to all 7672
parties in interest, allow a real estate commission in an action 7673
to sell real ~~estate~~ property by an executor, administrator, or 7674
guardian, but an allowance shall be passed upon by the court prior 7675
to the sale. 7676

The court may allow payment for certificate or abstract of 7677
title or policy of title insurance in connection with the sale of 7678
any ~~land~~ real property by an executor, administrator, or guardian. 7679

Sec. 2127.29. When the bond required by section 2127.27 of 7680
the Revised Code is filed and approved by the court, it shall 7681
order the sale of the real ~~estate~~ property included in the 7682
complaint set forth in section 2127.10 of the Revised Code, or the 7683
part of the real ~~estate~~ property it ~~deems~~ considers necessary for 7684
the interest of all parties concerned. If the complaint alleges 7685
that it is necessary to sell part of the real ~~estate~~ property, and 7686
that by the partial sale the residue of the ~~estate~~ real property, 7687

or a specific part of it, would be greatly injured, the court, if 7688
it so finds, may order a sale of the whole estate real property. 7689

Sec. 2127.30. If the order of sale set forth in section 7690
2127.29 of the Revised Code includes real estate property in which 7691
the ward or the estate has an equitable interest only, the court 7692
may make an order for the appraisal and sale of ~~such~~ that 7693
equitable estate free from dower, for the indemnity of the estate 7694
against any claim for purchase money, and for payment of the value 7695
of ~~such~~ the dower in money, as the court ~~deems~~ considers 7696
equitable, having regard for the rights of all parties in 7697
interest. 7698

Sec. 2127.32. The real estate property included in the 7699
court's order of sale, as provided in section 2127.29 of the 7700
Revised Code, shall be sold either in whole or in parcels at 7701
public auction at the door of the courthouse in the county in 7702
which the order of sale was granted, or at another place, as the 7703
court directs, and the order shall fix the place, day, and hour of 7704
sale. If it appears to be more for the interest of the ward or the 7705
estate to sell the real estate property at private sale, the court 7706
may authorize the complainant to sell it either in whole or in 7707
parcels. If an order for private sale is issued, it shall be 7708
returned by the complainant. Upon motion and showing of a person 7709
interested in the proceeds of the sale, filed after thirty days 7710
from the date of the order, the court may require the complainant 7711
to return the order, if the premises have not been sold. ~~Thereupon~~ 7712
Upon return of the order, the court may order the real estate 7713
property to be sold at public sale. 7714

If upon showing of any person interested, the court finds 7715
that it will be to the interest of the ward or the estate, it may 7716
order a reappraisal and sale in parcels. 7717

If the sale is to be public, the executor, administrator, or guardian ~~must~~ shall give notice of the time and place of the sale by advertisement at least three weeks successively in a newspaper published in the county where the ~~lands are~~ real property is situated.

Sec. 2127.33. ~~Where~~ If the sale authorized by a court as provided in section 2127.32 of the Revised Code is private, the real estate property shall not be sold for less than the appraised value. ~~When~~ If the sale is at public auction, the real estate property if improved shall not be sold for less than two thirds of the appraised value, or if not improved, for less than one half of the appraised value. In private sales if no sale has been effected after one bona fide effort to sell under this section, or if in public sales the ~~land~~ real property remains unsold for want of bidders when offered pursuant to advertisement, the court may fix the price for which ~~such~~ the real estate property may be sold or may set aside the appraisal and order a new appraisal. If ~~such~~ the new appraisal does not exceed five hundred dollars, and upon the first offer ~~thereunder~~ under the new appraisal at public sale there are no bids, then upon the motion of any party interested the court may order the real estate property to be readvertised and sold at public auction to the highest bidder.

Sec. 2127.34. The order for the sale of real estate property, granted by the probate court in an action by an executor, administrator, or guardian, shall prescribe the terms of the sale, and payment of the purchase money, either in whole or in part, for cash, or on deferred payments. In the sales by executors or administrators, deferred payments shall not exceed two years with interest.

Sec. 2127.35. An executor, administrator, or guardian shall

make return of ~~his~~ the executor's, administrator's, or guardian's 7748
proceedings under the order for the sale of real estate property 7749
granted by the probate court. The court, after careful 7750
examination, if satisfied that the sale has in all respects been 7751
legally made, shall confirm the sale, and order the executor, 7752
administrator, or guardian to make a deed to the purchaser. 7753

The deed shall be received in all courts as prima-facie 7754
evidence that the executor, administrator, or guardian in all 7755
respects observed the direction of the court, and complied with 7756
the requirements of the law, ~~and~~ shall convey the interest in the 7757
real estate property directed to be sold by the court, and shall 7758
vest title to the interest in the purchaser as if conveyed by the 7759
deceased in ~~his~~ the deceased's lifetime, or by the ward free from 7760
disability, and by the owners of the remaining interests in the 7761
real estate property. 7762

Sec. 2127.36. The order for the sale of real estate property 7763
granted in an action by an executor, administrator, or guardian 7764
shall require that before the delivery of the deed the deferred 7765
installments of the purchase money be secured by mortgage on the 7766
real estate property sold, and mortgage notes bearing interest at 7767
a rate approved by the probate court. If after the sale is made, 7768
and before delivery of the deed, the purchaser offers to pay the 7769
full amount of the purchase money in cash, the court may order 7770
that it be accepted, if for the best interest of the estate or the 7771
ward, and direct its distribution. 7772

The court in ~~such an~~ that order may also direct the sale, 7773
without recourse, of any or all of the notes taken for deferred 7774
payments, if for the best interest of the estate or the ward, at 7775
not less than their face value with accrued interest, and direct 7776
the distribution of the proceeds. 7777

Sec. 2127.37. ~~When~~ If an action to sell real estate property 7778
is prosecuted by an executor or administrator ~~he, the executor or~~ 7779
administrator shall be allowed the compensation provided by law, 7780
by the probate court from which ~~his~~ the executor's or 7781
administrator's letters issued. ~~When such~~ If that action is by a 7782
guardian, ~~his~~ the guardian's duties and obligations ~~therein~~ in the 7783
action shall be considered by the court appointing ~~him~~ the 7784
guardian in awarding ~~such~~ the compensation ~~as that~~ the court ~~deems~~ 7785
considers reasonable. 7786

Sec. 2127.38. The sale price of real estate property sold 7787
following an action by an executor, administrator, or guardian 7788
shall be applied and distributed as follows: 7789

(A) To discharge the costs and expenses of the sale, 7790
including reasonable fees to be fixed by the probate court for 7791
services performed by attorneys for the fiduciary in connection 7792
with the sale, and compensation, if any, to the fiduciary for ~~his~~ 7793
services in connection with the sale as the court may fix, which 7794
costs, expenses, fees, and compensation shall be paid prior to any 7795
liens upon the real estate property sold and notwithstanding the 7796
purchase of the real estate property by a lien holder; 7797

(B) To the payment of taxes, interest, penalties, and 7798
assessments then due against the real estate property, and to the 7799
payment of mortgages and judgments against the ward or deceased 7800
person, according to their respective priorities of lien, so far 7801
as they operated as a lien on the real estate property of the 7802
deceased at the time of the sale, or on the estate of the ward at 7803
the time of the sale, ~~which~~ that shall be apportioned and 7804
determined by the court, or on reference to a master, or 7805
otherwise; 7806

(C) (1) In the case of an executor or administrator, the 7807

remaining proceeds of sale shall be applied as follows: 7808

~~(1)~~(a) To the payment of legacies with which the real estate 7809
property of the deceased was charged, if the action is to sell 7810
real estate property to pay legacies; 7811

~~(2)~~(b) To discharge the claims and debts of the estate in the 7812
order provided by law. 7813

(2) Whether the executor or administrator was appointed in 7814
this state or elsewhere, the surplus of the proceeds of sale ~~must~~ 7815
shall be considered for all purposes as real estate property, and 7816
be disposed of accordingly. 7817

Sec. 2127.39. ~~When~~ If an action to sell real estate property 7818
is brought by an executor or administrator with the will annexed, 7819
if in the ~~last~~ will of the deceased there is a disposition of ~~his~~ 7820
the decedent's estate for the payment of debts, or a provision 7821
that may require or induce the probate court to marshal the assets 7822
differently from the way the law otherwise would prescribe, ~~such~~ 7823
those devises, or parts of the will, shall be set forth in the 7824
complaint, and a copy of the will exhibited to the court, 7825
whereupon the court shall marshal the proceeds of the sale 7826
accordingly, so far as it can be done consistently with the rights 7827
of creditors. 7828

Sec. 2127.40. When an action is brought by an executor or 7829
administrator to sell real estate property to pay debts, the real 7830
estate property subject to sale shall include all rights and 7831
interests in ~~lands, tenements, and hereditaments~~ real property 7832
transferred by the decedent in ~~his~~ the decedent's lifetime with 7833
intent to defraud ~~his~~ the decedent's creditors, except that ~~lands~~ 7834
real property fraudulently transferred cannot be taken from any 7835
person who purchased them for a valuable consideration, in good 7836
faith, and without knowledge of the fraud. No claim to ~~such lands~~ 7837

that real property shall be made unless within four years next 7838
after the decease of the grantor. 7839

If real ~~estate~~ property fraudulently transferred is to be 7840
included in ~~such an~~ that action, the executor or administrator, 7841
either before or at the same time, may commence a civil action in 7842
the court of common pleas in the county in which the real ~~estate~~ 7843
property is situated to recover possession of it, or, in ~~his~~ the 7844
action for its sale, ~~he~~ the executor or administrator may allege 7845
the fraud and have the fraudulent transfer avoided. But when the 7846
real ~~estate~~ property is included in the complaint before the 7847
recovery of possession by the executor or administrator, the 7848
action shall be brought in the court of common pleas in the county 7849
in which the real ~~estate~~ property is situated. 7850

