

As Passed by the Senate

129th General Assembly

Regular Session

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Am. S. B. No. 124

Senator Bacon

Cosponsors: Senators Wagoner, Brown, Hughes, Kearney, Coley, Hite,
Lehner, Obhof, Sawyer, Seitz, Wilson

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A B I L L

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

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

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

Sec. 2101.01. (A) A probate division of the court of common 128
pleas shall be held at the county seat in each county in an office 129
furnished by the board of county commissioners, in which the 130
books, records, and papers pertaining to the probate division 131
shall be deposited and safely kept by the probate judge. The board 132
shall provide suitable ~~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 court may administer all oaths required in the discharge of ~~his~~ the commissioner's duties, may summon and enforce the attendance of witnesses, may compel the production of books and papers, and may grant adjournments the same as the court, and, when the court directs, ~~such~~ the commissioner shall require the witnesses severally to subscribe ~~their~~ the witnesses' testimony.

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

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

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

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

to a fine, as provided by section 2101.99 of the Revised Code, 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 personally liable for the default, malfeasance, 430
or nonfeasance of any such appointee, but, if a bond is required 431
of the appointee, the liability of the judge is limited to the 432
amount by which the loss resulting from the default, malfeasance, 433
or nonfeasance exceeds the amount of the bond. 434

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

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

Sec. 2101.15. In each case, examination, or proceeding, the 449
probate judge shall file an itemized account of fees received or 450
charged by ~~him~~ the judge. On the first day of January, in each 451
year, ~~he~~ the judge shall file with the county auditor an account, 452
certified by ~~such~~ the judge, of all fees received by ~~him~~ the judge 453

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

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

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

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

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

.....	\$ 35.00	535
(35) Foreign will, application to record		536
.....	\$ 10.00	537
Record of foreign will, additional, per page		538
.....	\$ 1.00	539
(36) Forms when supplied by the probate court, not to exceed		540
.....	\$ 10.00	541
(37) Heirship, petition <u>complaint</u> to determine		542
.....	\$ 20.00	543
(38) Injunction proceedings		544
.....	\$ 20.00	545
(39) Improve real estate <u>property</u> , petition to		546
.....	\$ 20.00	547
(40) Inventory with appraisement		548
.....	\$ 10.00	549
(41) Inventory without appraisement		550
.....	\$ 7.00	551
(42) Investment or expenditure of funds, application for		552
.....	\$ 10.00	553
(43) Invest in real estate <u>property</u> , application to		554
.....	\$ 10.00	555
(44) Lease for oil, gas, coal, or other mineral, petition to		556
.....	\$ 20.00	557
(45) Lease or lease and improve real estate <u>property</u> , petition to		558
.....	\$ 20.00	559
(46) Marriage license		560
.....	\$ 10.00	561
Certified abstract of each marriage		562
.....	\$ 2.00	563
(47) Minor or incompetent person, etc., disposal of estate		564

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

(58) Release of estate by mortgagee or other lienholder	590
..... \$ 5.00	591
(59) Relieving an estate from administration under section	592
2113.03 of the Revised Code or granting an order for	
a summary release from administration under section	
2113.031 of the Revised Code	
..... \$ 60.00	593
(60) Removal of fiduciary, application for	594
..... \$ 10.00	595
(61) Requalification of executor or administrator	596
..... \$ 10.00	597
(62) Resignation of fiduciary	598
..... \$ 5.00	599
(63) Sale bill, public sale of personal property	600
..... \$ 10.00	601
(64) Sale of personal property and report, application for	602
..... \$ 10.00	603
(65) Sale of real estate <u>property</u> , petition for	604
..... \$ 25.00	605
(66) Terminate guardianship, petition to	606
..... \$ 10.00	607
(67) Transfer of real estate <u>property</u> , application, entry,	608
and certificate for	
..... \$ 7.00	609
(68) Unclaimed money, application to invest	610
..... \$ 7.00	611
(69) Vacate approval of account or order of distribution,	612
motion to	
..... \$ 10.00	613
(70) Writ of execution	614
..... \$ 5.00	615
(71) Writ of possession	616
..... \$ 5.00	617

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

indigent guardianship fund created pursuant to section 2111.51 of 649
the Revised Code. 650

(D) The fees of witnesses, jurors, sheriffs, coroners, and 651
constables for services rendered in the probate court or by order 652
of the probate judge shall be the same as provided for ~~like~~ 653
similar services in the court of common pleas. 654

(E) The probate court, by rule, may require an advance 655
deposit for costs, not to exceed one hundred twenty-five dollars, 656
at the time application is made for an appointment as executor or 657
administrator or at the time a will is presented for probate. 658

(F) The probate court, by rule, shall establish a reasonable 659
fee, not to exceed fifty dollars, for the filing of a petition for 660
the release of information regarding an adopted person's name by 661
birth and the identity of the adopted person's biological parents 662
and biological siblings pursuant to section 3107.41 of the Revised 663
Code, all proceedings relative to the petition, the entry of an 664
order relative to the petition, and all services required to be 665
performed in connection with the petition. The probate court may 666
use a reasonable portion of a fee charged under authority of this 667
division to reimburse any agency, as defined in section 3107.39 of 668
the Revised Code, for any services it renders in performing a task 669
described in section 3107.41 of the Revised Code relative to or in 670
connection with the petition for which the fee was charged. 671

(G)(1) Thirty dollars of the fifty-dollar fee collected 672
pursuant to division (A)(3) of this section shall be deposited 673
into the "putative father registry fund," which is hereby created 674
in the state treasury. The department of job and family services 675
shall use the money in the fund to fund the department's costs of 676
performing its duties related to the putative father registry 677
established under section 3107.062 of the Revised Code. 678

(2) If the department determines that money in the putative 679

father registry fund is more than is needed for its duties related 680
to the putative father registry, the department may use the 681
surplus moneys in the fund as permitted in division (C) of section 682
2151.3529, division (B) of section 2151.3530, or section 5103.155 683
of the Revised Code. 684

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

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

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

funds for other appropriate technological expenses of the court. 711

(B)(1) The probate judge may determine that, for the 712
efficient operation of ~~his~~ the probate court, additional funds are 713
required to computerize the office of the clerk of the court and, 714
upon that determination, may charge a fee, not to exceed ten 715
dollars, or authorize and direct a deputy clerk of the probate 716
court to charge a fee, not to exceed ten dollars, in addition to 717
the fees specified in divisions (A)(1), (3), (4), (6), (14) to 718
(17), (20) to (25), (27), (30) to (32), (34), (35), (37) to (48), 719
(50) to (55), (59) to (61), (63) to (66), (69), and (72) of 720
section 2101.16 of the Revised Code, the fee adopted pursuant to 721
division (F) of that section, and the fee charged in connection 722
with the docketing and indexing of an appeal. Subject to division 723
(B)(2) of this section, all moneys collected under this division 724
shall be paid to the county treasurer to be disbursed, upon an 725
order of the probate judge and subject to appropriation by the 726
board of county commissioners, in an amount no greater than the 727
actual cost to the probate court of procuring and maintaining 728
computer systems for the office of the clerk of the court. 729

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

Sec. 2101.19. (A) No probate judge or ~~his~~ probate judge's 741

deputy clerk shall sell or offer for sale for more than one dollar 742
any merchandise to be used in connection with any license, order, 743
or document issued by the probate court, or make any charge in 744
connection with the issuance of any license, order, or document 745
except that specifically provided by law. 746

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

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

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

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

Sec. 2101.23. The probate judge may keep order in ~~his~~ the 775
judge's court and has authority throughout the state to compel 776
performance of any duty incumbent upon any fiduciary appointed by 777
or accounting to ~~him~~ the judge. The probate judge may punish any 778
contempt of ~~his~~ the judge's authority as ~~such~~ that contempt might 779
be punished in the court of common pleas. 780

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

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

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

of the probate court. 802

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

(c) To direct and control the conduct and settle the accounts 805
of executors and administrators and order the distribution of 806
estates; 807

(d) To appoint the attorney general to serve as the 808
administrator of an estate pursuant to section 2113.06 of the 809
Revised Code; 810

(e) To appoint and remove guardians, conservators, and 811
testamentary trustees, direct and control their conduct, and 812
settle their accounts; 813

(f) To grant marriage licenses; 814

(g) To make inquests respecting persons who are so mentally 815
impaired as a result of a mental or physical illness or 816
disability, or mental retardation, or as a result of chronic 817
substance abuse, that they are unable to manage their property and 818
affairs effectively, subject to guardianship; 819

(h) To qualify assignees, appoint and qualify trustees and 820
commissioners of insolvents, control their conduct, and settle 821
their accounts; 822

(i) To authorize the sale of lands, equitable estates, or 823
interests in lands or equitable estates, and the assignments of 824
inchoate dower in such cases of sale, on petition by executors, 825
administrators, and guardians; 826

(j) To authorize the completion of real ~~estate~~ property 827
contracts on petition of executors and administrators; 828

(k) To construe wills; 829

(l) To render declaratory judgments, including, but not 830
limited to, those rendered pursuant to section 2107.084 of the 831

Revised Code;	832
(m) To direct and control the conduct of fiduciaries and	833
settle their accounts;	834
(n) To authorize the sale or lease of any estate created by	835
will if the estate is held in trust, on petition by the trustee;	836
(o) To terminate a testamentary trust in any case in which a	837
court of equity may do so;	838
(p) To hear and determine actions to contest the validity of	839
wills;	840
(q) To make a determination of the presumption of death of	841
missing persons and to adjudicate the property rights and	842
obligations of all parties affected by the presumption;	843
(r) To hear and determine an action commenced pursuant to	844
section 3107.41 of the Revised Code to obtain the release of	845
information pertaining to the birth name of the adopted person and	846
the identity of the adopted person's biological parents and	847
biological siblings;	848
(s) To act for and issue orders regarding wards pursuant to	849
section 2111.50 of the Revised Code;	850
(t) To hear and determine actions against sureties on the	851
bonds of fiduciaries appointed by the probate court;	852
(u) To hear and determine actions involving informed consent	853
for medication of persons hospitalized pursuant to section	854
5122.141 or 5122.15 of the Revised Code;	855
(v) To hear and determine actions relating to durable powers	856
of attorney for health care as described in division (D) of	857
section 1337.16 of the Revised Code;	858
(w) To hear and determine actions commenced by objecting	859
individuals, in accordance with section 2133.05 of the Revised	860
Code;	861

(x) To hear and determine complaints that pertain to the use 862
or continuation, or the withholding or withdrawal, of 863
life-sustaining treatment in connection with certain patients 864
allegedly in a terminal condition or in a permanently unconscious 865
state pursuant to division (E) of section 2133.08 of the Revised 866
Code, in accordance with that division; 867

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

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

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

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

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

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

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

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

(a) Another section of the Revised Code expressly confers 897
jurisdiction over that subject matter upon the probate court. 898

(b) No section of the Revised Code expressly confers 899
jurisdiction over that subject matter upon any other court or 900
agency. 901

(B)(1) The probate court has concurrent jurisdiction with, 902
and the same powers at law and in equity as, the general division 903
of the court of common pleas to issue writs and orders, and to 904
hear and determine actions as follows: 905

(a) If jurisdiction relative to a particular subject matter 906
is stated to be concurrent in a section of the Revised Code or has 907
been construed by judicial decision to be concurrent, any action 908
that involves that subject matter; 909

(b) Any action that involves an inter vivos trust; a trust 910
created pursuant to section 5815.28 of the Revised Code; a 911
charitable trust or foundation; subject to divisions (A)(1)(u) and 912
(z) of this section, a power of attorney, including, but not 913
limited to, a durable power of attorney; the medical treatment of 914
a competent adult; or a writ of habeas corpus. 915

(2) Any action that involves a concurrent jurisdiction 916
subject matter and that is before the probate court may be 917
transferred by the probate court, on its order, to the general 918
division of the court of common pleas. 919

(C) The probate court has plenary power at law and in equity 920
to dispose fully of any matter that is properly before the court, 921
unless the power is expressly otherwise limited or denied by a 922
section of the Revised Code. 923

(D) The jurisdiction acquired by a probate court over a 924
matter or proceeding is exclusive of that of any other probate 925
court, except when otherwise provided by law. 926

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

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

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

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

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

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

Sec. 2101.30. Whenever a jury is required in the probate 953

court, the probate judge shall ~~forthwith~~ notify the commissioners 954
of jurors, who shall cause to be drawn from the jury wheel, or to 955
be drawn by use of the automation data processing equipment and 956
procedures described in section 2313.07 of the Revised Code, the 957
names of sixteen persons as ~~jurymen~~ jurypersons. Additional names 958
may be drawn if required. The clerk of the court of common pleas 959
or one of ~~his~~ the clerk's deputies shall make a list of ~~such~~ those 960
names in the order drawn and certify ~~it~~ the list to the probate 961
court, and ~~such~~ the court shall issue a venire commanding the 962
persons whose names were drawn to appear on the day and at the 963
hour set for trial. The probate court shall deliver the venire to 964
the sheriff, who shall serve it within five days ~~thereafter~~ of 965
delivery and make prompt return of ~~such~~ the service. 966

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

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

the court of common pleas or a probate judge so designated resides 985
outside the county in which ~~he~~ the designated judge is called upon 986
to act, ~~he~~ the designated judge shall receive ~~such the~~ 987
compensation ~~as that~~ is provided for judges of the court of common 988
pleas designated by the chief justice to hold court outside their 989
respective counties. The record of ~~such the~~ cases shall be made 990
and preserved in the proper records of the probate court by the 991
deputy clerk ~~thereof~~ of the probate court. 992

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

When a matter or proceeding is so certified, a judge of the 1013
court of common pleas, ~~at chambers, by a judge thereof, or in open~~ 1014
~~court~~ shall hear and determine ~~it~~ the matter or proceeding in 1015
chambers or in open court as though ~~such the~~ court had original 1016

jurisdiction of the subject matter. Upon final decision of the 1017
questions involved in ~~such the matter or~~ proceedings, the final 1018
settlement of the estate in which the judge is interested as 1019
executor, administrator, or guardian, or when ~~his the judge's~~ 1020
interest ~~therein in the estate~~ ceases, the clerk shall deliver ~~the~~ 1021
~~original papers~~ to the probate court ~~from which they came in which~~ 1022
the original papers were filed and make and file ~~therein in that~~ 1023
court an authenticated transcript of the orders, judgments, and 1024
proceedings of the court of common pleas. ~~Thereupon the~~ The 1025
probate judge shall record ~~such the~~ orders, judgments, and 1026
proceedings in the proper records. 1027

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

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

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

The prosecuting attorney shall file ~~his~~ the prosecuting 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 1079
resident. ~~Such~~ The petition may consist of as many parts as are 1080
convenient. One of the signers to each separate paper shall swear 1081
before ~~some~~ an officer who is qualified to administer the oath 1082
that the petition is bona fide to the best of the signer's 1083
knowledge and belief. ~~Such~~ The oath shall be a part of or attached 1084
to ~~such~~ the paper. The judge upon receipt of ~~such~~ the petition 1085
shall deposit it with the clerk of the court of common pleas. 1086

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

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

Sec. 2105.051. When a person dies, property that ~~he~~ the 1104
person gave during ~~his~~ the person's lifetime to an heir shall be 1105
treated as an advancement against the heir's share of the estate 1106
only if declared in a contemporaneous writing by the decedent, or 1107
acknowledged in writing by the heir to be an advancement. For this 1108
purpose, property advanced is valued as of the time the heir came 1109

into possession or enjoyment of the property, or as of the time of 1110
death of the decedent, whichever occurs first. If the heir does 1111
not survive the decedent, the property shall not be taken into 1112
account in computing the intestate share to be received by the 1113
heir's issue, unless the declaration or acknowledgment provides 1114
otherwise. 1115

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

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

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

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

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

spouse and the remainder to the children equally, or to the lineal 1141
descendants of any deceased child, per stirpes; 1142

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

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

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

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

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

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

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

Sec. 2105.09. (A) The county auditor, unless ~~he~~ the auditor 1169
acts pursuant to division (C) of this section, shall take 1170

possession of real property escheated to the state that is located 1171
in ~~his~~ the auditor's county and outside the incorporated area of a 1172
city. The auditor shall take possession in the name of the state 1173
and sell the property at public auction, at the county seat of the 1174
county, to the highest bidder, after having given thirty days' 1175
notice of the intended sale in a newspaper published within the 1176
county. 1177

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

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

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

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

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

commissioners provides. 1202

(B) The legislative authority of a city within which are 1203
lands escheated to the state, unless it acts pursuant to division 1204
(C) of this section, shall take possession of the lands for the 1205
city, and the title to the lands shall vest in the city. The city 1206
shall use the premises primarily for health, welfare, or 1207
recreational purposes, or may lease them at ~~such~~ the prices and 1208
for ~~such~~ the purposes ~~as~~ that it considers proper. With the 1209
approval of the tax commissioner, the city may sell the lands or 1210
any undivided interest in the lands, in the same manner as is 1211
provided in the sale of land not needed for any municipal 1212
purposes; provided, that the net proceeds from the rent or sale of 1213
the premises shall be devoted to health, welfare, or recreational 1214
purposes. 1215

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

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

(1) "Abandoned" means that a parent of a minor failed without 1233
justifiable cause to communicate with the minor, care for ~~him~~ the 1234
minor, and provide for ~~his~~ the minor's maintenance or support as 1235
required by law or judicial decree for a period of at least one 1236
year immediately prior to the date of the death of the minor. 1237

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

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

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

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

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

(D)(1) The prohibition against inheritance set forth in 1264
division (B) of this section shall be enforceable only in 1265
accordance with a probate court adjudication rendered pursuant to 1266
this division. 1267

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

(3) An heirship determination proceeding resulting from the
filing of a petition pursuant to this division shall be conducted
in accordance with Chapter 2123. of the Revised Code, except to
the extent that a provision of this section conflicts with a
provision of that chapter, in which case the provision of this
section shall control.

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

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

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

living. 1327

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

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

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

if a child born in lawful wedlock. The rules of inheritance will 1358
be the same between ~~him~~ the person designated and the relations by 1359
blood of the declarant, as if so born. A certified copy of ~~such~~ 1360
the record will be prima-facie evidence of the fact stated ~~therein~~ 1361
in the record, and conclusive evidence, unless impeached for 1362
actual fraud or undue influence. After a lapse of one year from 1363
the date of ~~such~~ the designation, ~~such~~ the declarant may have ~~such~~ 1364
the designation vacated or changed by filing in ~~said~~ that probate 1365
court an application to vacate or change ~~such~~ the designation of 1366
heir; provided, that there is compliance with the procedure, 1367
conditions, and prerequisites required in the making of the 1368
original declaration. 1369

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

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

sections or laws, shall in any way benefit by the death. All 1389
property of the decedent, and all money, insurance proceeds, or 1390
other property or benefits payable or distributable in respect of 1391
the decedent's death, shall pass or be paid or distributed as if 1392
the person who caused the death of the decedent had predeceased 1393
the decedent. 1394

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

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

filed within ten days after the filing of ~~such a~~ the complaint. 1421
The person who files the ~~motion~~ complaint, and each person who is 1422
required to be notified of the filing of the ~~motion~~ complaint 1423
under this division, is entitled to a jury trial in the action. To 1424
assert the right, the person desiring a jury trial shall demand a 1425
jury in the manner prescribed in the Civil Rules. 1426

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

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

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

(B) If the surviving spouse elects to take under section 1452
2105.06 of the Revised Code and if the value of the property that 1453
the surviving spouse is entitled to receive is equal to or greater 1454
than the value of the decedent's interest in the mansion house as 1455
determined under section 2106.10 of the Revised Code, the 1456
surviving spouse also is entitled to make an election pursuant to 1457
division (A) of section 2106.10 of the Revised Code. 1458

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

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

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

property bequeathed or devised to the trust by the will, in all 1484
property held by the trustee at the time of the death of the 1485
decedent, and in all property that comes into the ~~hands~~ possession 1486
or under the control of the trustee by reason of the death of the 1487
decedent. 1488

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

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

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

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

some suitable person to ascertain the value of the provision made 1515
for the surviving spouse by the testator, the value of the rights 1516
of the surviving spouse in the estate of the testator under 1517
Chapter 2105. of the Revised Code, and the adequate support needs 1518
of the surviving spouse after taking into consideration the other 1519
available resources and the age, probable life expectancy, 1520
physical and mental condition, and present and reasonably 1521
anticipated future needs of the surviving spouse. The appointment 1522
by the court shall be made at any time within the times described 1523
in division (E) of section 2106.01 of the Revised Code for making 1524
an election under that section. 1525

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

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

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

intestate estate to the extent that the personal property is 1546
available for distribution. The personal property distributed to 1547
the surviving spouse, other than cash, shall be valued at the 1548
appraised value. 1549

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

complies with the law in force at the time of the execution of the 1945
will in the jurisdiction in which it was executed, ~~or~~ with the law 1946
in force in this state at the time of the death of the testator, 1947
or with the law in force in the jurisdiction in which the testator 1948
was domiciled at the time of ~~his~~ the testator's death. 1949

(b) Upon the demand of a person interested in having a will 1950
of later date admitted to probate, the probate court shall cause 1951
at least two of the witnesses to the will of later date, and any 1952
other witnesses that the interested person desires to have appear, 1953
to come before the probate court and provide testimony. If the 1954
interested person so requests, the probate court shall issue a 1955
subpoena to compel the presence of any such witness before the 1956
probate court to provide testimony. 1957

Witnesses before the probate court pursuant to this division 1958
shall be examined, and may be cross-examined, in open court, and 1959
their testimony shall be reduced to writing and then filed in the 1960
records of the probate court pertaining to the testator's estate. 1961

(2) When an authenticated copy of a will has been admitted to 1962
record by a probate court, and an authenticated copy of a will of 1963
later date that was executed and proved as required by law, is 1964
presented to the same court for record, it shall be admitted to 1965
record in the same manner as if no authenticated copy of the will 1966
of earlier date had been so admitted. 1967

(3) If a probate court admits a will of later date to 1968
probate, or an authenticated copy of a will of later date to 1969
record, its order shall operate as a revocation of the order 1970
admitting the will of earlier date to probate, or shall operate as 1971
a revocation of the order admitting the authenticated copy of the 1972
will of earlier date to record. The probate court shall enter on 1973
the record of the earlier will a marginal note "later will 1974
admitted to probate ..." (giving the date admitted). 1975

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

insurance on the property; 2127

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

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

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

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

Code. 2157

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Other interested parties. 2343

Sec. 2107.75. When the jury or the court finds that the writing produced is not the ~~last will and testament~~ or codicil of the testator, the trial court shall allow as part of the costs of administration ~~such the~~ amounts to the fiduciary and to the attorneys defending ~~such the~~ purported ~~last~~ will or purported codicil ~~as that~~ the trial court finds to be reasonable compensation for the services rendered in ~~such the will~~ contest action. The court shall order ~~such the~~ amounts allowed to be paid out of the estate of the decedent. 2344 2345 2346 2347 2348 2349 2350 2351 2352

Sec. 2108.51. Any licensed physician or surgeon who, in good faith and acting in reliance upon an instrument of consent for an autopsy or post-mortem examination executed under section 2108.50 of the Revised Code and without actual knowledge of revocation of ~~such that~~ consent, performs an autopsy or post-mortem examination is not liable in a civil or criminal action brought against ~~him~~ the licensed physician or surgeon for ~~such that~~ act. 2353 2354 2355 2356 2357 2358 2359

Sec. 2109.02. Every fiduciary, before entering upon the execution of a trust, shall receive letters of appointment from a probate court having jurisdiction of the subject matter of the trust. 2360 2361 2362 2363

The duties of a fiduciary shall be those required by law, and such additional duties as the court orders. Letters of appointment shall not issue until a fiduciary has executed a written acceptance of the fiduciary's duties, acknowledging that the fiduciary is subject to removal for failure to perform the fiduciary's duties, and that the fiduciary is subject to possible penalties for conversion of property the fiduciary ~~holds~~ held as a 2364 2365 2366 2367 2368 2369 2370

fiduciary. The written acceptance may be filed with the 2371
application for appointment. 2372

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If ~~such a~~ the trustee fails to give bond within the time 2479
ordered by the court, ~~he shall be removed~~ the court shall remove 2480
the trustee from ~~his~~ the trust, or the trustee shall be considered 2481
to have declined it. ~~Another person may be appointed in his stead~~ 2482
~~upon giving the required bond.~~ 2483

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

Immediately upon the filing of the inventory by a fiduciary, 2490
the court shall determine whether the amount of the bond of ~~such~~ 2491
the fiduciary is sufficient and shall require new or additional 2492
bond if in the opinion of the court the interests of the trust 2493
demand it. 2494

When a new bond is required as provided in this section, the
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 2525
of all real ~~estate~~ property in which the deceased had an interest, 2526
that is located in this state, and that is sold, when the property 2527
or proceeds have come to the possession of the administrator or to 2528
the possession of a person for the administrator; 2529

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The court may appoint a resident or nonresident of this 2760
state as a guardian of the person. 2761

(D) Any fiduciary, whose residence qualifications are not 2762
defined in this section, shall be a resident of this state, and 2763
shall be removed on proof that the fiduciary is no longer a 2764
resident of this state. 2765

(E) Any fiduciary, in order to assist in the carrying out of 2766
the fiduciary's fiduciary duties, may employ agents who are not 2767
residents of the county or of this state. 2768

(F) Every fiduciary shall sign and file with the court a 2769

statement of permanent address and shall notify the court of any 2770
change of address. A court may remove a fiduciary if the fiduciary 2771
fails to comply with this division. 2772

Sec. 2109.22. The marriage of any person does not disqualify 2773
~~him~~ the person from acting as fiduciary, whether the marriage 2774
occurs before or after ~~his~~ the person's appointment and 2775
qualification, and all of ~~his~~ the person's acts in ~~such~~ that 2776
capacity shall have the same validity as though ~~he~~ the person were 2777
unmarried. 2778

Sec. 2109.24. The probate court at any time may accept the 2779
resignation of any fiduciary upon the fiduciary's proper 2780
accounting, if the fiduciary was appointed by, is under the 2781
control of, or is accountable to the court. The fiduciary may 2782
resign by filing a written statement with the court after giving 2783
at least fifteen days notice to the persons known to be interested 2784
in the estate. Upon notice or a motion of the fiduciary to resign, 2785
the court may set the matter for a hearing and may notify all 2786
interested persons. No fiduciary shall resign without an order of 2787
the court. 2788

If a fiduciary fails to make and file an inventory as 2789
required by sections 2109.58, 2111.14, and 2115.02 of the Revised 2790
Code or to render a just and true account of the fiduciary's 2791
administration at the times required by section 2109.301, 2792
2109.302, or 2109.303 of the Revised Code, and if the failure 2793
continues for thirty days after the fiduciary has been notified by 2794
the court of the expiration of the relevant time, the fiduciary 2795
~~forthwith~~ may be removed by the court and shall receive no 2796
allowance for the fiduciary's services unless the court enters 2797
upon its journal its findings that the delay was necessary and 2798
reasonable. 2799

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

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

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

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

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

fiduciary is at the time a suitable and competent person and has 2831
the qualifications as to residence required by section 2109.21 of 2832
the Revised Code. If ~~such~~ the person is reappointed, the court 2833
shall remove the substitute fiduciary and revoke ~~his~~ the 2834
substitute fiduciary's letters of appointment, and shall make such 2835
further order or decree as justice requires. 2836

~~"Military service," as~~ (B) As used in this section, "military 2837
service" means any service, work, or occupation ~~which~~ that in the 2838
opinion of the court is directly or indirectly in furtherance of 2839
any military effort of the United States. ~~Such definition~~ 2840
"Military service" includes internment in an enemy country, 2841
residence in any foreign country, or residence in any possession 2842
or dependency of the United States, if by reason ~~thereof~~ of the 2843
internment or residence the fiduciary is unable to return to this 2844
state. 2845

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

proceedings to be had as are provided by sections 2109.30 to 2863
2109.36, ~~inclusive~~, of the Revised Code. 2864

Whenever such a vacancy occurs and ~~such~~ that contingency is 2865
not otherwise provided for by law or by the instrument creating 2866
the trust, or whenever ~~such~~ the instrument names no fiduciary, the 2867
court shall, on its own motion or on the application of any person 2868
beneficially interested, issue letters of appointment as fiduciary 2869
to ~~some~~ a competent person or persons who shall qualify according 2870
to law and execute the trust to its proper termination. ~~Such~~ The 2871
vacancy and the appointment of a successor fiduciary shall not 2872
affect the liability of the former fiduciary or ~~his~~ the former 2873
fiduciary's sureties ~~which~~ that was previously incurred. 2874

Sec. 2109.302. (A) Every guardian or conservator shall render 2875
an account of the administration of the ward's estate at least 2876
once in each two years. The guardian or conservator shall render 2877
an account at any time other than a time otherwise mentioned in 2878
this section upon the order of the probate court issued for good 2879
cause shown either at its own instance or upon the motion of any 2880
person interested in the estate. Except as provided in division 2881
(B) of this section, every guardian or conservator shall render a 2882
final account within thirty days after completing the 2883
administration of the ward's estate or within any other period of 2884
time that the court may order. 2885