Sec. 2127.41. If, after the institution of proceedings for 7851
the partition of the real property of a decedent, it is found that 7852
the assets in the ~~hands~~ possession or under the control of the 7853
executor or administrator probably are insufficient to pay the 7854
debts of the estate, together with the allowance for support of 7855
the surviving spouse, minor children, or surviving spouse and 7856
minor children as provided in section 2106.13 of the Revised Code, 7857
the expenses of administration, and the legacies that are a charge 7858
upon the real property, the executor or administrator shall make a 7859
written statement to the probate court of the assets, 7860
indebtedness, expenses, and legacies, and the court ~~forthwith~~ 7861
shall ascertain the amount necessary to pay the debts, expenses, 7862
and legacies and give a certificate of the amount to the executor 7863
or administrator. 7864

The executor or administrator then shall present the 7865
certificate to the court in which the proceedings for partition 7866
are or have been pending, and, on ~~his~~ the motion of the executor 7867
or administrator, the court shall order the amount named in the 7868

certificate to be paid over to the executor or administrator out 7869
of the proceeds of the sale of the premises, if thereafter they 7870
are sold or already have been sold. This section does not prohibit 7871
an executor or administrator from proceeding to sell real property 7872
belonging to the estate for the payment of debts or legacies, 7873
although it has been sold on partition or otherwise, or the 7874
proceeds of the sale have been fully distributed. 7875

Sec. 2127.42. Wards living out of this state and owning ~~lands~~ 7876
real property within it are entitled to the benefit of sections 7877
2127.01 to 2127.43 of the Revised Code. Complaints for the sale of 7878
real ~~estate~~ property by guardians of ~~such~~ those wards shall be 7879
filed in the county in which the ~~land~~ real property is situated, 7880
or if situated in two or more counties, then in one of the 7881
counties in which a part of it is situated. Additional security 7882
shall be required from ~~such~~ the guardians, ~~when deemed if~~ 7883
considered necessary by the probate court of the county in which 7884
the complaints are filed. 7885

Sec. 2127.43. ~~Chapter 2127. of the Revised Code~~ This chapter 7886
extends to an action brought by the trustee of a nonresident minor 7887
or mentally ill or deficient person to sell the real ~~estate~~ 7888
property of the ward. 7889

Sec. 2129.02. ~~When~~ If letters of administration or letters 7890
testamentary have been granted in any state other than this state, 7891
in any territory or possession of the United States, or in any 7892
foreign country, as to the estate of a deceased resident of that 7893
state, territory, possession, or country, and ~~when~~ if no ancillary 7894
administration proceedings have been commenced in this state, the 7895
person to whom the letters of appointment were granted may file an 7896
authenticated copy of them in the probate court of any county of 7897
this state in which is located real ~~estate~~ property of the 7898

decedent. 7899

The claim of any creditor of ~~such a~~ that decedent shall be 7900
subject to section 2117.06 of the Revised Code. The person filing 7901
~~such~~ those letters in the probate court may accelerate the bar 7902
against claims against the estate established by that section, by 7903
giving written notice to a potential claimant that identifies the 7904
decedent by name, states the date of the death of the decedent, 7905
identifies the court, states its mailing address, and informs the 7906
potential claimant that any claims ~~he~~ the potential claimant may 7907
have against the estate are required to be presented to the court 7908
within the earlier of thirty days after receipt of the notice by 7909
the potential claimant or ~~one year~~ six months after the date of 7910
the death of the decedent. A claim of that potential claimant that 7911
is not presented to the court within the earlier of thirty days 7912
after receipt of the notice by the potential claimant or ~~one year~~ 7913
six months after the date of the death of the decedent is forever 7914
barred as a possible lien upon the real estate property of the 7915
decedent in this state. If, at the expiration of that period, any 7916
such claim has been filed and remains unpaid after reasonable 7917
notice of the claim to the nonresident executor or administrator, 7918
ancillary administration proceedings as to the estate may be had 7919
forthwith. 7920

Sec. 2129.05. Authenticated copies of wills, executed and 7921
proved according to the laws of any state or territory of the 7922
United States, relative to property in this state, may be admitted 7923
to record in the probate court of a county where a part of ~~such~~ 7924
that property is situated. ~~Such~~ The authenticated copies, so 7925
recorded, shall be as valid as wills made in this state. 7926

When such a will, or authenticated copy, is admitted to 7927
record, a copy ~~thereof~~ of the will or of the authenticated copy, 7928
with the copy of the order to record it annexed ~~thereto~~ to that 7929

copy, certified by the probate judge under the seal of ~~his~~ the 7930
probate court, may be filed and recorded in the office of the 7931
probate judge of any other county where a part of ~~such~~ the 7932
property is situated, and it shall be as effectual as the 7933
authenticated copy of ~~such~~ the will would be if approved and 7934
admitted to record by the court. 7935

Sec. 2129.08. (A) After an authenticated copy of the will of 7936
a nonresident decedent has been allowed and admitted to record as 7937
provided in this chapter, and after there has been filed in the 7938
probate court a complete exemplification of the record of the 7939
grant of the domiciliary letters of appointment and of any other 7940
records of the court of domiciliary administration that the court 7941
requires, the court shall appoint as the ancillary administrator 7942
the person named in the will, or nominated in accordance with any 7943
power of nomination conferred in the will, as general executor of 7944
the decedent's estate or as executor of the portion of the 7945
decedent's estate located in this state, provided that the person 7946
makes application and qualifies under division (B)(2) of section 7947
2109.21 of the Revised Code and in all other respects as required 7948
by law. If the testator in the will naming or providing for the 7949
nomination of that executor orders or requests that bond not be 7950
given by ~~him~~ that executor, bond shall not be required unless, for 7951
sufficient reason, the court requires it. 7952

(B) If a nonresident decedent died intestate, or failed to 7953
designate in ~~his~~ the nonresident decedent's will any person 7954
qualified to act as ancillary administrator or to confer in the 7955
will a power to nominate a person as an executor as described in 7956
division (A) of this section, or if the will of a nonresident 7957
decedent conferred ~~such a~~ that power but no person qualified to 7958
act as ancillary administrator was nominated, the court shall 7959
appoint in ~~such~~ that capacity ~~some~~ a suitable person who is a 7960
resident of the county including, but not limited to, a creditor 7961

of the estate. 7962

(C) An ancillary administrator, acting as to the estate of a 7963
testate decedent that is located in this state, may sell and 7964
convey the real and personal property by virtue of the will as 7965
executors or administrators with the will annexed may do. 7966

(D) No person shall be appointed as an ancillary 7967
administrator of the estate of a nonresident presumed decedent 7968
that is located in this state, except after Chapter 2121. of the 7969
Revised Code, relative to the appointment of an ancillary 7970
administrator, has been complied with. 7971

Sec. 2129.11. If no domiciliary administration has been 7972
commenced, the ancillary administrator shall proceed with the 7973
administration in ~~Ohio~~ this state as though the decedent had been 7974
a resident of ~~Ohio~~ this state at the time of ~~his~~ the decedent's 7975
death. 7976

Sec. 2129.13. If an ancillary administrator finds that the 7977
personal property of the nonresident decedent in ~~Ohio~~ this state 7978
is not sufficient to pay the expenses of administration, public 7979
rates and taxes, and other valid claims ~~which~~ that have been 7980
presented, ~~he~~ the ancillary administrator shall proceed to sell as 7981
much of the real ~~estate~~ property of the decedent located in this 7982
state ~~as~~ that is necessary to pay ~~such~~ those debts. The procedure 7983
shall be the same as in sales of real ~~estate~~ property in 7984
administration proceedings relating to the estates of resident 7985
decedents under sections 2127.01 to 2127.43, ~~inclusive~~, of the 7986
Revised Code. 7987

Sec. 2129.14. A domiciliary executor or administrator of a 7988
nonresident decedent may file in the probate court by which the 7989
ancillary administrator was appointed information showing that it 7990
will be necessary to sell ~~Ohio~~ real ~~estate~~ property of the 7991

decedent located in this state to pay debts and legacies, and the 7992
court may thereupon authorize the ancillary administrator to sell 7993
~~such~~ any part or all of ~~such~~ the real estate ~~as~~ property that is 7994
necessary. The ancillary administrator shall proceed to sell ~~such~~ 7995
the real estate property in the manner provided by section 2129.13 7996
of the Revised Code. 7997

Sec. 2129.15. Within five months after ~~his~~ appointment, the 7998
ancillary administrator of a nonresident decedent shall forward to 7999
the domiciliary administrator, if any, of ~~such~~ the decedent, if 8000
the name and address of ~~such~~ the domiciliary administrator are 8001
known, a certificate showing all assets of the estate in this 8002
state and all debts and liabilities including estimated expenses 8003
of administration. If the name and address of ~~such~~ the domiciliary 8004
administrator are not known, ~~such~~ the certificate shall be 8005
forwarded to the next of kin of the deceased whose names and 8006
addresses are known and to the court having jurisdiction in estate 8007
matters in the county in which the decedent resided at the time of 8008
~~his~~ death. 8009

Sec. 2129.17. An ancillary administrator shall file in the 8010
probate court of every county in ~~Ohio~~ this state in which real 8011
~~estate~~ property of the nonresident decedent is located a certified 8012
copy of the records in the court of ~~his~~ the ancillary 8013
administrator's appointment ~~which~~ that affect the title to ~~such~~ 8014
that real estate property. 8015

Sec. 2129.18. Whenever property of a nonresident decedent as 8016
to whose estate ancillary administration proceedings are being had 8017
in ~~Ohio~~ this state passes by the laws of intestate succession or 8018
under a will to a beneficiary not named ~~therein~~ in the will, 8019
proceedings may be had to determine the persons entitled to ~~such~~ 8020
that property in the same manner as in the estates of resident 8021

decedents under sections 2123.01 to 2123.07, ~~inclusive,~~ of the Revised Code. The ancillary administrator shall file a certified copy of ~~such the~~ finding in the probate court in every county in ~~Ohio this state~~ in which real estate property of the decedent is located. ~~Such The~~ administrator shall procure and file in the court for the information of the court a certified copy of any determination of heirship relative to ~~such the~~ decedent's estate made in the state of the domiciliary administration.