Every account shall include an itemized statement of all 2886
receipts of the guardian or conservator during the accounting 2887
period and of all disbursements and distributions made by the 2888
guardian or conservator during the accounting period. The itemized 2889
disbursements and distributions shall be verified by vouchers or 2890
proof, except in the case of an account rendered by a corporate 2891
fiduciary subject to section 1111.28 of the Revised Code. In 2892
addition, the account shall include an itemized statement of all 2893

funds, assets, and investments of the estate known to or in the 2894
possession of the guardian or conservator at the end of the 2895
accounting period and shall show any changes in investments since 2896
the last previous account. 2897

Every account shall be upon the signature of the guardian or 2898
conservator. When two or more guardians or conservators render an 2899
account, the court may allow the account upon the signature of one 2900
of the guardians or conservators. 2901

Upon the filing of every account, the guardian or 2902
conservator, except a corporate fiduciary subject to section 2903
1111.28 of the Revised Code, shall exhibit to the court for its 2904
examination both of the following: the securities shown in the 2905
account as being in the ~~hands~~ possession or under the control of 2906
the guardian or conservator, or the certificate of the person in 2907
possession of the securities, if held as collateral or pursuant to 2908
section 2109.13 or 2131.21 of the Revised Code; and a passbook or 2909
certified bank statement showing as to each depository the fund 2910
deposited to the credit of the ward's estate. The court may 2911
designate a deputy clerk, an agent of a corporate surety on the 2912
bond of the guardian or conservator, or another suitable person 2913
whom the court appoints as commissioner to make the examination 2914
and to report the person's findings to the court. ~~When~~ If 2915
securities are located outside the county, the court may appoint a 2916
commissioner or request another probate court to make the 2917
examination and to report its findings to the court. The court may 2918
examine the guardian or conservator under oath concerning the 2919
account. 2920

~~When~~ If a guardian or conservator is authorized by law to 2921
distribute the assets of the estate, in whole or in part, the 2922
guardian or conservator may do so and include a report of the 2923
distribution in the guardian's or conservator's succeeding 2924
account. 2925

(B)(1) The court may waive, by order, an account that 2926
division (A) of this section requires of a guardian of the estate 2927
or of a guardian of the person and estate, other than an account 2928
made pursuant to court order, if any of the following 2929
circumstances apply: 2930

(a) The assets of the estate consist entirely of real 2931
property. 2932

(b) The assets of the estate consist entirely of personal 2933
property, that property is held by a bank, savings and loan 2934
association, or trust company in accordance with section 2109.13 2935
of the Revised Code, and the court has authorized expenditures of 2936
not more than ten thousand dollars annually for the support, 2937
maintenance, or, if applicable, education of the ward. 2938

(c) The assets of the estate consist entirely of real 2939
property and of personal property that is held by a bank, savings 2940
and loan association, or trust company in accordance with section 2941
2109.13 of the Revised Code, and the court has authorized 2942
expenditures of not more than ten thousand dollars annually for 2943
the support, maintenance, or, if applicable, education of the 2944
ward. 2945

(2) The order of a court entered pursuant to division (B)(1) 2946
of this section is prima-facie evidence that a guardian of the 2947
estate or a guardian of the person and estate has authority to 2948
make expenditures as described in divisions (B)(1)(b) and (c) of 2949
this section. 2950

(3) Notwithstanding the requirements for accounts by other 2951
guardians under this section, a guardian of the person is not 2952
required to render an account except upon an order of the court 2953
that the court issues for good cause shown either at its own 2954
instance or upon the motion of any person interested in the 2955
estate. 2956

Sec. 2109.303. (A) Except as provided in division (B) of this 2957
section, every testamentary trustee shall, and every other 2958
fiduciary not subject to section 2109.301 or 2109.302 of the 2959
Revised Code may, render an account of the trustee's or other 2960
fiduciary's administration of the estate or trust at least once in 2961
each two years. Any testamentary trustee or other fiduciary shall 2962
render an account, subject to division (B) of this section, at any 2963
time other than a time otherwise mentioned in this section upon an 2964
order of the court issued for good cause shown either at its own 2965
instance or upon the motion of any person interested in the estate 2966
or trust. Every testamentary trustee shall, and every other 2967
fiduciary may, render a final account within thirty days after 2968
completing the administration of the estate or trust or shall file 2969
a final account within any other period of time that the court may 2970
order. 2971

Every account shall include an itemized statement of all 2972
receipts of the testamentary trustee or other fiduciary during the 2973
accounting period and of all disbursements and distributions made 2974
by the testamentary trustee or other fiduciary during the 2975
accounting period. The itemized disbursements and distributions 2976
shall be verified by vouchers or proof, except in the case of an 2977
account rendered by a corporate fiduciary subject to section 2978
1111.28 of the Revised Code. In addition, the account shall 2979
include an itemized statement of all funds, assets, and 2980
investments of the estate or trust known to or in the possession 2981
of the testamentary trustee or other fiduciary at the end of the 2982
accounting period and shall show any changes in investments since 2983
the last previous account. The accounts of testamentary trustees 2984
shall, and the accounts of other fiduciaries may, show receipts 2985
and disbursements separately identified as to principal and 2986
income. 2987

Every account shall be upon the signature of the testamentary 2988

trustee or other fiduciary. When two or more testamentary trustees 2989
or other fiduciaries render an account, the court may allow the 2990
account upon the signature of one of them. 2991

Upon the filing of every account, the testamentary trustee or 2992
other fiduciary, except a corporate fiduciary subject to section 2993
1111.28 of the Revised Code, shall exhibit to the court for its 2994
examination both of the following: the securities shown in the 2995
account as being in the ~~hands~~ possession or under the control of 2996
the testamentary trustee or other fiduciary, or the certificate of 2997
the person in possession of the securities, if held as collateral 2998
or pursuant to section 2109.13 or 2131.21 of the Revised Code; and 2999
a passbook or certified bank statement showing as to each 3000
depository the fund deposited to the credit of the estate or 3001
trust. The court may designate a deputy clerk, an agent of a 3002
corporate surety on the bond of the testamentary trustee or other 3003
fiduciary, or another suitable person whom the court appoints as 3004
commissioner to make the examination and to report the person's 3005
findings to the court. ~~When~~ If securities are located outside the 3006
county, the court may appoint a commissioner or request another 3007
probate court to make the examination and to report its findings 3008
to the court. The court may examine the testamentary trustee or 3009
other fiduciary under oath concerning the account. 3010

~~When~~ If a testamentary trustee or other fiduciary is 3011
authorized by law or by the instrument governing distribution to 3012
distribute the assets of the estate or trust, in whole or in part, 3013
the testamentary trustee or other fiduciary may do so and include 3014
a report of the distribution in the testamentary trustee's or 3015
fiduciary's succeeding account. 3016

(B) If the assets of a testamentary charitable trust are held 3017
and managed by a testamentary trustee or other fiduciary who is an 3018
individual or by a corporate fiduciary and if the trust merges 3019
into a qualified community foundation, then, after the 3020

testamentary trustee or other fiduciary files with the court a 3021
final and distributive account pertaining to the trust and 3022
activities up to the effective date of the merger, the 3023
testamentary trustee or other fiduciary and any successors of the 3024
testamentary trustee or other fiduciary shall not be required to 3025
render any accounting to the court pertaining to the merged trust 3026
and activities that follow the effective date of the merger. 3027

(C) As used in this section: 3028

(1) "Charitable trust" has the same meaning as in section 3029
109.23 of the Revised Code. 3030

(2) "Qualified community foundation" means any foundation 3031
that is exempt from federal income taxation under sections 3032
170(b)(1)(A)(vi) and 501(c)(3) of the "Internal Revenue Code of 3033
1986," 100 Stat. 2085, 26 U.S.C. 170(b)(1)(A)(vi) and 501 (c)(3), 3034
as amended; that is further described in section 1.170A-9(10) and 3035
(11) of Title 26 of the Code of Federal Regulations, 26 C.F.R. 3036
1.170A-9(10) and (11), as amended; and that publishes at least 3037
annually and circulates widely within its community an audited 3038
report of its fund balances, activities, and donors. 3039

(3) "Testamentary charitable trust" means any charitable 3040
trust that is created by a will. 3041

(4) "Other fiduciary" means a fiduciary other than an 3042
executor, administrator, guardian, conservator, or testamentary 3043
trustee. 3044

Sec. 2109.32. (A) Every fiduciary's account required by 3045
section 2109.301, 2109.302, or 2109.303 of the Revised Code shall 3046
be set for hearing before the probate court. The hearing on the 3047
account shall be set not earlier than thirty days after the filing 3048
of the account. 3049

At the hearing upon an account required by section 2109.302 3050

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. 3083

(3) The probate court shall not approve the final account of 3084
any executor or administrator until the following events have 3085
occurred: 3086

(a) Three months have passed since the death of the decedent. 3087

(b) The surviving spouse has filed an election to take under 3088
or against the will, or the time for making the election has 3089
expired. 3090

(4) If an administrator or executor learns of the existence 3091
of newly discovered assets after the filing of the final account 3092
or otherwise comes into possession of assets belonging to the 3093
estate after the filing of the final account, the executor or 3094
administrator shall file a supplemental final account with respect 3095
to the disposition of the assets and shall provide a copy of the 3096
supplemental final account to each heir of an intestate estate or 3097
to each beneficiary of a testate estate, as provided in division 3098
(B)(1) of this section and subject to the exceptions specified in 3099
divisions (B)(1)(a) and (b) of this section. 3100

(C) The rights of any person with a pecuniary interest in the 3101
estate are not barred by approval of an account pursuant to 3102
divisions (A) and (B) of this section. These rights may be barred 3103
following a hearing on the account pursuant to section 2109.33 of 3104
the Revised Code. 3105

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

a notice of the hearing is to be served upon persons the court 3113
designates. 3114

The notice shall be made by mail in addition to service by 3115
publication, shall set forth the time and place of the hearing, 3116
and shall specify the account to be considered and acted upon by 3117
the court at the hearing and the period of time covered by the 3118
account. It shall contain a statement to the effect that the 3119
person notified is required to examine the account, to inquire 3120
into the contents of the account and into all matters that may 3121
come before the court at the hearing on the account, and to file 3122
any exceptions that the person may have to the account at least 3123
five days prior to the hearing on the account, and that upon ~~his~~ 3124
the person's failure to file exceptions, the account may be 3125
approved without further notice. If the person to be notified was 3126
not a party to the proceeding in which any prior account was 3127
settled, the notice, for the purpose of barring any rights 3128
possessed by that person, may include and specify the prior 3129
accounts and the periods of time covered by them. In that event, 3130
the notice shall inform the person notified that the approval of 3131
the account filed most recently will terminate any rights 3132
possessed by ~~him~~ the person to vacate the order settling each 3133
prior account so specified, except as provided in section 2109.35 3134
of the Revised Code, and shall further inform the person that, 3135
under penalty of losing those rights, ~~he forthwith~~ the person 3136
shall examine each prior account so specified, shall inquire into 3137
its contents, and, if ~~he deems~~ the person considers it necessary 3138
to protect ~~his~~ the person's rights, shall take the action with 3139
respect to ~~his~~ the person's rights that is permitted by law. 3140

The notice of the hearing upon an account shall be served at 3141
least fifteen days prior to the hearing on the account. Any 3142
competent person may waive service of notice and consent to the 3143
approval of any account by the court. Waivers of service and 3144

consents to approval shall be recorded with the account. 3145

Any person interested in an estate or trust may file 3146
exceptions to an account or to matters pertaining to the execution 3147
of the trust. All exceptions shall be specific and written. 3148
Exceptions shall be filed and a copy of them furnished to the 3149
fiduciary by the exceptor, not less than five days prior to the 3150
hearing on the account. The court for cause may allow further time 3151
to file exceptions. If exceptions are filed to an account, the 3152
court may allow further time for serving notice of the hearing 3153
upon any person who may be affected by an order disposing of the 3154
exceptions and who has not already been served with notice of the 3155
hearing in accordance with this section. 3156

A probate court, by local rule, may require that notice of 3157
the hearing on a final account be given to all heirs in an 3158
intestate estate and to all residuary beneficiaries in a testate 3159
estate. 3160

Any notice that is required or permitted by this section or 3161
by any local rule adopted under authority of this section shall be 3162
served, and any waiver of the right to receive any notice of those 3163
types may be waived, in accordance with the Rules of Civil 3164
Procedure. 3165

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

except that ~~such~~ the order may be vacated for fraud as provided in 3176
section 2109.35 of the Revised Code. 3177

If the beneficiaries, both present and future, of a 3178
charitable trust are not represented by a trustee or an existing 3179
corporation or other organization, they shall be represented in 3180
any ~~such~~ proceeding under this section by the attorney general if 3181
~~he~~ the attorney general is made a party ~~thereto~~ to the proceeding. 3182
Any order made in the proceeding shall be binding upon ~~such~~ those 3183
beneficiaries, except for fraud. 3184

Sec. 2109.35. The order of the probate court upon the 3185
settlement of a fiduciary's account shall have the effect of a 3186
judgment and may be vacated only as follows: 3187

(A) The order may be vacated for fraud, upon motion of any 3188
person affected by the order or upon the court's own order, if the 3189
motion is filed or order is made within one year after discovery 3190
of the existence of the fraud. Any person who is subject to any 3191
legal disability may file the motion at any time within one year 3192
after the removal of the legal disability or within one year after 3193
~~he~~ the person discovers the existence of the fraud, whichever is 3194
later, or ~~his~~ the person's guardian or a successor guardian may do 3195
so during the period of the legal disability. If the death of any 3196
person occurs during the period within which ~~he~~ the person could 3197
have filed the motion, ~~his~~ the person's administrator or executor 3198
may file it within one year after the person's death. 3199

(B) The order may be vacated for good cause shown, other than 3200
fraud, upon motion of any person affected by the order who was not 3201
a party to the proceeding in which the order was made and who had 3202
no knowledge of the proceeding in time to appear in it; provided 3203
that, if the account settled by the order is included and 3204
specified in the notice to that person of the proceeding in which 3205
a subsequent account is settled, the right of that person to 3206

vacate the order shall terminate upon the settlement of the 3207
subsequent account. A person affected by an order settling an 3208
account shall be ~~deemed~~ considered to have been a party to the 3209
proceeding in which the order was made if that person was served 3210
with notice of the hearing on the account in accordance with 3211
section 2109.33 of the Revised Code, waived that notice, consented 3212
to the approval of the account, filed exceptions to the account, 3213
or is bound by section 2109.34 of the Revised Code; but no person 3214
in being who is under legal disability at the time of that 3215
proceeding shall be ~~deemed~~ considered to have been a party to that 3216
proceeding unless ~~he~~ the person was represented in it as provided 3217
in section 2111.23 of the Revised Code. Neither the fiduciary nor 3218
~~his~~ the fiduciary's surety shall incur any liability as a result 3219
of the vacation of an order settling an account in accordance with 3220
this division, if the motion to vacate the order is filed more 3221
than three years following the settlement of the fiduciary's 3222
account showing complete distribution of assets; but the 3223
three-year period shall not affect the liability of any heir, 3224
devisee, or distributee either before or after the expiration of 3225
that period. 3226

(C) The order may be vacated for good cause shown upon motion 3227
of the fiduciary, if the motion is filed prior to the settlement 3228
of the account showing that the fiduciary has fully discharged his 3229
trust. 3230

A motion to vacate an order settling an account shall set 3231
forth the items of the account with respect to which complaint is 3232
made and the reasons for complaining of those items. The person 3233
filing a motion to vacate an order settling an account or another 3234
person the court may designate shall cause notice of the hearing 3235
on the motion to be served upon all interested parties who may be 3236
adversely affected by an order of the court granting the motion. 3237

An order settling an account shall not be vacated unless the 3238

court determines that there is good cause for doing so, and the 3239
burden of proving good cause shall be upon the complaining party. 3240

The vacation of an order settling an account, made after 3241
notice given in the manner provided in section 2109.33 of the 3242
Revised Code, shall not affect the rights of a purchaser for value 3243
in good faith, a lessee for value in good faith, or an 3244
encumbrancer for value in good faith; provided that, if the 3245
fiduciary has effected any such sale, lease, or encumbrance, any 3246
person prejudiced by it may proceed, after vacation of the order, 3247
against any distributee benefiting from the sale, lease, or 3248
encumbrance to the extent of the amount received by that 3249
distributee on distribution of the estate or trust, or if any 3250
heir, devisee, or distributee has effected any such sale, lease, 3251
or encumbrance, any person prejudiced by it may proceed, after the 3252
vacation of the order, against that heir, devisee, or distributee, 3253
to the extent of the value at the time of alienation of the 3254
property aliened by ~~him~~ the person, with legal interest. 3255

Sec. 2109.36. An application for an order of distribution of 3256
the assets of an estate or trust held by a fiduciary may be set 3257
for hearing before the probate court at ~~such the~~ the time ~~as that~~ 3258
the court shall designate. The fiduciary may serve notice of the 3259
hearing upon ~~such the~~ the application, or cause ~~such the~~ the notice to be 3260
served, upon any person who may be affected by an order disposing 3261
~~thereof of the application~~; or the court, upon motion of any 3262
interested person for good cause shown or at its own instance, may 3263
order ~~such the~~ the notice to be served upon ~~any such that~~ that person. ~~Such~~ 3264
The notice shall set forth the time and place of the hearing and 3265
shall be accompanied by a statement of the proposed distribution. 3266
At the hearing upon the application the court shall inquire into, 3267
consider, and determine all matters relative ~~thereto~~ to the 3268
application, and make ~~such an~~ an order ~~as that~~ that the court ~~deems~~ 3269
considers proper. If the court makes an order of distribution, the 3270

fiduciary shall comply ~~therewith~~ with the order and shall account 3271
to the court for ~~his~~ the fiduciary's distribution, verified by 3272
vouchers or proof. An order of distribution shall have the effect 3273
of a judgment. ~~Such~~ The order may be reviewed upon appeal and may 3274
be vacated as provided in section 2109.35 of the Revised Code. 3275

Sec. 2109.361. (A) As used in this section, "third-party 3276
distribution" means the distribution by a fiduciary of an estate 3277
or trust of the assets of that estate or trust when both of the 3278
following apply: 3279

(1) The fiduciary makes the distribution to either of the 3280
following persons: 3281

(a) The transferee of a beneficiary; 3282

(b) Any person pursuant to an agreement, request, or 3283
instruction of a beneficiary or pursuant to a legal claim against 3284
a beneficiary. 3285

(2) The distribution is the subject of an agreement between a 3286
beneficiary and any person that requires the fiduciary or 3287
beneficiary to pay a percentage of an inheritance or a dollar 3288
amount to any person other than the beneficiary. 3289

(B) Prior to making a third-party distribution, the affected 3290
beneficiary or the affected beneficiary's guardian or other legal 3291
representative of the beneficiary may file an application for the 3292
approval of a third-party distribution with the probate court. An 3293
application filed pursuant to this division shall identify the 3294
person to whom the third-party distribution is to be made, 3295
disclose the basis for making the third-party distribution, and 3296
include a copy of any written agreement between the affected 3297
beneficiary and the person to whom the third-party distribution is 3298
to be made. 3299

(C) The probate court shall hold a hearing on an application 3300

filed under division (B) of this section. The applicant shall 3301
serve notice of the hearing on all interested parties at least 3302
fifteen days prior to the hearing in accordance with Civil Rule 3303
73. An interested party may waive notice of the hearing in 3304
accordance with Civil Rule 73. 3305

(D) The probate court may approve the third-party 3306
distribution in whole or in part, as the court determines is just 3307
and equitable. To the extent that the application is approved, the 3308
court shall determine whether the third-party distribution is 3309
properly charged solely against the beneficiary's share of the 3310
estate or trust or whether some or all of the third-party 3311
distribution is properly charged against the residue of the 3312
affected estate or trust. The court may consider any relevant 3313
factors in evaluating the application, including, but not limited 3314
to, any of the following: 3315

(1) The amount or percentage of the affected beneficiary's 3316
share that would be the subject of the proposed third-party 3317
distribution measured against the reasonable value of any ~~goods~~ 3318
assets or services the person to whom the third-party distribution 3319
would be made provided to the beneficiary or to the estate or 3320
trust; 3321

(2) Whether the agreement, request, or instructions of the 3322
affected beneficiary were procured by duress, fraud, 3323
misrepresentation, undue influence, or other unfair means; 3324

(3) Whether the amount of the proposed third-party 3325
distribution is fixed or contingent under the terms of the 3326
agreement between the affected beneficiary and the recipient of 3327
the proposed third-party distribution; 3328

(4) Whether the beneficiary was represented by an attorney 3329
during the pendency of the probate action, or the beneficiary 3330
authorized the recipient of the proposed third-party distribution 3331

to retain an attorney who is licensed to practice law in Ohio for 3332
the beneficiary to formally represent the beneficiary in any 3333
proceeding regarding the decedent's estate, and the recipient of 3334
the proposed third-party distribution is responsible for paying 3335
the attorney's fees; 3336

(5) The extent, if any, to which the recipient of the 3337
proposed third-party distribution incurred expenses in connection 3338
with the services provided to the affected beneficiary, estate, or 3339
trust; 3340

(6) Whether the beneficiary was required to advance any 3341
payments for fees or expenses to the recipient of the proposed 3342
third-party distribution. 3343

(E) Division (D)(4) of this section does not prohibit the 3344
beneficiary from retaining the beneficiary's own legal counsel. 3345

(F) This section does not apply to third-party distributions 3346
to an attorney who represents a beneficiary and does not affect 3347
any other provision of law regarding the compensation of 3348
attorneys. 3349

Sec. 2109.37. (A) Except as otherwise provided by law, 3350
including division (D) of this section, or by the instrument 3351
creating the trust, a fiduciary having funds belonging to a trust 3352
~~which~~ that are to be invested may invest them in the following: 3353

(1) Bonds or other obligations of the United States or of 3354
this state; 3355

(2) Bonds or other interest-bearing obligations of any 3356
county, municipal corporation, school district, or other legally 3357
constituted political taxing subdivision within the state, 3358
provided that ~~such~~ the county, municipal corporation, school 3359
district, or other subdivision has not defaulted in the payment of 3360
the interest on any of its bonds or interest-bearing obligations, 3361

for more than one hundred twenty days during the ten years 3362
immediately preceding the investment by the fiduciary in the bonds 3363
or other obligations, and provided that ~~such~~ the county, municipal 3364
corporation, school district, or other subdivision, is not, at the 3365
time of the investment, in default in the payment of principal or 3366
interest on any of its bonds or other interest-bearing 3367
obligations; 3368

(3) Bonds or other interest-bearing obligations of any other 3369
state of the United States which, within twenty years prior to the 3370
making of ~~such~~ that investment, has not defaulted for more than 3371
ninety days in the payment of principal or interest on any of its 3372
bonds or other interest-bearing obligations; 3373

(4) Any bonds issued by or for federal land banks and any 3374
debentures issued by or for federal intermediate credit banks 3375
under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 3376
U.S.C.A. 641, as amended; or any debentures issued by or for banks 3377
for cooperatives under the "Farm Credit Act of 1933," 48 Stat. 3378
257, 12 U.S.C.A. 131, as amended; 3379

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

and located in the state, provided that ~~such~~ the mortgage requires 3394
that the buildings on the mortgaged property shall be well insured 3395
against loss by fire, and so kept, for the benefit of the 3396
mortgagee, until the debt is paid, and provided that the unpaid 3397
principal of the notes secured by the mortgage shall not exceed 3398
fifty per cent of the fair value of the mortgaged real ~~estate~~ 3399
property at the time the investment is made, and the notes shall 3400
be payable not more than five years after the date on which the 3401
investment in them is made; except that the unpaid principal of 3402
the notes may equal sixty per cent of the fair value of the 3403
mortgaged real ~~estate~~ property at the time the investment is made, 3404
and may be payable over a period of fifteen years following the 3405
date of the investment by the fiduciary if regular installment 3406
payments are required sufficient to amortize four per cent or more 3407
of the principal of the outstanding notes per annum and if the 3408
unpaid principal and interest become due and payable at the option 3409
of the holder upon any default in the payment of any installment 3410
of interest or principal upon the notes, or of taxes, assessments, 3411
or insurance premiums upon the mortgaged premises or upon the 3412
failure to cure any such default within any grace period provided 3413
~~therein~~ in the notes not exceeding ninety days in duration; 3414

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

drawn by the insuring company so that the proceeds shall be the 3427
sole property of the person whose funds are so invested; 3428

(7) Notes or bonds secured by mortgages and insured by the 3429
federal housing administrator or debentures issued by ~~such~~ that 3430
administrator; 3431

(8) Obligations issued by a federal home loan bank created 3432
under the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12 3433
U.S.C.A. 1421, as amended; 3434

(9) Shares and certificates or other evidences of deposits 3435
issued by a federal savings and loan association organized and 3436
incorporated under the "Home Owners' Loan Act of 1933," 48 Stat. 3437
128, 12 U.S.C.A. 1461, as amended, to the extent and only to the 3438
extent that those shares or certificates or other evidences of 3439
deposits are insured pursuant to the "Financial Institutions 3440
Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12 3441
U.S.C.A. 1811, as amended; 3442

(10) Bonds issued by the home owners' loan corporation 3443
created under the "Home Owners' Act of 1933," 48 Stat. 128, 12 3444
U.S.C.A. 1461, as amended; 3445

(11) Obligations issued by the national mortgage association 3446
created under the "National Housing Act," 48 Stat. 1246 (1934), 12 3447
U.S.C.A. 1701, as amended; 3448

(12) Shares and certificates or other evidences of deposits 3449
issued by a domestic savings and loan association organized under 3450
the laws of the state, which association has obtained insurance of 3451
accounts pursuant to the "Financial Institutions Reform, Recovery, 3452
and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as 3453
amended, or as may be otherwise provided by law, only to the 3454
extent that ~~such~~ the evidences of deposits are insured under that 3455
act, as amended; 3456

(13) Shares and certificates or other evidences of deposits 3457

issued by a domestic savings and loan association organized under 3458
the laws of the state, provided that no fiduciary may invest ~~such~~ 3459
the deposits except with the approval of the probate court, and 3460
then in an amount not to exceed the amount ~~which~~ that the 3461
fiduciary is permitted to invest under division (A)(12) of this 3462
section; 3463

(14) In savings accounts in, or certificates or other 3464
evidences of deposits issued by, a national bank located in the 3465
state or a state bank located in and organized under the laws of 3466
the state or a state credit union located and organized under the 3467
laws of the state or a federal credit union located in the state 3468
by depositing the funds in the bank or credit union, and ~~such the~~ 3469
national or state bank or the federal or state credit union when 3470
itself acting in a fiduciary capacity may deposit the funds in 3471
savings accounts in, or certificates or other evidences of 3472
deposits issued by, its own savings department or any bank 3473
subsidiary corporation owned or controlled by the bank holding 3474
company that owns or controls ~~such the~~ national or state bank; 3475
provided that no deposit shall be made by any fiduciary, 3476
individual, or corporate, unless the deposits of the depository 3477
bank are insured by the federal deposit insurance corporation 3478
created under the "Federal Deposit Insurance Corporation Act of 3479
1933," 48 Stat. 162, 12 U.S.C. 264, as amended, or provided that 3480
no deposit shall be made by any fiduciary, individual or 3481
corporate, unless the deposits of the depository credit union are 3482
insured by the national credit union administration created under 3483
the "Federal Credit Union Act of 1934," 48 Stat. 1216, 12 U.S.C. 3484
1751, as amended, or the deposits of the depository credit union 3485
are insured by a share guaranty corporation as defined in Chapter 3486
1761. of the Revised Code, and provided that the deposit of the 3487
funds of any one trust in ~~any such~~ those savings accounts in, or 3488
certificates or other evidences of deposits issued by, any one 3489
bank or credit union shall not exceed the sum insured under ~~that~~ 3490

~~act~~ those acts, as amended, or under Chapter 1761. of the Revised 3491
Code; 3492

(15) Obligations consisting of notes, bonds, debentures, or 3493
equipment trust certificates issued under an indenture, ~~which~~ that 3494
are the direct obligations, or in the case of equipment trust 3495
certificates are secured by direct obligations, of a railroad or 3496
industrial corporation, or a corporation engaged directly and 3497
primarily in the production, transportation, distribution, or sale 3498
of electricity or gas, or the operation of telephone or telegraph 3499
systems or waterworks, or in some combination of them; provided 3500
that the obligor corporation is one ~~which~~ that is incorporated 3501
under the laws of the United States, any state, ~~or~~ the District of 3502
Columbia, or foreign government, and the obligations are rated at 3503
the time of purchase in the highest or next highest classification 3504
established by at least two standard rating services selected from 3505
a list of the standard rating services ~~which~~ that shall be 3506
prescribed by the superintendent of financial institutions; 3507
provided that every such list shall be certified by the 3508
superintendent to the clerk of each probate court in the state, 3509
and shall continue in effect until a different list is prescribed 3510
and certified as provided in this division; 3511

(16) Obligations issued, assumed, or guaranteed by the 3512
international finance corporation or by the international bank for 3513
reconstruction and development, the Asian development bank, the 3514
inter-American development bank, the African development bank, or 3515
other similar development bank in which the president, as 3516
authorized by congress and on behalf of the United States, has 3517
accepted membership, provided that the obligations are rated at 3518
the time of purchase in the highest or next highest classification 3519
established by at least one standard rating service selected from 3520
a list of standard rating services ~~which~~ that shall be prescribed 3521
by the superintendent of financial institutions; 3522