Sec. 2129.19. Prior to filing ~~his the~~ ancillary administrator's final account, an ancillary administrator shall file in the probate court an application for a certificate of transfer as to the real estate property of the nonresident decedent situated in ~~Ohio this state~~, in the same manner as in the administration of the estates of resident decedents under section 2113.61 of the Revised Code.

Sec. 2129.23. When the expense of the ancillary administration of a nonresident decedent's estate, including ~~such any~~ attorney's fee ~~as that~~ is allowed by the probate court, all public charges and taxes, and all claims of creditors presented as provided in section 2129.12 of the Revised Code, have been paid, any residue of the personal estate property and the proceeds of any real estate property sold for the payment of debts shall be distributed by the ancillary administrator as follows:

(A) With the approval of the court ~~such, the~~ residue may be delivered to the domiciliary administrator or executor.

(B) If the court so orders, ~~such the~~ residue shall be delivered to the persons entitled ~~thereto~~ to it.

Sec. 2129.25. When an executor or administrator is appointed in any other state, territory, or foreign country for the estate of a person dying out of this state, and no executor or

administrator ~~thereon~~ for the estate is appointed in this state, 8052
the foreign executor or administrator may file an authenticated 8053
copy of ~~his~~ the foreign executor's or administrator's appointment 8054
in the probate court of any county in which there is real ~~estate~~ 8055
property of the deceased, together with an authenticated copy of 8056
the will. After filing ~~such~~ those copies, ~~he~~ the foreign executor 8057
or administrator may be authorized, under an order of the court, 8058
to sell real ~~estate~~ property for the payment of debts or legacies 8059
and charges of administration, in the manner prescribed in 8060
sections 2127.01 to 2127.43, ~~inclusive~~, of the Revised Code. 8061

Sec. 2129.26. ~~When~~ If it appears to the probate court 8062
granting the order of sale set forth in section 2129.25 of the 8063
Revised Code that the foreign executor or administrator is bound 8064
with sufficient surety in the state or country in which ~~he~~ the 8065
foreign executor or administrator was appointed to account for the 8066
proceeds of ~~such~~ the sale, for the payment of debts or legacies, 8067
and for charges of administration, and an authenticated copy of 8068
~~such~~ the bond is filed in court, no further bond for that purpose 8069
shall be required of ~~him~~ the foreign executor or administrator. 8070
~~When~~ If the court finds that ~~such~~ the bond is insufficient, before 8071
making ~~such~~ the sale, ~~such~~ the foreign executor or administrator 8072
~~must~~ shall give bond to this state with two or more sufficient 8073
sureties, conditioned to account for and dispose of ~~such~~ the 8074
proceeds of the sale for the payment of the debts or legacies of 8075
the deceased and the charges of administration according to the 8076
laws of the state or country in which ~~he~~ the foreign executor or 8077
administrator was appointed. 8078

~~When such~~ If the foreign executor or administrator is 8079
authorized by order of the court to sell more than is necessary 8080
for the payment of debts, legacies, and charges of administration, 8081
before making the sale, ~~he~~ the foreign executor or administrator 8082
shall give bond with two or more sufficient sureties to this 8083

state, conditioned to account before the court for all the 8084
proceeds of the sale that remain and to dispose of ~~such the~~ 8085
proceeds after payment of ~~such the~~ debts, legacies, and charges. 8086

Sec. 2129.28. If a trustee is named in a foreign will ~~which~~ 8087
~~that~~ creates a trust relating to ~~lands~~ real property situated in 8088
this state, ~~such the~~ trustee may execute the trust upon giving 8089
bond to the state in ~~such the~~ sum and with ~~such the~~ sureties ~~as~~ 8090
~~that~~ the probate court of the county in which ~~such lands the real~~ 8091
property or a part ~~thereof~~ are of the real property is situated 8092
approves, conditioned to discharge with fidelity the trust reposed 8093
in ~~him the trustee~~. If the testator in the will naming the trustee 8094
orders or requests that bond ~~be not be~~ given by ~~him the trustee~~, 8095
bond shall not be required, unless for sufficient cause the court 8096
requires it. 8097

Sec. 2129.29. If a trustee has been appointed under a foreign 8098
will ~~which that~~ creates a trust relating to ~~lands~~ real property 8099
situated in this state by a foreign court according to the laws of 8100
the foreign jurisdiction, ~~he the trustee~~ may execute the trust 8101
upon giving bond as provided in section 2129.28 of the Revised 8102
Code, and after satisfying the probate court of the county in 8103
which ~~such lands the real property~~ or a part of ~~them~~ are it is 8104
situated, by an authenticated record of ~~his~~ appointment, that ~~he~~ 8105
the person or entity has been appointed trustee to execute the 8106
trust. 8107

Sec. 2129.30. ~~When~~ If necessary, the probate court of the 8108
county where the property affected by the trust is situated, on 8109
application by petition of the parties interested, may appoint a 8110
trustee to carry into effect a trust created by a foreign will. 8111
~~Such The~~ trustee, before entering upon ~~his the~~ trust, ~~must shall~~ 8112
give bond with ~~such the~~ security and in ~~such the~~ amount ~~as that~~ 8113

the court directs. 8114

Sec. 2131.08. (A) Subject to sections 1746.14, 1747.09, and 8115
2131.09 of the Revised Code, no interest in real or personal 8116
property shall be good unless it must vest, if at all, not later 8117
than twenty-one years after a life or lives in being at the 8118
creation of the interest. All estates given in tail, by deed or 8119
will, in ~~lands or tenements~~ real property lying within this state 8120
shall be and remain an absolute estate in fee simple to the issue 8121
of the first donee in tail. It is the intention by the adoption of 8122
this section to make effective in this state what is generally 8123
known as the common law rule against perpetuities, except as set 8124
forth in divisions (B) and (C) of this section. 8125

(B) For the purposes of this section and subject to sections 8126
1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the 8127
creation of an interest in real or personal property subject to a 8128
power reserved by the grantor to revoke or terminate the interest 8129
shall be the time at which the reserved power expires by reason of 8130
the death of the grantor, by release of the power, or otherwise. 8131

(C) Any interest in real or personal property that would 8132
violate the rule against perpetuities, under division (A) of this 8133
section, shall be reformed, within the limits of the rule, to 8134
approximate most closely the intention of the creator of the 8135
interest. In determining whether an interest would violate the 8136
rule and in reforming an interest, the period of perpetuities 8137
shall be measured by actual rather than possible events. 8138

(D) Divisions (B) and (C) of this section shall be effective 8139
with respect to interests in real or personal property created by 8140
wills of decedents dying after December 31, 1967, with respect to 8141
interests in real or personal property created by inter vivos 8142
instruments executed after December 31, 1967, and with respect to 8143
interests in real or personal property created by inter vivos 8144

instruments executed on or before December 31, 1967, that by 8145
reason of division (B) of this section will be treated as 8146
interests created after December 31, 1967. Divisions (B) and (C) 8147
of this section shall be effective with respect to interests in 8148
real or personal property created by the exercise of a power of 8149
appointment if divisions (B) and (C) of this section apply to the 8150
instrument that exercises the power, whether or not divisions (B) 8151
and (C) of this section apply to the instrument that creates the 8152
power. 8153

Sec. 2131.11. ~~When~~ If an investment share certificate, share 8154
account, deposit, or stock deposit is made, in any bank, building 8155
and loan or savings and loan association, credit union, or society 8156
for savings, payable to the owner during ~~his~~ the owner's lifetime, 8157
and to another on ~~his~~ the owner's death, ~~such~~ the investment share 8158
certificate, share account, deposit, or stock deposit ~~or~~, any part 8159
~~thereof~~ of that certificate, account, or deposit, or any interest 8160
or dividend ~~thereon~~ on the certificate, account, or deposit, may 8161
be paid to the owner during ~~his~~ the owner's lifetime, and on ~~his~~ 8162
the owner's death ~~such~~ the investment share certificate, share 8163
account, deposit, or stock deposit ~~or~~, any part ~~thereof~~ of that 8164
certificate, account, or deposit, or any interest or dividend 8165
~~thereon~~ on the certificate, account, or deposit, may be paid to 8166
the designated beneficiary, and the receipt of acquittance of the 8167
person paid is a sufficient release and discharge of the bank, 8168
building and loan or savings and loan association, credit union, 8169
or society for savings for any payment so made. 8170

Sec. 2133.04. (A) A declarant may revoke a declaration at any 8171
time and in any manner. The revocation shall be effective when the 8172
declarant expresses ~~his~~ an intention to revoke the declaration, 8173
except that, if the declarant made ~~his~~ the declarant's attending 8174
physician aware of the declaration, the revocation shall be 8175

effective upon its communication to the attending physician of the 8176
declarant by the declarant ~~himself~~, a witness to the revocation, 8177
or other health care personnel to whom the revocation is 8178
communicated by ~~such a~~ that witness. Absent actual knowledge to 8179
the contrary, the attending physician of a declarant and other 8180
health care personnel who are informed of the revocation of a 8181
declaration by an alleged witness may rely on the information and 8182
act in accordance with the revocation. 8183

(B) Upon the communication as described in division (A) of 8184
this section to the attending physician of a declarant of the fact 8185
that ~~his~~ the declaration has been revoked, the attending physician 8186
or other health care personnel acting under the direction of the 8187
attending physician shall make the fact a part of the declarant's 8188
medical record. 8189

Sec. 2133.05. (A) If the attending physician of a declarant 8190
and one other physician who examines the declarant determine that 8191
~~he~~ the declarant is in a terminal condition or in a permanently 8192
unconscious state, whichever is addressed in the declaration, if 8193
the attending physician additionally determines that the declarant 8194
no longer is able to make informed decisions regarding the 8195
administration of life-sustaining treatment for ~~himself~~ the 8196
declarant and that there is no reasonable possibility that the 8197
declarant will regain the capacity to make those informed 8198
decisions for ~~himself~~ the declarant, and if the attending 8199
physician is aware of the existence of the declarant's 8200
declaration, then the attending physician shall do all of the 8201
following: 8202

(1) Record the determinations, together with the terms of the 8203
declaration or any copy of the declaration acquired as described 8204
in division (C) of section 2133.02 of the Revised Code, in the 8205
declarant's medical record; 8206

(2)(a) Make a good faith effort, and use reasonable 8207
diligence, to notify either of the following of the 8208
determinations: 8209

(i) If the declarant designated in ~~his~~ the declarant's 8210
declaration one or more persons to be notified at any time that 8211
life-sustaining treatment would be withheld or withdrawn pursuant 8212
to the declaration, that person or those persons; 8213

(ii) If division (A)(2)(a)(i) of this section is not 8214
applicable, the appropriate individual or individuals, in 8215
accordance with the following descending order of priority: if 8216
any, the guardian of the declarant, but this division does not 8217
permit or require, and shall not be construed as permitting or 8218
requiring, the appointment of a guardian for the declarant; the 8219
declarant's spouse; the declarant's adult children who are 8220
available within a reasonable period of time for consultation with 8221
the declarant's attending physician; the declarant's parents; or 8222
an adult sibling of the declarant or, if there is more than one 8223
adult sibling, a majority of the declarant's adult siblings who 8224
are available within a reasonable period of time for ~~such~~ the 8225
consultation. 8226

(b) The attending physician shall record in the declarant's 8227
medical record the names of the individual or individuals notified 8228
pursuant to division (A)(2)(a) of this section and the manner of 8229
notification. 8230

(c) If, despite making a good faith effort, and despite using 8231
reasonable diligence, to notify the appropriate individual or 8232
individuals described in division (A)(2)(a) of this section, the 8233
attending physician cannot notify the individual or individuals of 8234
the determinations because the individual or individuals are 8235
deceased, cannot be located, or cannot be notified for some other 8236
reason, then the requirements of divisions (A)(2)(a) and (b) and 8237
(3) of this section and, except as provided in division (B)(1)(b) 8238

of this section, the provisions of division (B) of this section 8239
shall not apply in connection with the declarant and ~~his~~ the 8240
declarant's declaration. However, the attending physician shall 8241
record in the declarant's medical record information pertaining to 8242
the reason for the failure to provide the requisite notices and 8243
information pertaining to the nature of the good faith effort and 8244
reasonable diligence used. 8245

(3) Afford time for the individual or individuals notified in 8246
accordance with division (A)(2) of this section to object in the 8247
manner described in division (B)(1)(a) of this section. 8248

(B)(1)(a) Within forty-eight hours after receipt of a notice 8249
pursuant to division (A)(2) of this section, any individual so 8250
notified shall advise the attending physician of the declarant 8251
whether ~~he~~ the individual objects on a basis specified in division 8252
(B)(2)(c) of this section. If an objection as described in that 8253
division is communicated to the attending physician, then, within 8254
two business days after the communication, the individual shall 8255
file a complaint as described in division (B)(2) of this section 8256
in the probate court of the county in which the declarant is 8257
located. If the individual fails to so file a complaint, ~~his~~ the 8258
individual's objections as described in division (B)(2)(c) of this 8259
section shall be considered to be void. 8260

(b) Within forty-eight hours after a person described in 8261
division (A)(2)(a)(i) of this section or a priority individual or 8262
any member of a priority class of individuals described in 8263
division (A)(2)(a)(ii) of this section receives a notice pursuant 8264
to division (A)(2) of this section or within forty-eight hours 8265
after information pertaining to an unnotified person described in 8266
division (A)(2)(a)(i) of this section or an unnotified priority 8267
individual or unnotified priority class of individuals described 8268
in division (A)(2)(a)(ii) of this section is recorded in a 8269
declarant's medical record pursuant to division (A)(2)(c) of this 8270

section, either of the following shall advise the attending 8271
physician of the declarant whether ~~he or they object~~ there is an 8272
objection on a basis specified in division (B)(2)(c) of this 8273
section: 8274

(i) If a person described in division (A)(2)(a)(i) of this 8275
section was notified pursuant to division (A)(2) of this section 8276
or was the subject of a recordation under division (A)(2)(c) of 8277
this section, then the objection shall be communicated by the 8278
individual or a majority of the individuals in either of the first 8279
two classes of individuals that pertain to the declarant in the 8280
descending order of priority set forth in division (A)(2)(a)(ii) 8281
of this section. 8282

(ii) If an individual or individuals in the descending order 8283
of priority set forth in division (A)(2)(a)(ii) of this section 8284
were notified pursuant to division (A)(2) of this section or were 8285
the subject of a recordation under division (A)(2)(c) of this 8286
section, then the objection shall be communicated by the 8287
individual or a majority of the individuals in the next class of 8288
individuals that pertains to the declarant in the descending order 8289
of priority set forth in division (A)(2)(a)(ii) of this section. 8290

If an objection as described in division (B)(2)(c) of this 8291
section is communicated to the attending physician in accordance 8292
with division (B)(1)(b)(i) or (ii) of this section, then, within 8293
two business days after the communication, the objecting 8294
individual or majority shall file a complaint as described in 8295
division (B)(2) of this section in the probate court of the county 8296
in which the declarant is located. If the objecting individual or 8297
majority fails to file a complaint, ~~his or their~~ the objections as 8298
described in division (B)(2)(c) of this section shall be 8299
considered to be void. 8300

(2) A complaint of an individual that is filed in accordance 8301
with division (B)(1)(a) of this section or of an individual or 8302

majority of individuals that is filed in accordance with division 8303
(B)(1)(b) of this section shall satisfy all of the following: 8304

(a) Name any health care facility in which the declarant is 8305
confined; 8306

(b) Name the declarant, ~~his~~ the declarant's attending 8307
physician, and the consulting physician associated with the 8308
determination that the declarant is in a terminal condition or in 8309
a permanently unconscious state, whichever is addressed in the 8310
declaration; 8311

(c) Indicate whether the plaintiff or plaintiffs object on 8312
one or more of the following bases: 8313

(i) To the attending physician's and consulting physician's 8314
determinations that the declarant is in a terminal condition or in 8315
a permanently unconscious state, whichever is addressed in the 8316
declaration; 8317

(ii) To the attending physician's determination that the 8318
declarant no longer is able to make informed decisions regarding 8319
the administration of life-sustaining treatment; 8320

(iii) To the attending physician's determination that there 8321
is no reasonable possibility that the declarant will regain the 8322
capacity to make informed decisions regarding the administration 8323
of life-sustaining treatment; 8324

(iv) That the course of action proposed to be undertaken by 8325
the attending physician is not authorized by the declarant's 8326
declaration; 8327

(v) That the declaration was executed when the declarant was 8328
not of sound mind or was under or subject to duress, fraud, or 8329
undue influence; 8330

(vi) That the declaration otherwise does not substantially 8331
comply with this chapter. 8332

(d) Request the probate court to issue one of the following 8333
types of orders: 8334

(i) An order to the attending physician to reevaluate, in 8335
light of the court proceedings, the determination that the 8336
declarant is in a terminal condition or in a permanently 8337
unconscious state, whichever is addressed in the declaration, the 8338
determination that the declarant no longer is able to make 8339
informed decisions regarding the administration of life-sustaining 8340
treatment, the determination that there is no reasonable 8341
possibility that the declarant will regain the capacity to make 8342
those informed decisions, or the course of action proposed to be 8343
undertaken; 8344

(ii) An order invalidating the declaration because it was 8345
executed when the declarant was not of sound mind or was under or 8346
subject to duress, fraud, or undue influence, or because it 8347
otherwise does not substantially comply with this chapter; 8348

(e) Be accompanied by an affidavit of the plaintiff or 8349
plaintiffs that includes averments relative to whether ~~he~~ the 8350
plaintiff is an individual or ~~they~~ the plaintiffs are individuals 8351
as described in division (A)(2)(a)(i) or (ii) of this section and 8352
to the factual basis for ~~his~~ the plaintiff's or ~~their~~ the 8353
plaintiffs' objections; 8354

(f) Name any individuals who were notified by the attending 8355
physician in accordance with division (A)(2)(a) of this section 8356
and who are not joining in the complaint as plaintiffs; 8357