(17) Securities of any investment company, as defined in and 3523
registered under sections 3 and 8 of the "Investment Company Act 3524
of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8, that are 3525
invested exclusively in forms of investment or in instruments that 3526
are fully collateralized by forms of investment in which the 3527
fiduciary is permitted to invest pursuant to divisions (A)(1) to 3528
(16) of this section, provided that, in addition to ~~such~~ those 3529
forms of investment, the investment company may, for the purpose 3530
of reducing risk of loss or of stabilizing investment returns, 3531
engage in hedging transactions. 3532

(B) No administrator or executor may invest funds belonging 3533
to an estate in any asset other than a direct obligation of the 3534
United States that has a maturity date not exceeding one year from 3535
the date of investment, or other than in a short-term investment 3536
fund that is invested exclusively in obligations of the United 3537
States or of its agencies, or primarily in ~~such~~ those obligations 3538
and otherwise only in variable demand notes, corporate money 3539
market instruments including, but not limited to, commercial 3540
paper, or fully collateralized repurchase agreements or other 3541
evidences of indebtedness that are payable on demand or generally 3542
have a maturity date not exceeding ninety-one days from the date 3543
of investment, except with the approval of the probate court or 3544
with the permission of the instruments creating the trust. 3545

(C)(1) In addition to the investments allowed by this 3546
section, a guardian or trustee, with the approval of the court, 3547
may invest funds belonging to the trust in productive real ~~estate~~ 3548
property located within the state, provided that neither the 3549
guardian nor the trustee nor any member of the family of either 3550
has any interest in ~~such~~ the real ~~estate~~ property or in the 3551
proceeds of the purchase price. The title to any real ~~estate~~ 3552
property so purchased by a guardian ~~must~~ shall be taken in the 3553
name of the ward. 3554

(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 3586
the Revised Code or securities of any investment company, 3587
including any affiliated investment company, whether or not the 3588
fiduciary has invested other funds held by it in an agency or 3589
other nonfiduciary capacity in the securities of the same 3590
investment company or affiliated investment company. ~~Such~~ Those 3591
investments may be made regardless of the eligibility of the 3592
underlying assets held by the fund portfolios of the investment 3593
company. 3594

(3) Bonds or other interest-bearing obligations of any state 3595
or territory of the United States, or of any county, city, 3596
village, school district, or other legally constituted political 3597
taxing subdivision of any state or territory of the United States, 3598
not otherwise eligible under division (A)(2) or (3) of section 3599
2109.37 of the Revised Code, or of any foreign government; 3600

(4) Debt or equity securities of foreign corporations that 3601
trade on recognized United States domiciled exchanges. 3602

(B) No investment shall be made pursuant to this section 3603
~~which that,~~ at the time ~~such the~~ investment is made, causes the 3604
aggregate market value of the investments, not made eligible by 3605
section 2109.37 or 2109.372 of the Revised Code, to exceed sixty 3606
per cent of the aggregate market value at that time of all the 3607
property of the fund held by the fiduciary. No sale or other 3608
liquidation of any investment shall be required solely because of 3609
any change in the relative market value of those investments made 3610
eligible by this section and those made eligible by section 3611
2109.37 or 2109.372 of the Revised Code; provided that, in the 3612
event of a sale of investments authorized by this section, the 3613
proceeds from the sale may be reinvested in the kinds and classes 3614
of securities authorized by this section without regard to the 3615
percentage limitation provided in this division. In determining 3616
the aggregate market value of the property of a fund and the 3617

percentage of a fund to be invested under this section, a 3618
fiduciary may rely upon published market quotations as to those 3619
investments for which ~~such~~ those quotations are available and upon 3620
~~such~~ the valuations of other investments ~~as that~~, in the 3621
fiduciary's best judgment, seem fair and reasonable according to 3622
available information. 3623

(C)(1)(a) A fiduciary making an investment of trust funds in 3624
securities of an affiliated investment company, or a bank 3625
subsidiary corporation or other corporation owned or controlled by 3626
the bank holding company that owns or controls the fiduciary, may 3627
charge a reasonable fee for investment advisory, brokerage, 3628
transfer agency, registrar, management, or other similar services 3629
provided to an affiliated investment company. The fee may be in 3630
addition to the compensation to which the fiduciary is otherwise 3631
entitled to receive from the trust, provided that the fee is 3632
charged as a percentage of either asset value or income earned or 3633
actual amount charged and is disclosed at least annually by 3634
prospectus, account statement, or any other written means to all 3635
persons entitled to receive statements of account activity. The 3636
fiduciary shall disclose the relationship between the fiduciary 3637
and the affiliated investment company, at least annually by 3638
account statement, whether or not the fee is charged. 3639

(b) A fiduciary making an investment of trust funds in 3640
securities of an affiliated investment company pursuant to 3641
division (A)(2) of this section shall, when providing any periodic 3642
account statements to the trust fund, report the net asset value 3643
of the shares comprising the investment of the trust funds in the 3644
affiliated investment company. 3645

(c) If a fiduciary making an investment of trust funds in 3646
securities of an affiliated investment company pursuant to 3647
division (A)(2) of this section invests ~~such~~ those funds in any 3648
mutual fund, the fiduciary shall disclose, in at least ten-point 3649

boldface type, by prospectus, account statement, or any other 3650
written means to all persons entitled to receive statements of 3651
account activity, that the mutual fund is not insured or 3652
guaranteed by the federal deposit insurance corporation or by any 3653
other government-sponsored agency of the federal government or of 3654
this state. 3655

(2) Unless the investment of trust funds in securities of an 3656
affiliated investment company can be made under the terms of the 3657
instrument creating the trust, an exception to the investment of 3658
trust funds in securities of an affiliated investment company may 3659
be filed with the probate court. Any exception filed pursuant to 3660
this division ~~must~~ shall be signed by all persons who would, at 3661
the time the exception is filed, be permitted to file an exception 3662
to an account pursuant to section 2109.33 of the Revised Code and 3663
~~must~~ shall state that all ~~such~~ of those persons request that the 3664
current investment of trust funds in securities of an affiliated 3665
investment company be terminated within a reasonable time. If the 3666
probate court determines that the exception complies with the 3667
requirements of this division, the probate court shall establish a 3668
schedule for disposing of any current investments in securities of 3669
an affiliated investment company, and the fiduciary shall cause 3670
the trust to dispose of the investments in accordance with the 3671
schedule. The fiduciary shall not be liable for any loss incurred 3672
by the trust as a result of complying with division (C)(2) of this 3673
section. 3674

(D) As used in this section, "affiliated investment company" 3675
and "reasonable fee" have the same meanings as in division (E) of 3676
section 1111.13 of the Revised Code. 3677

Sec. 2109.372. (A) As used in this section: 3678

(1) "Short term trust-quality investment fund" means a short 3679
term investment fund that meets both of the following conditions: 3680

(a) The fund may be either a collective investment fund 3681
established in accordance with section 1111.14 of the Revised Code 3682
or a registered investment company, including any affiliated 3683
investment company whether or not the fiduciary has invested other 3684
funds held by it in an agency or other nonfiduciary capacity in 3685
the securities of the same registered investment company or 3686
affiliated investment company. 3687

(b) The fund is invested in any one or more of the following 3688
manners: 3689

(i) In obligations of the United States or of its agencies; 3690

(ii) In obligations of one or more of the states of the 3691
United States or their political subdivisions; 3692

(iii) In obligations of foreign governments or states; 3693

(iv) In variable demand notes, corporate money market 3694
instruments including, but not limited to, commercial paper rated 3695
at the time of purchase in either of the two highest 3696
classifications established by at least one nationally recognized 3697
standard rating service; 3698

~~(iv)~~(v) Deposits in banks, savings banks, or savings and loan 3699
associations, whose deposits are insured by the federal deposit 3700
insurance corporation, or in credit unions insured by the national 3701
credit union administration or by a credit union share guaranty 3702
corporation established under Chapter 1761. of the Revised Code, 3703
if the rate of interest paid on ~~such~~ those deposits is at least 3704
equal to the rate of interest generally paid by ~~such~~ those banks, 3705
savings banks, savings and loan associations, or credit unions on 3706
deposits of similar terms or amounts; 3707

~~(v)~~(vi) In fully collateralized repurchase agreements or 3708
other evidences of indebtedness that are of trust quality and are 3709
payable on demand or have a maturity date consistent with the 3710
purpose of the fund and the duty of fiduciary prudence. 3711

(2) "Registered investment company" means any investment 3712
company that is defined in and registered under sections 3 and 8 3713
of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 3714
80a-3 and 80a-8. 3715

(3) "Affiliated investment company" has the same meaning as 3716
in division (E)(1) of section 1111.13 of the Revised Code. 3717

(B) A fiduciary is not required to invest cash that belongs 3718
to the trust and may hold that cash for the period prior to 3719
distribution if either of the following applies: 3720

(1) The fiduciary reasonably expects to do either of the 3721
following: 3722

(a) Distribute the cash to beneficiaries of the trust on a 3723
quarterly or more frequent basis; 3724

(b) Use the cash for the payment of debts, taxes, or expenses 3725
of administration within the ninety-day period following the 3726
receipt of the cash by the fiduciary. 3727

(2) Determined on the basis of the facilities available to 3728
the fiduciary and the amount of the income that reasonably could 3729
be earned by the investment of the cash, the amount of the cash 3730
does not justify the administrative burden or expense associated 3731
with its investment. 3732

(C) If a fiduciary wishes to hold funds that belong to the 3733
trust in liquid form and division (B) of this section does not 3734
apply, the fiduciary may so hold the funds as long as they are 3735
temporarily invested as described in division (D) of this section. 3736

(D)(1) A fiduciary may make a temporary investment of cash 3737
that the fiduciary may hold uninvested in accordance with division 3738
(B) of this section, and shall make a temporary investment of 3739
funds held in liquid form pursuant to division (C) of this 3740
section, in any of the following investments, unless the governing 3741

instrument provides for other investments in which the temporary 3742
investment of cash or funds is permitted: 3743

(a) A short term trust-quality investment fund; 3744

(b) Direct obligations of the United States or of its 3745
agencies; 3746

(c) Obligations of foreign governments or states; 3747

(d) A deposit with a bank, savings bank, savings and loan 3748
association, or credit union, including a deposit with the 3749
fiduciary itself or any bank subsidiary corporation owned or 3750
controlled by the bank holding company that owns or controls the 3751
fiduciary, whose deposits are insured by the federal deposit 3752
insurance corporation, if the rate of interest paid on that 3753
deposit is at least equal to the rate of interest generally paid 3754
by that bank, savings bank, savings and loan association, or 3755
credit union on deposits of similar terms or amounts. 3756

(2) A fiduciary that makes a temporary investment of cash or 3757
funds pursuant to division (D)(1) of this section may charge a 3758
reasonable fee for the services associated with that investment. 3759
The fee shall be in addition to the compensation to which the 3760
fiduciary is entitled for ordinary fiduciary services. 3761

(3) Fiduciaries that make one or more temporary investments 3762
of cash or funds pursuant to division (D)(1) of this section shall 3763
provide to the beneficiaries of the trusts involved, that are 3764
currently receiving income or have a right to receive income, a 3765
written disclosure of their temporary investment practices and, if 3766
applicable, the method of computing reasonable fees for their 3767
temporary investment services pursuant to division (D)(2) of this 3768
section. Fiduciaries may comply with this requirement in any 3769
appropriate written document, including, but not limited to, any 3770
periodic statement or account. 3771

(4) A fiduciary that makes a temporary investment of cash or 3772

funds in an affiliated investment company pursuant to division 3773
(D)(1)(a) of this section shall, when providing any periodic 3774
account statements of its temporary investment practices, report 3775
the net asset value of the shares comprising the investment in the 3776
affiliated investment company. 3777

(5) If a fiduciary that makes a temporary investment of cash 3778
or funds in an affiliated investment company pursuant to division 3779
(D)(1)(a) of this section invests in any mutual fund, the 3780
fiduciary shall provide to the beneficiaries of the trust 3781
involved, that are currently receiving income or have a right to 3782
receive income, a written disclosure, in at least ten-point 3783
boldface type, that the mutual fund is not insured or guaranteed 3784
by the federal deposit insurance corporation or by any other 3785
government agency or government-sponsored agency of the federal 3786
government or of this state. 3787

Sec. 2109.38. Sections 2109.37, 2109.371, and 2109.372 of the 3788
Revised Code do not prohibit a fiduciary from retaining any part 3789
of a trust estate as received by ~~him~~ the fiduciary even though 3790
~~such that~~ that part is not of the class or percentage permitted to 3791
fiduciaries, or from retaining any investment made by ~~him~~ the 3792
fiduciary after ~~such the~~ the investment ceases to be of a class or 3793
exceeds the percentage permitted by law, provided the 3794
circumstances are not such as to require the fiduciary to dispose 3795
of ~~such the~~ the investment in the performance of ~~his~~ the fiduciary's 3796
duties. 3797

Sec. 2109.39. A fiduciary entitled to a distributive share of 3798
the assets of an estate or trust has the same right as other 3799
beneficiaries to accept or demand distribution in kind and may 3800
retain any security or investment so distributed to ~~him~~ the 3801
fiduciary as though it were a part of the original estate received 3802
by ~~him~~ the fiduciary. 3803

Sec. 2109.40. Unless the instrument creating a trust forbids, 3804
a fiduciary may do all of the things ~~which~~ that an individual 3805
holder might do with respect to securities held by ~~him~~ the 3806
fiduciary, including the exercise or sale of subscription rights, 3807
the acceptance of new stock in the same corporation in place of 3808
the stock held, or in the event of reorganization, sale, or merger 3809
in a different corporation, and with the approval of the probate 3810
court, the investment of additional funds ~~where~~ if required of all 3811
shareholders participating in a reorganization. 3812

Sec. 2109.42. Subject to section 2109.372 of the Revised 3813
Code, a fiduciary who has funds belonging to a trust ~~which~~ that 3814
are not required for payment of current obligations of ~~his~~ the 3815
fiduciary's trust or distribution shall, unless otherwise ordered 3816
by the probate court, invest ~~such~~ those funds within a reasonable 3817
time according to section 2109.37 or 2109.371 of the Revised Code. 3818
On failure to do so, ~~such~~ the fiduciary shall account to the trust 3819
for ~~such~~ any loss of interest ~~as~~ that is found by the court to be 3820
due to ~~his~~ the fiduciary's negligence. 3821