(g) Name, in the caption of the complaint, as defendants the 8358
attending physician of the declarant, the consulting physician 8359
associated with the determination that the declarant is in a 8360
terminal condition or in a permanently unconscious state, 8361
whichever is addressed in the declaration, any health care 8362
facility in which the declarant is confined, and any individuals 8363

who were notified by the attending physician in accordance with 8364
division (A)(2)(a) of this section and who are not joining in the 8365
complaint as plaintiffs. 8366

(3) Notwithstanding any contrary provision of the Revised 8367
Code or of the Rules of Civil Procedure, the state and persons 8368
other than an objecting individual as described in division 8369
(B)(1)(a) of this section, other than an objecting individual or 8370
majority of individuals as described in division (B)(2)(b)(i) or 8371
(ii) of this section, and other than persons described in division 8372
(B)(2)(g) of this section are prohibited from commencing a civil 8373
action under this section and from joining or being joined as 8374
parties to an action commenced under this section, including 8375
joining by way of intervention. 8376

(4)(a) A probate court in which a complaint as described in 8377
division (B)(2) of this section is filed within the period 8378
specified in division (B)(1)(a) or (b) of this section shall 8379
conduct a hearing on the complaint after a copy of the complaint 8380
and a notice of the hearing have been served upon the defendants. 8381
The clerk of the probate court in which the complaint is filed 8382
shall cause the complaint and the notice of the hearing to be so 8383
served in accordance with the Rules of Civil Procedure, which 8384
service shall be made, if possible, within three days after the 8385
filing of the complaint. The hearing shall be conducted at the 8386
earliest possible time, but no later than the third business day 8387
after ~~such~~ the service has been completed. Immediately following 8388
the hearing, the court shall enter on its journal its 8389
determination whether a requested order will be issued. 8390

(b) If the declarant's declaration authorized the use or 8391
continuation of life-sustaining treatment should ~~he~~ the declarant 8392
be in a terminal condition or in a permanently unconscious state 8393
and if the plaintiff or plaintiffs requested a reevaluation order 8394
to the attending physician of the declarant as described in 8395

division (B)(2)(d)(i) of this section, the court shall issue the reevaluation order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards.

(c) If the declarant's declaration authorized the withholding or withdrawal of life-sustaining treatment should ~~he~~ the declarant be in a terminal condition or in a permanently unconscious state and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the declarant as described in division (B)(2)(d)(i) of this section, the court shall issue the reevaluation order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by a preponderance of the evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards.

(d) If the plaintiff or plaintiffs requested an invalidation order as described in division (B)(2)(d)(ii) of this section, the court shall issue the order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence.

(e) If the court issues a reevaluation order to the declarant's attending physician pursuant to division (B)(4)(b) or (c) of this section, then the attending physician shall make the requisite reevaluation. If, after doing so, the attending physician again determines that the declarant is in a terminal condition or in a permanently unconscious state, that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment, that there is no reasonable possibility that the declarant will regain the capacity to make those informed decisions, or that ~~he~~ the attending

physician would undertake the same proposed course of action, then 8428
he the attending physician shall notify the court in writing of 8429
the determination and comply with the provisions of section 8430
2133.10 of the Revised Code. 8431

Sec. 2133.06. (A) As long as a qualified patient is able to 8432
make informed decisions regarding the administration of 8433
life-sustaining treatment, ~~he~~ the qualified patient may continue 8434
to do so. 8435

(B) Life-sustaining treatment shall not be withheld or 8436
withdrawn from a declarant pursuant to a declaration if ~~she~~ the 8437
declarant is pregnant and if the withholding or withdrawal of the 8438
treatment would terminate the pregnancy, unless the declarant's 8439
attending physician and one other physician who has examined the 8440
declarant determine, to a reasonable degree of medical certainty 8441
and in accordance with reasonable medical standards, that the 8442
fetus would not be born alive. 8443

Sec. 2133.08. (A)(1) If written consent to the withholding or 8444
withdrawal of life-sustaining treatment, witnessed by two 8445
individuals who satisfy the witness eligibility criteria set forth 8446
in division (B)(1) of section 2133.02 of the Revised Code, is 8447
given by the appropriate individual or individuals as specified in 8448
division (B) of this section to the attending physician of a 8449
patient who is an adult, and if all of the following apply in 8450
connection with the patient, then, subject to section 2133.09 of 8451
the Revised Code, ~~his~~ the patient's attending physician may 8452
withhold or withdraw the life-sustaining treatment: 8453

(a) The attending physician and one other physician who 8454
examines the patient determine, in good faith, to a reasonable 8455
degree of medical certainty, and in accordance with reasonable 8456
medical standards, that the patient is in a terminal condition or 8457

the patient currently is and for at least the immediately 8458
preceding twelve months has been in a permanently unconscious 8459
state, and the attending physician additionally determines, in 8460
good faith, to a reasonable degree of medical certainty, and in 8461
accordance with reasonable medical standards, that the patient no 8462
longer is able to make informed decisions regarding the 8463
administration of life-sustaining treatment and that there is no 8464
reasonable possibility that the patient will regain the capacity 8465
to make those informed decisions. 8466

(b) The patient does not have a declaration that addresses 8467
~~his~~ the patient's intent should ~~he~~ the patient be determined to be 8468
in a terminal condition or in a permanently unconscious state, 8469
whichever applies, or a durable power of attorney for health care, 8470
or has a document that purports to be such a declaration or 8471
durable power of attorney for health care but that document is not 8472
legally effective. 8473

(c) The consent of the appropriate individual or individuals 8474
is given after consultation with the patient's attending physician 8475
and after receipt of information from the patient's attending 8476
physician or a consulting physician that is sufficient to satisfy 8477
the requirements of informed consent. 8478

(d) The appropriate individual or individuals who give a 8479
consent are of sound mind and voluntarily give the consent. 8480

(e) If a consent would be given under division (B)(3) of this 8481
section, the attending physician made a good faith effort, and 8482
used reasonable diligence, to notify the patient's adult children 8483
who are available within a reasonable period of time for 8484
consultation as described in division (A)(1)(c) of this section. 8485

(2) The consulting physician under division (A)(1)(a) of this 8486
section associated with a patient allegedly in a permanently 8487
unconscious state shall be a physician who, by virtue of advanced 8488

education or training, of a practice limited to particular 8489
diseases, illnesses, injuries, therapies, or branches of medicine 8490
or surgery or osteopathic medicine and surgery, of certification 8491
as a specialist in a particular branch of medicine or surgery or 8492
osteopathic medicine and surgery, or of experience acquired in the 8493
practice of medicine or surgery or osteopathic medicine and 8494
surgery, is qualified to determine whether the patient currently 8495
is and for at least the immediately preceding twelve months has 8496
been in a permanently unconscious state. 8497

(B) For purposes of division (A) of this section, a consent 8498
to withhold or withdraw life-sustaining treatment may be given by 8499
the appropriate individual or individuals, in accordance with the 8500
following descending order of priority: 8501

(1) If any, the guardian of the patient. This division does 8502
not permit or require, and shall not be construed as permitting or 8503
requiring, the appointment of a guardian for the patient. 8504

(2) The patient's spouse; 8505

(3) An adult child of the patient or, if there is more than 8506
one adult child, a majority of the patient's adult children who 8507
are available within a reasonable period of time for consultation 8508
with the patient's attending physician; 8509

(4) The patient's parents; 8510

(5) An adult sibling of the patient or, if there is more than 8511
one adult sibling, a majority of the patient's adult siblings who 8512
are available within a reasonable period of time for ~~such~~ that 8513
consultation; 8514

(6) The nearest adult who is not described in divisions 8515
(B)(1) to (5) of this section, who is related to the patient by 8516
blood or adoption, and who is available within a reasonable period 8517
of time for ~~such~~ that consultation. 8518

(C) If an appropriate individual or class of individuals 8519
entitled to decide under division (B) of this section whether or 8520
not to consent to the withholding or withdrawal of life-sustaining 8521
treatment for a patient is not available within a reasonable 8522
period of time for ~~such~~ the consultation and competent to so 8523
decide, or declines to so decide, then the next priority 8524
individual or class of individuals specified in that division is 8525
authorized to make the decision. However, an equal division in a 8526
priority class of individuals under that division does not 8527
authorize the next class of individuals specified in that division 8528
to make the decision. If an equal division in a priority class of 8529
individuals under that division occurs, no written consent to the 8530
withholding or withdrawal of life-sustaining treatment from the 8531
patient can be given pursuant to this section. 8532

(D)(1) A decision to consent pursuant to this section to the 8533
use or continuation, or the withholding or withdrawal, of 8534
life-sustaining treatment for a patient shall be made in good 8535
faith. 8536

(2) Except as provided in division (D)(4) of this section, if 8537
the patient previously expressed ~~his~~ an intention with respect to 8538
the use or continuation, or the withholding or withdrawal, of 8539
life-sustaining treatment should ~~he~~ the patient subsequently be in 8540
a terminal condition or in a permanently unconscious state, 8541
whichever applies, and no longer able to make informed decisions 8542
regarding the administration of life-sustaining treatment, a 8543
consent given pursuant to this section shall be valid only if it 8544
is consistent with that previously expressed intention. 8545

(3) Except as provided in division (D)(4) of this section, if 8546
the patient did not previously express ~~his~~ an intention with 8547
respect to the use or continuation, or the withholding or 8548
withdrawal, of life-sustaining treatment should ~~he~~ the patient 8549
subsequently be in a terminal condition or in a permanently 8550

unconscious state, whichever applies, and no longer able to make 8551
informed decisions regarding the administration of life-sustaining 8552
treatment, a consent given pursuant to this section shall be valid 8553
only if it is consistent with the type of informed consent 8554
decision that the patient would have made if ~~he~~ the patient 8555
previously had expressed ~~his~~ an intention with respect to the use 8556
or continuation, or the withholding or withdrawal, of 8557
life-sustaining treatment should ~~he~~ the patient subsequently be in 8558
a terminal condition or in a permanently unconscious state, 8559
whichever applies, and no longer able to make informed decisions 8560
regarding the administration of life-sustaining treatment, as 8561
inferred from the lifestyle and character of the patient, and from 8562
any other evidence of the desires of the patient, prior to ~~his~~ the 8563
patient's becoming no longer able to make informed decisions 8564
regarding the administration of life-sustaining treatment. The 8565
Rules of Evidence shall not be binding for purposes of this 8566
division. 8567

(4)(a) The attending physician of the patient, and other 8568
health care personnel acting under the direction of the attending 8569
physician, who do not have actual knowledge of a previously 8570
expressed intention as described in division (D)(2) of this 8571
section or who do not have actual knowledge that the patient would 8572
have made a different type of informed consent decision under the 8573
circumstances described in division (D)(3) of this section, may 8574
rely on a consent given in accordance with this section unless a 8575
probate court decides differently under division (E) of this 8576
section. 8577

(b) The immunity conferred by division (C)(1) of section 8578
2133.11 of the Revised Code is not forfeited by an individual who 8579
gives a consent to the use or continuation, or the withholding or 8580
withdrawal, of life-sustaining treatment for a patient under 8581
division (B) of this section if the individual gives the consent 8582

in good faith and without actual knowledge, at the time of giving 8583
the consent, of either a contrary previously expressed intention 8584
of the patient, or a previously expressed intention of the 8585
patient, as described in division (D)(2) of this section, that is 8586
revealed to the individual subsequent to the time of giving the 8587
consent. 8588

(E)(1) Within forty-eight hours after a priority individual 8589
or class of individuals gives a consent pursuant to this section 8590
to the use or continuation, or the withholding or withdrawal, of 8591
life-sustaining treatment and communicates the consent to the 8592
patient's attending physician, any individual described in 8593
divisions (B)(1) to (5) of this section who objects to the 8594
application of this section to the patient shall advise the 8595
attending physician of the grounds for the objection. If an 8596
objection is so communicated to the attending physician, then, 8597
within two business days after that communication, the objecting 8598
individual shall file a complaint against the priority individual 8599
or class of individuals, the patient's attending physician, and 8600
the consulting physician associated with the determination that 8601
the patient is in a terminal condition or that the patient 8602
currently is and for at least the immediately preceding twelve 8603
months has been in a permanently unconscious state, in the probate 8604
court of the county in which the patient is located for the 8605
issuance of an order reversing the consent of the priority 8606
individual or class of individuals. If the objecting individual 8607
fails to so file a complaint, ~~his~~ the individual's objections 8608
shall be considered to be void. 8609

A probate court in which a complaint is filed in accordance 8610
with this division shall conduct a hearing on the complaint after 8611
a copy of the complaint and a notice of the hearing have been 8612
served upon the defendants. The clerk of the probate court in 8613
which the complaint is filed shall cause the complaint and the 8614

notice of the hearing to be so served in accordance with the Rules 8615
of Civil Procedure, which service shall be made, if possible, 8616
within three days after the filing of the complaint. The hearing 8617
shall be conducted at the earliest possible time, but no later 8618
than the third business day after ~~such~~ the service has been 8619
completed. Immediately following the hearing, the court shall 8620
enter on its journal its determination whether the decision of the 8621
priority individual or class of individuals to consent to the use 8622
or continuation, or the withholding or withdrawal, of 8623
life-sustaining treatment in connection with the patient will be 8624
confirmed or reversed. 8625

(2) If the decision of the priority individual or class of 8626
individuals was to consent to the use or continuation of 8627
life-sustaining treatment in connection with the patient, the 8628
court only may reverse that consent if the objecting individual 8629
establishes, by clear and convincing evidence and, if applicable, 8630
to a reasonable degree of medical certainty and in accordance with 8631
reasonable medical standards, one or more of the following: 8632

(a) The patient is able to make informed decisions regarding 8633
the administration of life-sustaining treatment. 8634

(b) The patient has a legally effective declaration that 8635
addresses ~~his~~ the patient's intent should ~~he~~ the patient be 8636
determined to be in a terminal condition or in a permanently 8637
unconscious state, whichever applies, or a legally effective 8638
durable power of attorney for health care. 8639

(c) The decision to use or continue life-sustaining treatment 8640
is not consistent with the previously expressed intention of the 8641
patient as described in division (D)(2) of this section. 8642

(d) The decision to use or continue life-sustaining treatment 8643
is not consistent with the type of informed consent decision that 8644
the patient would have made if ~~he~~ the patient previously had 8645

expressed ~~his~~ an intention with respect to the use or 8646
continuation, or the withholding or withdrawal, of life-sustaining 8647
treatment should ~~he~~ the patient subsequently be in a terminal 8648
condition or in a permanently unconscious state, whichever 8649
applies, and no longer able to make informed decisions regarding 8650
the administration of life-sustaining treatment as described in 8651
division (D)(3) of this section. 8652

(e) The decision of the priority individual or class of 8653
individuals was not made after consultation with the patient's 8654
attending physician and after receipt of information from the 8655
patient's attending physician or a consulting physician that is 8656
sufficient to satisfy the requirements of informed consent. 8657

(f) The priority individual, or any member of the priority 8658
class of individuals, who made the decision to use or continue 8659
life-sustaining treatment was not of sound mind or did not 8660
voluntarily make the decision. 8661

(g) If the decision of a priority class of individuals under 8662
division (B)(3) of this section is involved, the patient's 8663
attending physician did not make a good faith effort, and use 8664
reasonable diligence, to notify the patient's adult children who 8665
were available within a reasonable period of time for consultation 8666
as described in division (A)(1)(c) of this section. 8667

(h) The decision of the priority individual or class of 8668
individuals otherwise was made in a manner that does not comply 8669
with this section. 8670

(3) If the decision of the priority individual or class of 8671
individuals was to consent to the withholding or withdrawal of 8672
life-sustaining treatment in connection with the patient, the 8673
court only may reverse that consent if the objecting individual 8674
establishes, by a preponderance of the evidence and, if 8675
applicable, to a reasonable degree of medical certainty and in 8676

accordance with reasonable medical standards, one or more of the 8677
following: 8678

(a) The patient is not in a terminal condition, the patient 8679
is not in a permanently unconscious state, or the patient has not 8680
been in a permanently unconscious state for at least the 8681
immediately preceding twelve months. 8682

(b) The patient is able to make informed decisions regarding 8683
the administration of life-sustaining treatment. 8684

(c) There is a reasonable possibility that the patient will 8685
regain the capacity to make informed decisions regarding the 8686
administration of life-sustaining treatment. 8687

(d) The patient has a legally effective declaration that 8688
addresses ~~his~~ the patient's intent should ~~he~~ the patient be 8689
determined to be in a terminal condition or in a permanently 8690
unconscious state, whichever applies, or a legally effective 8691
durable power of attorney for health care. 8692

(e) The decision to withhold or withdraw life-sustaining 8693
treatment is not consistent with the previously expressed 8694
intention of the patient as described in division (D)(2) of this 8695
section. 8696

(f) The decision to withhold or withdraw life-sustaining 8697
treatment is not consistent with the type of informed consent 8698
decision that the patient would have made if ~~he~~ the patient 8699
previously had expressed ~~his~~ an intention with respect to the use 8700
or continuation, or the withholding or withdrawal, of 8701
life-sustaining treatment should ~~he~~ the patient subsequently be in 8702
a terminal condition or in a permanently unconscious state, 8703
whichever applies, and no longer able to make informed decisions 8704
regarding the administration of life-sustaining treatment as 8705
described in division (D)(3) of this section. 8706

(g) The decision of the priority individual or class of 8707

individuals was not made after consultation with the patient's 8708
attending physician and after receipt of information from the 8709
patient's attending physician or a consulting physician that is 8710
sufficient to satisfy the requirements of informed consent. 8711

(h) The priority individual, or any member of the priority 8712
class of individuals, who made the decision to withhold or 8713
withdraw life-sustaining treatment was not of sound mind or did 8714
not voluntarily make the decision. 8715

(i) If the decision of a priority class of individuals under 8716
division (B)(3) of this section is involved, the patient's 8717
attending physician did not make a good faith effort, and use 8718
reasonable diligence, to notify the patient's adult children who 8719
were available within a reasonable period of time for consultation 8720
as described in division (A)(1)(c) of this section. 8721

(j) The decision of the priority individual or class of 8722
individuals otherwise was made in a manner that does not comply 8723
with this section. 8724

(4) Notwithstanding any contrary provision of the Revised 8725
Code or of the Rules of Civil Procedure, the state and persons 8726
other than individuals described in divisions (B)(1) to (5) of 8727
this section are prohibited from filing a complaint under division 8728
(E) of this section and from joining or being joined as parties to 8729
a hearing conducted under division (E) of this section, including 8730
joining by way of intervention. 8731

(F) A valid consent given in accordance with this section 8732
supersedes any general consent to treatment form signed by or on 8733
behalf of the patient prior to, upon, or after ~~his~~ the patient's 8734
admission to a health care facility to the extent there is a 8735
conflict between the consent and the form. 8736

(G) Life-sustaining treatment shall not be withheld or 8737
withdrawn from a patient pursuant to a consent given in accordance 8738

with this section if ~~she~~ the patient is pregnant and if the 8739
withholding or withdrawal of the treatment would terminate the 8740
pregnancy, unless the patient's attending physician and one other 8741
physician who has examined the patient determine, to a reasonable 8742
degree of medical certainty and in accordance with reasonable 8743
medical standards, that the fetus would not be born alive. 8744