Sec. 2109.43. No fiduciary shall make any personal use of the 3822
funds or property belonging to a trust. For a violation of this 3823
section, ~~such~~ the fiduciary and ~~his~~ the fiduciary's bond shall be 3824
liable in an action for any loss occasioned by ~~such~~ that use and 3825
for ~~such~~ any additional amount by way of forfeiture, not exceeding 3826
the amount of the loss occasioned by ~~such~~ the use, ~~as~~ that may be 3827
fixed by the probate court hearing ~~such~~ the case. ~~Such~~ Those 3828
amounts shall be payable for the benefit of the beneficiary, if 3829
living, and to ~~his~~ the beneficiary's estate if ~~he~~ the beneficiary 3830
is deceased. In addition to the penalties under this section, the 3831
court may remove the fiduciary pursuant to section 2109.24 of the 3832
Revised Code for fraudulent conduct or dereliction of duty related 3833

to the fiduciary's personal use or misuse of funds or property 3834
belonging to a trust. However, if all interested persons consent 3835
to the fiduciary's use of the property in a signed writing filed 3836
with the probate court, the fiduciary may make personal use of 3837
property belonging to the trust. 3838

An action under this section shall be brought not later than 3839
one year after the termination of the trust or the discovery of 3840
~~such~~ that loss. 3841

It is within the court's discretion, upon application, notice 3842
to interested persons, and a hearing, to allow the personal use of 3843
trust property by the fiduciary. 3844

Sec. 2109.44. (A) Fiduciaries shall not buy from or sell to 3845
themselves and shall not have in their individual capacities any 3846
dealings with the estate, except as expressly authorized by the 3847
instrument creating the trust and then only ~~1111.13-1111.14~~ with 3848
the approval of the probate court in each instance. No corporate 3849
fiduciary, ~~7~~ as defined in section 1101.01 of the Revised Code, 3850
that is not subject to examination or regulatory oversight by the 3851
superintendent of financial institutions, the comptroller of the 3852
currency, or the office of thrift supervision shall be permitted 3853
to deal with the estate, any power in the instrument creating the 3854
trust to the contrary notwithstanding. This section does not 3855
prohibit a fiduciary from making an advancement ~~when~~ if the 3856
advancement has been expressly authorized by the instrument 3857
creating the trust or ~~when~~ if the probate court approves or from 3858
engaging in any act authorized by this chapter. 3859

(B) The fiduciary may petition the court for authority to 3860
purchase property of the estate if all of the following 3861
requirements are met: 3862

(1) Written consent to the purchase is signed by the 3863
following: 3864

(a) Each known heir whose interest in the estate would be 3865
affected by the proposed purchase; 3866

(b) Each known devisee whose interest in the estate would be 3867
affected by the proposed purchase. 3868

(2) The written consents are filed with the court. 3869

(3) The purchase is shown to be to the advantage of the 3870
estate. 3871

(C) The court shall deliver notice of the hearing on the 3872
petition to the heirs, devisees, or legatees of the estate or any 3873
interested person. 3874

Sec. 2109.45. Before the probate court confirms a sale by an 3875
executor, administrator, guardian, assignee, or trustee made under 3876
an order allowing that officer to make a private sale, the court 3877
shall require that officer to file a statement indicating that the 3878
private sale was made after diligent endeavor to obtain the best 3879
price for the property and that the private sale was at the 3880
highest price ~~he~~ the executor, administrator, guardian, assignee, 3881
or trustee could ~~get~~ obtain for the property. 3882

Sec. 2109.46. When it appears to be for the best interests of 3883
the ~~trust~~ entrusted estate, a fiduciary other than an executor or 3884
administrator may, with the approval of the probate court, borrow 3885
money and mortgage real ~~estate~~ property belonging to the ~~trust~~ 3886
entrusted estate, whether ~~such the~~ the real estate property was 3887
acquired by purchase or by descent and distribution. 3888

The fiduciary proposing ~~se~~ to borrow money ~~must~~ shall file in 3889
the probate court ~~which that~~ appointed him the fiduciary a 3890
~~petition~~ complaint describing all of the real ~~estate~~ property in 3891
the trust and stating the nature and amount of the encumbrances 3892
~~thereon on that real property~~, the date ~~such those~~ those encumbrances 3893
became or will become due, and the rate of interest ~~thereon on~~ 3894

those encumbrances. The ~~petition~~ complaint shall also contain a 3895
statement of the personal property in the trust, the income from 3896
~~such the~~ personal property, and the income from the real ~~estate~~ 3897
property in ~~such the~~ trust. ~~Such petition~~ The complaint if filed 3898
by a guardian shall state the names, ages, and residences of the 3899
ward and next of kin known to be a resident in the of this state, 3900
including the spouse of ~~such the~~ ward and persons holding liens on 3901
~~such the~~ real estate property unless the liens will be 3902
extinguished, all of whom ~~must~~ shall be made defendants and be 3903
notified of the pendency and prayer of the ~~petition~~ complaint in 3904
~~such the~~ manner as that the court directs. In addition ~~such~~ 3905
~~petition,~~ the complaint shall contain a statement of the nature of 3906
the ~~imbecility incompetency or insanity~~ incapacity, if any, of 3907
~~such the~~ ward, whether temporary or confirmed and its duration. 3908
Except as provided in this section, the defendants and notice 3909
~~thereto to the defendants~~ shall be the same as though the real 3910
~~estate property~~ proposed to be mortgaged were being sold by the 3911
fiduciary. The ~~petition~~ complaint shall set forth the purpose of 3912
the loan, the amount required ~~therefor~~ for the loan, and ~~such any~~ 3913
other facts ~~as that~~ may be pertinent to the question whether ~~such~~ 3914
the money should be borrowed and shall contain a prayer that the 3915
fiduciary be authorized to mortgage so much of the ward's lands as 3916
may be necessary to secure ~~such the~~ loan. 3917

Upon the filing of ~~such petition~~ the complaint, the 3918
proceedings as to pleadings and proof shall be the same as on 3919
~~petition a complaint~~ to sell real ~~estate~~ property belonging to the 3920
trust. 3921

Sec. 2109.47. Before the probate court makes an order 3922
authorizing a guardian to mortgage real ~~estate~~ property for the 3923
purpose of borrowing money to make repairs or improvements, the 3924
court shall appoint ~~three~~ disinterested persons whose duty it 3925
shall be to investigate fully the necessity for and the 3926

advisability of making the repairs or improvements and their 3927
probable cost and to report their conclusions to the court. 3928

Sec. 2109.48. If on the final hearing of a fiduciary's 3929
~~petition~~ complaint to borrow money and mortgage real ~~estate~~ 3930
property belonging to the trust it appears to be for the best 3931
interests of the trust that the prayer of the ~~petition~~ complaint 3932
be granted, the probate court shall fix the amount necessary to be 3933
borrowed, direct what ~~lands~~ real property shall be encumbered by 3934
mortgage to secure ~~such that~~ amount, and issue an order to ~~such~~ 3935
the fiduciary directing ~~him~~ the fiduciary to ascertain and report 3936
to the court the rate of interest and the length of time for which 3937
~~he~~ the fiduciary can borrow ~~such that~~ amount. 3938

If ~~such the~~ report of the fiduciary and the terms proposed 3939
are satisfactory to the court, they may be accepted and confirmed 3940
and the fiduciary ordered, as fiduciary, to execute a note for 3941
~~such the~~ amount to be borrowed and a mortgage on the ~~lands~~ real 3942
property so designated, which shall be a valid lien ~~thereon~~ on the 3943
property. The fiduciary in no way shall be personally liable for 3944
the payment of any part of the sum borrowed, but ~~such the~~ 3945
mortgaged ~~lands~~ real property alone shall be bound ~~therefor~~ for 3946
its payment. ~~Such The~~ court shall direct the distribution of the 3947
fund and the fiduciary shall report to the court, for its 3948
approval, the execution of ~~such the~~ notes and mortgage and ~~his the~~ 3949
fiduciary's distribution of the fund. 3950

Sec. 2109.49. The probate judge, ~~when~~ if the probate judge 3951
~~deems~~ considers it necessary or upon the written application of 3952
any party interested in the trust estate, may appoint a suitable 3953
~~persons~~ person to investigate the administration of the trust or 3954
estate and report to the court. The expense ~~thereof~~ of the 3955
investigation shall be taxed as costs against the party asking for 3956
~~such the~~ examination or the trust fund, as the court may decree. 3957

This section shall not apply to a corporate trustee ~~which~~ that is 3958
subject to section 1111.28 of the Revised Code. 3959

Sec. 2109.50. Upon complaint made to the probate court of the 3960
county having jurisdiction of the administration of ~~a trust~~ an 3961
estate, a testamentary trust, or a guardianship or of the county 3962
~~wherein~~ where a person resides against whom the complaint is made, 3963
by a person interested in ~~such trust~~ the estate, testamentary 3964
trust, or guardianship or by the creditor of a person interested 3965
in ~~such trust~~ the estate, testamentary trust, or guardianship 3966
against any person suspected of having concealed, embezzled, or 3967
conveyed away or of being or having been in the possession of any 3968
moneys, ~~chattels~~ personal property, or choses in action of ~~such~~ 3969
the estate, testamentary trust, or guardianship, ~~said~~ the court 3970
shall by citation, ~~attachment or warrant, or, if circumstances~~ 3971
~~require it, by warrant or attachment in the first instance, or~~ 3972
other judicial order compel the person or persons ~~so~~ suspected to 3973
~~forthwith~~ appear before it to be examined, on oath, touching the 3974
matter of the complaint. ~~Where~~ If necessary ~~such, the~~ citation, 3975
~~attachment or warrant~~ or other judicial order may be issued into 3976
any county in the state and shall be served and returned by the 3977
officer to whom it is delivered. The officer to whom ~~such the~~ 3978
process is delivered shall be liable for negligence in its service 3979
or return in ~~like~~ a similar manner as sheriffs are liable for 3980
negligence in not serving or returning a capias issued upon an 3981
indictment. Before issuing an extra-county citation, ~~attachment or~~ 3982
~~warrant~~ or other judicial order, the probate judge may require the 3983
complainant to post security with the probate court in ~~such an~~ 3984
amount and in ~~such~~ a form ~~as that~~ the probate judge ~~shall find~~ 3985
finds acceptable in order to cover the costs of the proceeding 3986
under this section, including in ~~such those~~ costs a reasonable 3987
allowance for the ~~travelling~~ travel expenses of the person or 3988
persons against whom an extra-county citation, ~~attachment or~~ 3989

~~warrant or other judicial order~~ is to be issued. ~~Such~~ The security 3990
may be in the form of a bond, the amount, terms, conditions, and 3991
sureties of which shall be subject to the approval of the probate 3992
judge. 3993

The probate court may initiate proceedings on its own motion. 3994

The probate court shall ~~forthwith~~ promptly proceed to hear 3995
and determine the matter. 3996

The examinations, including questions and answers, shall be 3997
reduced to writing, signed by the party examined, and filed in the 3998
probate court. 3999

If required by either party, the probate court shall swear 4000
~~such the~~ witnesses ~~as may be~~ who are offered by either party 4001
touching the matter of ~~such the~~ complaint and cause the 4002
examination of every ~~such~~ witness, including questions and 4003
answers, to be reduced to writing, signed by the witness, and 4004
filed in the probate court. 4005

All costs of ~~such the~~ proceedings, including the reasonable 4006
~~travelling travel~~ expenses of a person against whom an 4007
extra-county citation, ~~attachment or warrant or judicial order~~ is 4008
issued, shall be assessed against and paid by the party making the 4009
complaint, except as provided by section 2109.52 of the Revised 4010
Code. 4011

Sec. 2109.51. If a person compelled under section 2109.50 of 4012
the Revised Code to appear for examination refuses to answer 4013
interrogatories propounded, the probate court shall commit ~~such~~ 4014
the person to the county jail, and ~~such the~~ person shall remain in 4015
close custody until ~~he~~ the person submits to the court's order. 4016

Sec. 2109.52. When passing on a complaint made under section 4017
2109.50 of the Revised Code, the probate court shall determine, by 4018
the verdict of a jury if either party requires it or without if 4019

not required, whether the person accused is guilty of having 4020
concealed, embezzled, conveyed away, or been in the possession of 4021
moneys, ~~chattels~~ personal property, or choses in action of the 4022
~~trust~~ estate, testamentary trust, or guardianship. If ~~such~~ the 4023
person is found guilty, the probate court shall assess the amount 4024
of damages to be recovered or the court may order the return of 4025
the specific thing concealed or embezzled or may order restoration 4026
in kind. The probate court may issue a citation or other judicial 4027
order into any county in this state, ~~which citation that~~ shall be 4028
served and returned as provided in section 2109.50, ~~requiring of~~ 4029
the Revised Code. The citation or other judicial order shall 4030
require any person ~~to appear before it~~ who claims any interest in 4031
the assets alleged to have been concealed, embezzled, conveyed, or 4032
held in possession ~~and at such~~ to appear before the court. At the 4033
hearing, the court may hear and determine questions of title 4034
relating to ~~such~~ those assets. In all cases, except when the 4035
person found guilty is the fiduciary, the probate court shall 4036
~~forthwith~~ render judgment in favor of the fiduciary or if there is 4037
no fiduciary in this state, the probate court shall render 4038
judgment in favor of the state, against the person found guilty, 4039
for the amount of the moneys or the value of the ~~chattels~~ personal 4040
property or choses in action concealed, embezzled, conveyed away, 4041
or held in possession, together with ten per cent penalty and all 4042
costs of ~~such~~ the proceedings or complaint; except that ~~such~~ the 4043
judgment shall be reduced to the extent of the value of any thing 4044
specifically restored or returned in kind as provided in this 4045
section. 4046

If the person found guilty is the fiduciary, the probate 4047
court shall ~~forthwith~~ render judgment in favor of the state 4048
against ~~him~~ the fiduciary for ~~such~~ the amount of the moneys or the 4049
value of the personal property or choses in action concealed, 4050
embezzled, conveyed away, or held in possession, together with 4051
penalty and costs as provided in this section. 4052

Sec. 2109.53. If a judgment is rendered against a fiduciary 4053
under section 2109.52 of the Revised Code, ~~he~~ the fiduciary shall 4054
~~forthwith~~ be removed by the probate court ~~and that part of the~~ 4055
~~trust not already administered shall be committed to some other~~ 4056
~~person.~~ If any portion of the estate, testamentary trust, or 4057
guardianship remains to be administered by the probate court at 4058
the time of the removal of the fiduciary, the court shall appoint 4059
a new fiduciary to continue the administrative process. A 4060
fiduciary ~~so~~ that is removed shall not receive compensation for 4061
acting as fiduciary and ~~must~~ shall be charged ~~in his account with~~ 4062
for the amount of ~~such~~ the judgment. ~~Such~~ The fiduciary's property 4063
also shall be liable for the satisfaction of the judgment on 4064
execution issued ~~thereon~~ on the judgment by ~~his~~ the fiduciary's 4065
successor. 4066