Sec. 2133.09. (A) The attending physician of a patient who is 8745
an adult and who currently is and for at least the immediately 8746
preceding twelve months has been in a permanently unconscious 8747
state may withhold or withdraw nutrition and hydration in 8748
connection with the patient only if all of the following apply: 8749

(1) Written consent to the withholding or withdrawal of 8750
life-sustaining treatment in connection with the patient has been 8751
given by an appropriate individual or individuals in accordance 8752
with section 2133.08 of the Revised Code, and divisions (A)(1)(a) 8753
to (e) and (2) of that section have been satisfied. 8754

(2) A probate court has not reversed the consent to the 8755
withholding or withdrawal of life-sustaining treatment in 8756
connection with the patient pursuant to division (E) of section 8757
2133.08 of the Revised Code. 8758

(3) The attending physician of the patient and one other 8759
physician as described in division (A)(2) of section 2133.08 of 8760
the Revised Code who examines the patient determine, in good 8761
faith, to a reasonable degree of medical certainty, and in 8762
accordance with reasonable medical standards, that nutrition and 8763
hydration will not or no longer will provide comfort or alleviate 8764
pain in connection with the patient. 8765

(4) Written consent to the withholding or withdrawal of 8766
nutrition and hydration in connection with the patient, witnessed 8767
by two individuals who satisfy the witness eligibility criteria 8768
set forth in division (B)(1) of section 2133.02 of the Revised 8769

Code, is given to the attending physician of the patient by an 8770
appropriate individual or individuals as specified in division (B) 8771
of section 2133.08 of the Revised Code. 8772

(5) The written consent to the withholding or withdrawal of 8773
the nutrition and hydration in connection with the patient is 8774
given in accordance with division (B) of this section. 8775

(6) The probate court of the county in which the patient is 8776
located issues an order to withhold or withdraw the nutrition and 8777
hydration in connection with the patient pursuant to division (C) 8778
of this section. 8779

(B)(1) A decision to consent pursuant to this section to the 8780
withholding or withdrawal of nutrition and hydration in connection 8781
with a patient shall be made in good faith. 8782

(2) Except as provided in division (B)(4) of this section, if 8783
the patient previously expressed ~~his~~ an intention with respect to 8784
the use or continuation, or the withholding or withdrawal, of 8785
nutrition and hydration should ~~he~~ the patient subsequently be in a 8786
permanently unconscious state and no longer able to make informed 8787
decisions regarding the administration of nutrition and hydration, 8788
a consent given pursuant to this section shall be valid only if it 8789
is consistent with that previously expressed intention. 8790

(3) Except as provided in division (B)(4) of this section, if 8791
the patient did not previously express ~~his~~ an intention with 8792
respect to the use or continuation, or the withholding or 8793
withdrawal, of nutrition and ~~hydration~~ hydration should ~~he~~ the 8794
patient subsequently be in a permanently unconscious state and no 8795
longer able to make informed decisions regarding the 8796
administration of nutrition and hydration, a consent given 8797
pursuant to this section shall be valid only if it is consistent 8798
with the type of informed consent decision that the patient would 8799
have made if ~~he~~ the patient previously had expressed ~~his~~ an 8800

intention with respect to the use or continuation, or the 8801
withholding or withdrawal, of nutrition and hydration should ~~he~~ 8802
the patient subsequently be in a permanently unconscious state and 8803
no longer able to make informed decisions regarding the 8804
administration of nutrition and hydration, as inferred from the 8805
lifestyle and character of the patient, and from any other 8806
evidence of the desires of the patient, prior to ~~his~~ the patient's 8807
becoming no longer able to make informed decisions regarding the 8808
administration of nutrition and hydration. The Rules of Evidence 8809
shall not be binding for purposes of this division. 8810

(4)(a) The attending physician of the patient, and other 8811
health care personnel acting under the direction of the attending 8812
physician, who do not have actual knowledge of a previously 8813
expressed intention as described in division (B)(2) of this 8814
section or who do not have actual knowledge that the patient would 8815
have made a different type of informed consent decision under the 8816
circumstances described in division (B)(3) of this section, may 8817
rely on a consent given in accordance with this section unless a 8818
probate court decides differently under division (C) of this 8819
section. 8820

(b) The immunity conferred by division (C)(2) of section 8821
2133.11 of the Revised Code is not forfeited by an individual who 8822
gives a consent to the withholding or withdrawal of nutrition and 8823
hydration in connection with a patient under division (A)(4) of 8824
this section if the individual gives the consent in good faith and 8825
without actual knowledge, at the time of giving the consent, of 8826
either a contrary previously expressed intention of the patient, 8827
or a previously expressed intention of the patient, as described 8828
in ~~division~~ division (B)(2) of this section, that is revealed to 8829
the individual subsequent to the time of giving the consent. 8830

(C)(1) Prior to the withholding or withdrawal of nutrition 8831
and hydration in connection with a patient pursuant to this 8832

section, the priority individual or class of individuals that 8833
consented to the withholding or withdrawal of the nutrition and 8834
hydration shall apply to the probate court of the county in which 8835
the patient is located for the issuance of an order that 8836
authorizes the attending physician of the patient to commence the 8837
withholding or withdrawal of the nutrition and hydration in 8838
connection with the patient. Upon the filing of the application, 8839
the clerk of the probate court shall schedule a hearing on it and 8840
cause a copy of it and a notice of the hearing to be served in 8841
accordance with the Rules of Civil Procedure upon the applicant, 8842
the attending physician, the consulting physician associated with 8843
the determination that nutrition and hydration will not or no 8844
longer will provide comfort or alleviate pain in connection with 8845
the patient, and the individuals described in divisions (B)(1) to 8846
(5) of section 2133.08 of the Revised Code who are not applicants, 8847
which service shall be made, if possible, within three days after 8848
the filing of the application. The hearing shall be conducted at 8849
the earliest possible time, but no sooner than the thirtieth 8850
business day, and no later than the sixtieth business day, after 8851
~~such~~ the service has been completed. 8852

At the hearing, any individual described in divisions (B)(1) 8853
to (5) of section 2133.08 of the Revised Code who is not an 8854
applicant and who disagrees with the decision of the priority 8855
individual or class of individuals to consent to the withholding 8856
or withdrawal of nutrition and hydration in connection with the 8857
patient shall be permitted to testify and present evidence 8858
relative to the use or continuation of nutrition and hydration in 8859
connection with the patient. Immediately following the hearing, 8860
the court shall enter on its journal its determination whether the 8861
requested order will be issued. 8862

(2) The court shall issue an order that authorizes the 8863
patient's attending physician to commence the withholding or 8864

withdrawal of nutrition and hydration in connection with the 8865
patient only if the applicants establish, by clear and convincing 8866
evidence, to a reasonable degree of medical certainty, and in 8867
accordance with reasonable medical standards, all of the 8868
following: 8869

(a) The patient currently is and for at least the immediately 8870
preceding twelve months has been in a permanently unconscious 8871
state. 8872

(b) The patient no longer is able to make informed decisions 8873
regarding the administration of life-sustaining treatment. 8874

(c) There is no reasonable possibility that the patient will 8875
regain the capacity to make informed decisions regarding the 8876
administration of life-sustaining treatment. 8877

(d) The conditions specified in divisions (A)(1) to (4) of 8878
this section have been satisfied. 8879

(e) The decision to withhold or withdraw nutrition and 8880
hydration in connection with the patient is consistent with the 8881
previously expressed intention of the patient as described in 8882
division (B)(2) of this section or is consistent with the type of 8883
informed consent decision that the patient would have made if ~~he~~ 8884
the patient previously had expressed ~~his~~ an intention with respect 8885
to the use or continuation, or the withholding or withdrawal, of 8886
nutrition and hydration should ~~he~~ the patient subsequently be in a 8887
permanently unconscious state and no longer able to make informed 8888
decisions regarding the administration of nutrition and hydration 8889
as described in division (B)(3) of this section. 8890

(3) Notwithstanding any contrary provision of the Revised 8891
Code or of the Rules of Civil Procedure, the state and persons 8892
other than individuals described in division (A)(4) of this 8893
section or in divisions (B)(1) to (5) of section 2133.08 of the 8894
Revised Code and other than the attending physician and consulting 8895

physician associated with the determination that nutrition and 8896
hydration will not or no longer will provide comfort or alleviate 8897
pain in connection with the patient are prohibited from filing an 8898
application under this division and from joining or being joined 8899
as parties to a hearing conducted under this division, including 8900
joining by way of intervention. 8901

(D) A valid consent given in accordance with this section 8902
supersedes any general consent to treatment form signed by or on 8903
behalf of the patient prior to, upon, or after ~~his~~ the patient's 8904
admission to a health care facility to the extent there is a 8905
conflict between the consent and the form. 8906

Sec. 2151.13. The juvenile judge may appoint such bailiffs, 8907
probation officers, and other employees as are necessary and may 8908
designate their titles and fix their duties, compensation, and 8909
expense allowances. The juvenile court may by entry on its journal 8910
authorize any deputy clerk to administer oaths when necessary in 8911
the discharge of ~~his~~ the deputy clerk's duties. Such employees 8912
shall serve during the pleasure of the judge. 8913

The compensation and expenses of all employees and the salary 8914
and expenses of the judge shall be paid in semimonthly 8915
installments by the county treasurer from the money appropriated 8916
for the operation of the court, upon the warrant of the county 8917
auditor, certified to by the judge. 8918