Sec. 2109.54. The fiduciary in whose favor a judgment has 4067
been rendered by the probate court under section 2109.52 of the 4068
Revised Code shall ~~forthwith~~ deliver to the clerk of the court of 4069
common pleas a certificate of ~~such~~ that judgment in accordance 4070
with section 2329.04 of the Revised Code, ~~which certificate the~~ 4071
The probate judge court shall make out complete and deliver the 4072
certificate to ~~such~~ the fiduciary on demand. The clerk shall 4073
~~forthwith~~ issue an execution of the court of common pleas for the 4074
amount of the judgment and the costs that have accrued or that may 4075
accrue ~~thereon~~ on the judgment. Thenceforth proceedings on 4076
execution shall be the same as if the judgment had been rendered 4077
in ~~such~~ that court of common pleas. 4078

Sec. 2109.55. If a judgment is rendered in the name of the 4079
state under section 2109.52 of the Revised Code and there is no 4080
fiduciary within this state, the prosecuting attorney shall cause 4081
the certificate provided for in section 2109.54 of the Revised 4082

Code to be filed in the clerk's office and proceed ~~thereon~~ to 4083
execution on the judgment as provided in ~~such that~~ section. ~~Such~~ 4084
~~The~~ prosecuting attorney shall pay the money realized upon ~~such~~ 4085
~~the~~ execution to the county treasurer for the use of ~~such trust~~ 4086
~~the estate, testamentary trust, or guardianship,~~ reserving ~~such~~ 4087
~~the~~ compensation to ~~himself as the prosecuting attorney that~~ the 4088
probate court allows. 4089

Sec. 2109.56. All gifts, grants, or conveyances of ~~land,~~ 4090
~~tenements, hereditaments~~ real property, rents, or ~~chattels~~ 4091
personal property and all bonds, judgments, or executions made or 4092
obtained with intent to avoid the purpose of the proceedings set 4093
forth in sections 2109.50 to 2109.55, ~~inclusive,~~ of the Revised 4094
Code, or in contemplation of any examination or complaint provided 4095
for by ~~such~~ those sections, shall be void. 4096

Sec. 2109.57. In any action or proceeding pending in a court 4097
of record, if it is made to appear to the court that any person 4098
entitled to all or a part of the proceeds of property sold in ~~such~~ 4099
~~that~~ action or proceeding is unknown or is a nonresident and not 4100
represented in ~~such the~~ action or proceeding or that the person 4101
entitled cannot, at the time, definitely be ascertained, the 4102
probate court may appoint a trustee to whom the notes and 4103
mortgages for the unpaid part shall be made, delivered, and paid 4104
and to receive, hold, and manage ~~such the~~ proceeds or part ~~thereof~~ 4105
of the proceeds. ~~Such The~~ trustee shall collect the unpaid part of 4106
the proceeds of the property sold, by action or otherwise, and 4107
shall pay over ~~such that~~ fund only on the order of the probate 4108
court appointing ~~him~~ the trustee. 4109

Payment to ~~such the~~ trustee shall be a bar to any claim 4110
thereafter made by any person and the persons or corporations 4111
paying ~~such the~~ money in no case shall be required to see to the 4112
application of the money paid. 4113

If a person entitled to any portion of the money held by ~~such~~ 4114
~~the~~ trustee fails for seven or more years after ~~such the~~ trustee's 4115
appointment to make claim to the money and to present the proof 4116
necessary to entitle ~~such the~~ person to ~~such the~~ money, the 4117
prosecuting attorney of the county in which ~~such the~~ trustee was 4118
appointed shall collect it, with the interest accrued ~~thereon on~~ 4119
~~the money~~, from ~~such the~~ trustee and pay it into ~~such the~~ county's 4120
treasury, to be placed to the credit of the general fund. 4121

~~When~~ Upon application to the probate court ~~which that~~ 4122
appointed ~~such the~~ trustee ~~is satisfied that a~~ and presentment of 4123
the proof necessary to entitle the person who appears and claims 4124
to the moneys paid into the county treasury has a right to receive 4125
them, money, the court shall order the payment of the money to the 4126
person in whole or part, less the costs of collection by the 4127
prosecuting attorney, ~~such court shall order the payment thereof~~ 4128
~~to the person shown to be entitled to such moneys. Such. The~~ 4129
person, on the judge's certificate, shall be given a warrant 4130
~~therefor~~ for the money by the county auditor. 4131

Sec. 2109.58. Each fiduciary as to whom definite provision is 4132
not made in sections 2111.14 and 2115.02 of the Revised Code shall 4133
make and file within three months after ~~his~~ the fiduciary's 4134
appointment a full inventory of the real and personal property 4135
~~belonging to the trust~~ be entrusted with the fiduciary, its value, 4136
and the value of the yearly rent of the real property. 4137

Except as provided by section 2115.16 of the Revised Code, 4138
exceptions to the inventory of a fiduciary may be filed at any 4139
time within six months after the return of the inventory by any 4140
person interested in the ~~trust~~ entrusted property or in any of the 4141
property included in the inventory, but the six-month period shall 4142
not apply in case of fraud or concealment of assets. At the 4143
hearing, the fiduciary and any witness may be examined under oath. 4144

The probate court shall enter its finding on the journal and tax 4145
the costs as may be equitable. 4146

Sec. 2109.59. If a fiduciary, upon demand, refuses or 4147
neglects to pay any creditor whose claim has been allowed by the 4148
fiduciary and not subsequently rejected or to pay any creditor or 4149
make distribution to any person interested in the estate whose 4150
claim or interest has been established by judgment, decree, or 4151
order of court, including an order of distribution, ~~such the~~ 4152
creditor or other person may file a petition against the fiduciary 4153
in the probate court from which the fiduciary received ~~his the~~ 4154
fiduciary's appointment to enforce ~~such the~~ payment or 4155
distribution, briefly setting forth ~~therein in the petition~~ the 4156
amount and nature of ~~his the creditor's or other person's~~ claim or 4157
interest. ~~Such The~~ petition shall not be filed against an executor 4158
or administrator until the expiration of the period prescribed in 4159
section 2117.30 of the Revised Code. 4160

When ~~such the~~ petition is filed, the probate court shall 4161
issue a citation to the fiduciary setting forth the filing of the 4162
petition and the nature of the claim of the petitioner and 4163
commanding ~~such the~~ fiduciary to appear before the court on the 4164
return day ~~thereof~~ to answer and show cause why a judgment should 4165
not be rendered or order entered against ~~him the fiduciary~~. ~~Such~~ 4166
The citation shall be returnable not less than twenty nor more 4167
than forty days from its date and shall be served and returned by 4168
an officer as in the case of summons. ~~Such The~~ citation may issue 4169
to any county in the state. 4170

On the return of the citation, the cause shall be set for 4171
hearing, unless for good cause shown it is continued. The probate 4172
court may hear and determine all questions necessary to ascertain 4173
and fix the amount due from the fiduciary to the petitioner and 4174
render ~~such the~~ judgment or make ~~such the~~ order as that may be 4175

proper. If necessary, ~~such~~ the court may hear, determine, and 4176
settle the rights and claims of all parties interested in the 4177
subject matter of the petition. For ~~such~~ that purpose the probate 4178
court may ~~cause~~ allow all parties in interest to be made parties 4179
to ~~such~~ the petition by amended, supplemental, or ~~crosspetition~~ 4180
cross-petition. The court shall cause notice to be served on all 4181
~~such~~ the parties in the manner provided in this section for 4182
service of the citation upon the fiduciary. 4183

In any ~~such~~ proceeding under this section, the sureties on 4184
the bond of the fiduciary, if made parties ~~thereto~~ to the 4185
proceeding, may make any defense that the fiduciary could make and 4186
the court may render ~~such~~ the judgment or make ~~such~~ the order with 4187
respect to the sureties ~~as~~ that may be proper. 4188

Sec. 2109.60. When a proceeding set forth in section 2109.59 4189
of the Revised Code is pending in the probate court, ~~such~~ the 4190
court, on motion of any party ~~thereto~~ or on the court's own 4191
motion, may ~~reserve and send such~~ transfer the cause to the court 4192
of common pleas ~~which, and the court of common pleas~~ shall hear, 4193
settle, and determine all issues as provided in ~~such~~ that section. 4194
In case of ~~such reservation the transfer~~, the probate court shall 4195
prepare a transcript of the proceedings in the cause, so far as it 4196
has progressed, ~~which that~~, with the petition and other papers 4197
~~therein in the proceedings, forthwith~~ shall be filed with the 4198
clerk of the court of common pleas. 4199

Sec. 2109.61. An action may be prosecuted on the bond of a 4200
fiduciary against any one or more of the obligors ~~thereof~~ on the 4201
bond by any person who has been injured by reason of the breach of 4202
any condition of the bond. ~~Such~~ The action shall be prosecuted for 4203
the benefit of all persons who are interested in the estate and 4204
who have been similarly injured. Any such person or any obligor on 4205
the bond who is not already a party to the action may intervene 4206

~~therein in the action~~ or be made a party ~~thereto to the action~~ by 4207
supplemental, amended, or ~~crosspetition~~ cross-petition. Notice of 4208
any action or proceeding against the bonded fiduciary shall be 4209
given to the surety. 4210

If a surety on the bond of a fiduciary is not made a party to 4211
an action or proceeding against ~~such the~~ fiduciary, the fact that 4212
a judgment was rendered or an order was entered against the 4213
fiduciary shall constitute only prima-facie evidence of the 4214
justice and validity of the claim in an action subsequently 4215
brought against the sureties on the bond of the fiduciary. 4216

Sec. 2109.62. (A)(1) Upon the filing of a motion by a trustee 4217
with the court that has jurisdiction over the trust, upon the 4218
provision of reasonable notice to all beneficiaries who are known 4219
and in being and who have vested or contingent interests in the 4220
trust, and after holding a hearing, the court may terminate the 4221
trust, in whole or in part, if it determines that all of the 4222
following apply: 4223

(a) It is no longer economically feasible to continue the 4224
trust. 4225

(b) The termination of the trust is for the benefit of the 4226
beneficiaries. 4227

(c) The termination of the trust is equitable and practical. 4228

(d) The current value of the trust is less than one hundred 4229
thousand dollars. 4230

(2) The existence of a spendthrift or similar provision in a 4231
trust instrument or will does not preclude the termination of a 4232
trust pursuant to this section. 4233

(B) If property is to be distributed from an estate being 4234
probated to a trust and the termination of the trust pursuant to 4235
this section does not clearly defeat the intent of the testator, 4236

the probate court has jurisdiction to order the outright 4237
distribution of the property or to make the property custodial 4238
property under sections 5814.01 to 5814.09 of the Revised Code. A 4239
probate court may so order whether the ~~application~~ motion for the 4240
order is made by an inter vivos trustee named in the will of the 4241
decedent or by a testamentary trustee. 4242

(C) Upon the termination of a trust pursuant to this section, 4243
the probate court shall order the distribution of the trust estate 4244
in accordance with any provision specified in the trust instrument 4245
for the premature termination of the trust. If there is no 4246
provision of that nature in the trust instrument, the probate 4247
court shall order the distribution of the trust estate among the 4248
beneficiaries of the trust in accordance with their respective 4249
beneficial interests and in a manner that the court determines to 4250
be equitable. For purposes of ordering the distribution of the 4251
trust estate among the beneficiaries of the trust under this 4252
division, the court shall consider all of the following: 4253

(1) The existence of any agreement among the beneficiaries 4254
with respect to their beneficial interests; 4255

(2) The actuarial values of the separate beneficial interests 4256
of the beneficiaries; 4257

(3) Any expression of preference of the beneficiaries that is 4258
contained in the trust instrument. 4259

Sec. 2111.02. (A) ~~When~~ If found necessary, the probate court 4260
on its own motion or on application by any interested party shall 4261
appoint, subject to divisions (C) and (D) of this section and to 4262
section 2109.21 and division (B) of section 2111.121 of the 4263
Revised Code, a guardian of the person, the estate, or both, of a 4264
minor or incompetent, provided the person for whom the guardian is 4265
to be appointed is a resident of the county or has a legal 4266
settlement in the county and, except in the case of a minor, has 4267

had the opportunity to have the assistance of counsel in the 4268
proceeding for the appointment of ~~such~~ that guardian. An 4269
interested party includes, but is not limited to, a person 4270
nominated in a durable power of attorney as described in division 4271
(D) of section 1337.09 of the Revised Code or in a writing as 4272
described in division (A) of section 2111.121 of the Revised Code. 4273

Except when the guardian of an incompetent is an agency under 4274
contract with the department of developmental disabilities for the 4275
provision of protective services under sections 5123.55 to 5123.59 4276
of the Revised Code, the guardian of an incompetent, by virtue of 4277
~~such~~ the appointment as guardian, shall be the guardian of the 4278
minor children of the guardian's ward, unless the court appoints 4279
some other person as their guardian. 4280

When the primary purpose of the appointment of a guardian is, 4281
or was, the collection, disbursement, or administration of moneys 4282
awarded by the veterans administration to the ward, or assets 4283
derived from ~~such~~ those moneys, no court costs shall be charged in 4284
the proceeding for the appointment or in any subsequent 4285
proceedings made in pursuance of the appointment, unless the value 4286
of the estate, including the moneys then due under the veterans 4287
administration award, exceeds one thousand five hundred dollars. 4288

(B)(1) If the probate court finds it to be in the best 4289
interest of an incompetent or minor, it may appoint pursuant to 4290
divisions (A) and (C) of this section, on its own motion or on 4291
application by an interested party, a limited guardian with 4292
specific limited powers. The sections of the Revised Code, rules, 4293
and procedures governing guardianships apply to a limited 4294
guardian, except that the order of appointment and letters of 4295
authority of a limited guardian shall state the reasons for, and 4296
specify the limited powers of, the guardian. The court may appoint 4297
a limited guardian for a definite or indefinite period. An 4298
incompetent or minor for whom a limited guardian has been 4299

appointed retains all of the incompetent's or minor's rights in 4300
all areas not affected by the court order appointing the limited 4301
guardian. 4302

(2) If a guardian appointed pursuant to division (A) of this 4303
section is temporarily or permanently removed or resigns, and if 4304
the welfare of the ward requires immediate action, at any time 4305
after the removal or resignation, the probate court may appoint, 4306
ex parte and with or without notice to the ward or interested 4307
parties, an interim guardian for a maximum period of fifteen days. 4308
If the court appoints the interim guardian ex parte or without 4309
notice to the ward, the court, at its first opportunity, shall 4310
enter upon its journal with specificity the reason for acting ex 4311
parte or without notice, and, as soon as possible, shall serve 4312
upon the ward a copy of the order appointing the interim guardian. 4313
For good cause shown, after notice to the ward and interested 4314
parties and after hearing, the court may extend an interim 4315
guardianship for a specified period, but not to exceed an 4316
additional thirty days. 4317