The judge may require any employee to give bond in the sum of 8919
not less than one thousand dollars, conditioned for the honest and 8920
faithful performance of ~~his~~ the employee's duties. The sureties on 8921
such bonds shall be approved in the manner provided by section 8922
2151.12 of the Revised Code. The judge shall not be personally 8923
liable for the default, misfeasance, or nonfeasance of any 8924
employee ~~from whom a bond has been required.~~ 8925

Sec. 2335.34. On the first Monday of January, each year, the 8926
clerk of each court of common pleas and court of appeals, each 8927
probate judge, and each sheriff shall make two certified lists of 8928
causes in which money has been paid and has remained in the hands 8929
of ~~such that~~ person or in the hands of a former clerk, probate 8930
judge, or sheriff, for one year next preceding ~~such that~~ first 8931
Monday of January. ~~Such~~ The lists shall designate the amount of 8932
money and in whose hands it remains. One list shall be set up in a 8933
conspicuous place by ~~such the~~ officer, in ~~his~~ the officer's 8934
office, for the period of thirty days, and the other list shall be 8935
posted at ~~or on the door~~ a public area of the courthouse or 8936
published on the web site of the court or officer, on the second 8937
Monday of January, for the same period of time. 8938

Sec. 3101.02. Any consent required under section 3101.01 of 8939
the Revised Code shall be personally given before the probate 8940
judge or a deputy clerk of the probate court, or certified under 8941
the hand of the person consenting, by two witnesses, one of whom 8942
~~must~~ shall appear before the judge and make oath that ~~he~~ the 8943
witness saw the person whose name is annexed to the certificate 8944
subscribe it, or heard ~~him~~ the person consenting acknowledge it. 8945

Sec. 3101.03. If the parent or guardian of a minor is a 8946
nonresident of, or is absent from, the county in which the 8947
marriage license is applied for, ~~he~~ the parent or guardian 8948
personally may appear before the official upon whose authority 8949
marriage licenses are issued, in the county in which ~~he~~ the parent 8950
or guardian is at the time domiciled, and give ~~his~~ consent in 8951
writing to ~~such that~~ marriage. The consent ~~must~~ shall be attested 8952
to by two witnesses, certified to by ~~such that~~ official, and 8953
forwarded to the probate judge of the county in which the license 8954
is applied for. The probate judge may administer any oath 8955

required, issue and sign ~~such~~ the license, and affix the seal of 8956
the probate court. 8957

Sec. 3101.10. A minister upon producing to the secretary of 8958
state, credentials of ~~his~~ the minister's being a regularly 8959
ordained or licensed minister of any religious society or 8960
congregation, shall be entitled to receive from the secretary of 8961
state a license authorizing ~~him~~ the minister to solemnize 8962
marriages in this state so long as ~~he~~ the minister continues as a 8963
regular minister in ~~such~~ that society or congregation. A minister 8964
shall produce for inspection ~~his~~ the minister's license to 8965
solemnize marriages upon demand of any party to a marriage at 8966
which ~~he~~ the minister officiates or proposes to officiate or upon 8967
demand of any probate judge. 8968

Sec. 3101.13. Except as otherwise provided in this section, a 8969
certificate of every marriage solemnized shall be transmitted by 8970
the authorized person solemnizing the marriage, within thirty days 8971
after the solemnization, to the probate judge of the county in 8972
which the marriage license was issued. If, in accordance with 8973
section 2101.27 of the Revised Code, a probate judge solemnizes a 8974
marriage and if the probate judge issued the marriage license to 8975
the husband and wife, ~~he~~ the probate judge shall file a 8976
certificate of that solemnized marriage in ~~his~~ the probate judge's 8977
office within thirty days after the solemnization. All ~~such~~ of the 8978
transmitted and filed certificates shall be consecutively numbered 8979
and recorded in the order in which they are received. 8980

Sec. 3101.14. Every marriage license shall have printed upon 8981
it in prominent type the notice that, unless the person 8982
solemnizing the marriage returns a certificate of the solemnized 8983
marriage to the probate court that issued the marriage license 8984
within thirty days after performing the ceremony, or, if the 8985

person solemnizing the marriage is a probate judge who is acting 8986
in accordance with section 2101.27 of the Revised Code and who 8987
issued the marriage license to the husband and wife, unless ~~such a~~ 8988
~~that~~ probate judge files a certificate of the solemnized marriage 8989
in ~~his~~ the probate judge's office within thirty days after the 8990
solemnization, ~~he~~ the person or probate judge is guilty of a minor 8991
misdemeanor and, upon conviction, may be punished by a fine of 8992
fifty dollars. An envelope suitable for returning the certificate 8993
of marriage, and addressed to the proper probate court, shall be 8994
given with each license, except that this requirement does not 8995
apply if a marriage is to be solemnized by a probate judge who is 8996
acting in accordance with section 2101.27 of the Revised Code and 8997
who issued the marriage license to the husband and wife. 8998

Sec. 3313.85. If the board of education of any city, exempted 8999
village, or local school district or the governing board of any 9000
educational service center ~~fails to perform the duties imposed~~ 9001
~~upon it or~~ fails to fill a vacancy in ~~such~~ that board within a 9002
period of thirty days after ~~such~~ the vacancy occurs, the probate 9003
court of the county in which ~~such~~ the district or service center 9004
is located, upon being advised and satisfied of ~~such~~ that failure, 9005
shall act as ~~such~~ that board ~~and perform all duties imposed upon~~ 9006
~~such board~~ to fill any vacancy as promptly as possible. 9007

9008

Sec. 5111.113. (A) As used in this section: 9009

(1) "Adult care facility" has the same meaning as in section 9010
5119.70 of the Revised Code. 9011

(2) "Commissioner" means a person appointed by a probate 9012
court under division ~~(B)~~(E) of section 2113.03 of the Revised Code 9013
to act as a commissioner. 9014

(3) "Home" has the same meaning as in section 3721.10 of the 9015

Revised Code. 9016

(4) "Personal needs allowance account" means an account or 9017
petty cash fund that holds the money of a resident of an adult 9018
care facility or home and that the facility or home manages for 9019
the resident. 9020

(B) Except as provided in divisions (C) and (D) of this 9021
section, the owner or operator of an adult care facility or home 9022
shall transfer to the department of job and family services the 9023
money in the personal needs allowance account of a resident of the 9024
facility or home who was a recipient of the medical assistance 9025
program no earlier than sixty days but not later than ninety days 9026
after the resident dies. The adult care facility or home shall 9027
transfer the money even though the owner or operator of the 9028
facility or home has not been issued letters testamentary or 9029
letters of administration concerning the resident's estate. 9030

(C) If funeral or burial expenses for a resident of an adult 9031
care facility or home who has died have not been paid and the only 9032
resource the resident had that could be used to pay for the 9033
expenses is the money in the resident's personal needs allowance 9034
account, or all other resources of the resident are inadequate to 9035
pay the full cost of the expenses, the money in the resident's 9036
personal needs allowance account shall be used to pay for the 9037
expenses rather than being transferred to the department of job 9038
and family services pursuant to division (B) of this section. 9039

(D) If, not later than sixty days after a resident of an 9040
adult care facility or home dies, letters testamentary or letters 9041
of administration are issued, or an application for release from 9042
administration is filed under section 2113.03 of the Revised Code, 9043
concerning the resident's estate, the owner or operator of the 9044
facility or home shall transfer the money in the resident's 9045
personal needs allowance account to the administrator, executor, 9046
commissioner, or person who filed the application for release from 9047

administration. 9048

(E) The transfer or use of money in a resident's personal 9049
needs allowance account in accordance with division (B), (C), or 9050
(D) of this section discharges and releases the adult care 9051
facility or home, and the owner or operator of the facility or 9052
home, from any claim for the money from any source. 9053

(F) If, sixty-one or more days after a resident of an adult 9054
care facility or home dies, letters testamentary or letters of 9055
administration are issued, or an application for release from 9056
administration under section 2113.03 of the Revised Code is filed, 9057
concerning the resident's estate, the department of job and family 9058
services shall transfer the funds to the administrator, executor, 9059
commissioner, or person who filed the application, unless the 9060
department is entitled to recover the money under the medicaid 9061
estate recovery program instituted under section 5111.11 of the 9062
Revised Code. 9063

Section 2. That existing sections 2101.01, 2101.02, 2101.021, 9064
2101.03, 2101.04, 2101.06, 2101.07, 2101.08, 2101.09, 2101.10, 9065
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3101.14, 3313.85, and 5111.113 and sections 2101.36, 2113.02, 9114
2113.17, 2113.24, 2113.26, 2113.27, 2113.28, 2113.29, 2113.57, and 9115
2113.63 of the Revised Code are hereby repealed. 9116

Section 3. The provisions of this act that relate to the 9117
estates of decedents apply to the estates of decedents who die on 9118
or after the effective date of this act. 9119

Section 4. The General Assembly, applying the principle 9120
stated in division (B) of section 1.52 of the Revised Code that 9121
amendments are to be harmonized if reasonably capable of 9122
simultaneous operation, finds that the following sections, 9123
presented in this act as composites of the sections as amended by 9124
the acts indicated, are the resulting versions of the sections in 9125
effect prior to the effective date of the sections as presented in 9126
this act: 9127

Section 2101.24 of the Revised Code as amended by both Sub. 9128
H.B. 416 and Sub. H.B. 426 of the 126th General Assembly. 9129

Section 2109.44 of the Revised Code as amended by both Am. 9130
Sub. H.B. 538 and Sub. S.B. 129 of the 121st General Assembly. 9131