(3) If a minor or incompetent has not been placed under a 4318
guardianship pursuant to division (A) of this section and if an 4319
emergency exists, and ~~if~~ it is reasonably certain that immediate 4320
action is required to prevent significant injury to the person or 4321
estate of the minor or incompetent, at any time after it receives 4322
notice of the emergency, the court, ex parte, may issue any order 4323
that it considers necessary to prevent injury to the person or 4324
estate of the minor or incompetent, or may appoint an emergency 4325
guardian for a maximum period of seventy-two hours. A written copy 4326
of any order issued by a court under this division shall be served 4327
upon the incompetent or minor as soon as possible after its 4328
issuance. Failure to serve ~~such an~~ that order after its issuance 4329
or prior to the taking of any action under its authority does not 4330
invalidate the order or the actions taken. The powers of an 4331

emergency guardian shall be specified in the letters of 4332
appointment, and shall be limited to those powers that are 4333
necessary to prevent injury to the person or estate of the minor 4334
or incompetent. If the court acts ex parte or without notice to 4335
the minor or incompetent, the court, at its first opportunity, 4336
shall enter upon its journal a record of the case and, with 4337
specificity, the reason for acting ex parte or without notice. For 4338
good cause shown, after notice to the minor or incompetent and 4339
interested parties, and after hearing, the court may extend an 4340
emergency guardianship for a specified period, but not to exceed 4341
an additional thirty days. 4342

(C) Prior to the appointment of a guardian or limited 4343
guardian under division (A) or (B)(1) of this section, the court 4344
shall conduct a hearing on the matter of the appointment. The 4345
hearing shall be conducted in accordance with all of the 4346
following: 4347

(1) The proposed guardian or limited guardian shall appear at 4348
the hearing and, if appointed, shall swear under oath that the 4349
proposed guardian or limited guardian has made and will continue 4350
to make diligent efforts to file a true inventory in accordance 4351
with section 2111.14 of the Revised Code and find and report all 4352
assets belonging to the estate of the ward and that the proposed 4353
guardian or limited guardian faithfully and completely will 4354
fulfill the other duties of guardian, including the filing of 4355
timely and accurate reports and accountings~~+~~. 4356

(2) If the hearing is conducted by a ~~referee~~ magistrate, the 4357
procedures set forth in Civil Rule 53 shall be followed~~+~~. 4358

(3) If the hearing concerns the appointment of a guardian or 4359
limited guardian for an alleged incompetent, the burden of proving 4360
incompetency shall be by clear and convincing evidence~~+~~. 4361

(4) Upon request of the applicant, the alleged incompetent 4362

for whom the appointment is sought or the alleged incompetent's 4363
counsel, or any interested party, a recording or record of the 4364
hearing shall be made~~+~~. 4365

(5) Evidence of a less restrictive alternative to 4366
guardianship may be introduced, and when introduced, shall be 4367
considered by the court~~+~~. 4368

(6) The court may deny a guardianship based upon a finding 4369
that a less restrictive alternative to guardianship exists~~+~~. 4370

(7) If the hearing concerns the appointment of a guardian or 4371
limited guardian for an alleged incompetent, the alleged 4372
incompetent has all of the following rights: 4373

(a) The right to be represented by independent counsel of the 4374
alleged incompetent's choice; 4375

(b) The right to have a friend or family member of the 4376
alleged incompetent's choice present; 4377

(c) The right to have evidence of an independent expert 4378
evaluation introduced; 4379

(d) If the alleged incompetent is indigent, upon the alleged 4380
incompetent's request: 4381

(i) The right to have counsel and an independent expert 4382
evaluator appointed at court expense; 4383

(ii) If the guardianship, limited guardianship, or standby 4384
guardianship decision is appealed, the right to have counsel 4385
appointed and necessary transcripts for appeal prepared at court 4386
expense. 4387

(D)(1) ~~When~~ If a person has been nominated to be a guardian 4388
of the estate of a minor in or pursuant to a durable power of 4389
attorney as described in division (D) of section 1337.09 of the 4390
Revised Code or a writing as described in division (A) of section 4391
2111.121 of the Revised Code, the person nominated has preference 4392

in appointment over a person selected by the minor. A person who 4393
has been nominated to be a guardian of the person of a minor in or 4394
pursuant to a durable power of attorney or writing of that nature 4395
does not have preference in appointment over a person selected by 4396
the minor, but the probate court may appoint the person named in 4397
the durable power of attorney or the writing, the person selected 4398
by the minor, or another person as guardian of the person of the 4399
minor. 4400

(2) A person nominated as a guardian of an incompetent adult 4401
child pursuant to section 1337.09 or 2111.121 of the Revised Code 4402
shall have preference in appointment over a person applying to be 4403
guardian if the person nominated is competent, suitable, and 4404
willing to accept the appointment, and if the incompetent adult 4405
child does not have a spouse or an adult child and has not 4406
designated a guardian prior to the court finding the adult child 4407
incompetent. 4408

Sec. 2111.021. A competent adult who is physically infirm may 4409
petition the probate court of the county in which ~~he~~ the 4410
petitioner resides, to place, for a definite or indefinite period 4411
of time, ~~his~~ the petitioner's person, any or all of ~~his~~ the 4412
petitioner's real or personal property, or both under a 4413
conservatorship with the court. A petitioner either may grant 4414
specific powers to the conservator or court or may limit any 4415
powers granted by law to the conservator or court, except that the 4416
petitioner may not limit the powers granted to the court by this 4417
section and may not limit the requirement for bond as determined 4418
by the court. The petition shall state whether the person of the 4419
competent adult will be placed under the conservatorship, shall 4420
state with particularity all real and personal property that will 4421
be placed under the conservatorship, shall state the powers 4422
granted and any limitation upon the powers of the conservator or 4423
court, and shall state the name of a proposed suitable 4424

conservator. 4425

After a hearing, if the court finds that the petition was 4426
voluntarily filed and that the proposed conservator is suitable, 4427
the court shall issue an order of conservatorship. Upon issuance 4428
of the order, all sections of the Revised Code governing a 4429
guardianship of the person, the estate, or both, whichever is 4430
involved, except those sections the application of which 4431
specifically is limited by the petitioner, and all rules and 4432
procedures governing ~~such~~ a guardianship of the person, the 4433
estate, or both, shall apply to the conservatorship, including, 4434
but not limited to, applicable bond and accounting requirements. 4435

A conservatorship shall terminate upon a judicial 4436
determination of incompetency, the death of the petitioner, the 4437
order of the probate court, or the execution of a written 4438
termination notice by the petitioner. A termination notice shall 4439
take effect upon execution by the petitioner, and shall be filed 4440
with the court and served upon the conservator. A termination 4441
notice executed by a petitioner relative to a conservatorship of 4442
the estate and the termination of a conservatorship of the estate 4443
based upon a termination notice are void unless the termination 4444
notice is filed with the court within fourteen days after its 4445
execution. Modification of the powers of a conservator or the 4446
court may be made by the petitioner upon motion to the court at 4447
any time during the conservatorship. Neither the establishment of 4448
a conservatorship nor the filing of a petition for conservatorship 4449
with the probate court shall be considered as evidence of mental 4450
impairment under section 2111.01 of the Revised Code. 4451

Upon motion to the probate court and a showing of good cause, 4452
the court may make confidential, or remove from confidential 4453
status, any file, record, petition, motion, account, or paper, 4454
except for an index, docket, or journal, that pertains to a 4455
conservatorship and that is in the possession of the court. 4456

Sec. 2111.031. In connection with an application for the 4457
appointment of a guardian for an alleged incompetent, the court 4458
may appoint physicians and other qualified persons to examine, 4459
investigate, or represent the alleged incompetent, to assist the 4460
court in deciding whether a guardianship is necessary. If the 4461
person is determined to be an incompetent and a guardian is 4462
appointed for ~~him~~ the person, the costs, fees, or expenses 4463
incurred to so assist the court shall be charged either against 4464
the estate of the person or against the applicant, unless the 4465
court determines, for good cause shown, that the costs, fees, or 4466
expenses are to be recovered from the county, in which case they 4467
shall be charged against the county. If the person is not 4468
determined to be an incompetent or a guardian is not appointed for 4469
~~him~~ the person, the costs, fees, or expenses incurred to so assist 4470
the court shall be charged against the applicant, unless the court 4471
determines, for good cause shown, that the costs, fees, or 4472
expenses are to be recovered from the county, in which case they 4473
shall be charged against the county. 4474

A court may require the applicant to make an advance deposit 4475
of an amount that the court determines is necessary to defray the 4476
anticipated costs of examinations of an alleged incompetent and to 4477
cover fees or expenses to be incurred to assist it in deciding 4478
whether a guardianship is necessary. 4479

This section does not affect or apply to the duties of a 4480
probate court investigator under sections 2111.04 and 2111.041 of 4481
the Revised Code. 4482

Sec. 2111.04. (A) Except for an interim or emergency guardian 4483
appointed under division (B)(2) or (3) of section 2111.02 of the 4484
Revised Code, no guardian of the person, the estate, or both shall 4485
be appointed until at least seven days after the probate court has 4486
caused written notice, setting forth the time and place of the 4487

hearing, to be served as follows: 4488

(1) In the appointment of the guardian of a minor, notice 4489
shall be served as follows: 4490

(a) Upon the minor, if over the age of fourteen, by personal 4491
service; 4492

(b) Upon each parent of the minor whose name and address is 4493
known or with reasonable diligence can be ascertained, provided 4494
the parent is free from disability other than minority; 4495

(c) Upon the next of kin of the minor who are known to reside 4496
in this state, if there is no living parent, the name and address 4497
of the parent cannot be ascertained, or the parent is under 4498
disability other than minority; 4499

(d) Upon the person having the custody of the minor. 4500

(2) In the appointment of the guardian of an incompetent, 4501
notice shall be served as follows: 4502

(a)(i) Upon the person for whom appointment is sought by 4503
personal service, by a probate court investigator, or in the 4504
manner provided in division (A)(2)(a)(ii) of this section. The 4505
notice shall be in boldface type and shall inform the alleged 4506
incompetent, in boldface type, of his the alleged incompetent's 4507
rights to be present at the hearing, to contest any application 4508
for the appointment of a guardian for his the alleged 4509
incompetent's person, estate, or both, and to be represented by an 4510
attorney and of all of the rights set forth in division (C)(7) of 4511
section 2111.02 of the Revised Code. 4512

(ii) If the person for whom appointment is sought is a 4513
resident of, or has a legal settlement in, the county in which the 4514
court has jurisdiction, but is absent from that county, the 4515
probate court may designate, by order, a temporary probate court 4516
investigator, in lieu of a regular probate court investigator 4517

appointed or designated under section 2101.11 of the Revised Code, 4518
to make the personal service of the notice described in division 4519
(A)(2)(a)(i) of this section upon the person for whom appointment 4520
is sought. 4521

(b) Upon the next of kin of the person for whom appointment 4522
is sought who are known to reside in this state. 4523

(B) After service of notice in accordance with division (A) 4524
of this section and for good cause shown, the court may appoint a 4525
guardian prior to the time limitation specified in that division. 4526

(C) Notice may not be waived by the person for whom the 4527
appointment is sought. 4528

(D) From the service of notice until the hearing, no sale, 4529
gift, conveyance, or encumbrance of the property of an alleged 4530
incompetent shall be valid as to persons having notice of the 4531
proceeding. 4532

Sec. 2111.041. (A) At the time of the service of notice upon 4533
an alleged incompetent, as required by division (A)(2)(a) of 4534
section 2111.04 of the Revised Code, the court shall require a 4535
regular probate court investigator appointed or designated under 4536
section 2101.11 of the Revised Code or appoint a temporary probate 4537
court investigator to investigate the circumstances of the alleged 4538
incompetent, and, to the maximum extent feasible, to communicate 4539
to the alleged incompetent in a language or method of 4540
communication that ~~he~~ the alleged incompetent can understand, ~~his~~ 4541
the alleged incompetent's rights as specified in that division, 4542
and subsequently to file with the court a report that contains all 4543
of the following: 4544

(1) A statement indicating that the notice was served and 4545
describing the extent to which the alleged incompetent's rights to 4546
be present at the hearing, to contest any application for the 4547

appointment of a guardian for ~~his~~ the alleged incompetent's 4548
person, estate, or both, and to be represented by an attorney were 4549
communicated to ~~him~~ the alleged incompetent in a language or 4550
method of communication understandable to the alleged incompetent; 4551

(2) A brief description, as observed by the investigator, of 4552
the physical and mental condition of the alleged incompetent; 4553

(3) A recommendation regarding the necessity for a 4554
guardianship or a less restrictive alternative; 4555

(4) A recommendation regarding the necessity of appointing 4556
pursuant to section 2111.031 of the Revised Code, an attorney to 4557
represent the alleged incompetent. 4558

(B) The report that is required by division (A) of this 4559
section shall be made a part of the record in the case and shall 4560
be considered by the court prior to establishing any guardianship 4561
for the alleged incompetent. 4562

Sec. 2111.06. If the powers of the person appointed as 4563
guardian of a minor or incompetent are not limited by the order of 4564
appointment, ~~such~~ the person shall be guardian both of the person 4565
and estate of the ward. In every instance the court shall appoint 4566
the same person as guardian of the person and estate of ~~any such~~ 4567
the ward, unless in the opinion of the court the interests of the 4568
ward will be promoted by the appointment of different persons as 4569
guardians of the person and of the estate. 4570

A guardian of the person of a minor shall be appointed as to 4571
a minor having ~~neither~~ no father ~~nor~~ or mother, ~~or~~ whose parents 4572
are unsuitable persons to have the custody ~~and tuition~~ of ~~such~~ the 4573
minor and to provide for the education of the minor as required by 4574
section 3321.01 of the Revised Code, or whose interests, in the 4575
opinion of the court, will be promoted ~~thereby~~ by the appointment 4576
of a guardian. A guardian of the person shall have the custody and 4577

provide for the maintenance of the ward, and if the ward is a 4578
minor, ~~such~~ the guardian shall also provide for the education of 4579
~~such~~ the ward as required by section 3321.01 of the Revised Code. 4580

Before exercising its jurisdiction to appoint a guardian of a 4581
minor, the court shall comply with the jurisdictional standards of 4582
sections 3127.01 to 3127.53 of the Revised Code. 4583

Sec. 2111.07. Each person appointed guardian of the person 4584
and estate of a minor shall have the custody ~~and tuition~~ of ~~his~~ 4585
the ward, the obligation to provide for the education of the ward 4586
as required under section 3321.01 of the Revised Code, and the 4587
management of ~~such~~ the ward's estate during minority, unless ~~such~~ 4588
the guardian is removed or discharged from ~~such~~ that trust or the 4589
guardianship terminates from any of the causes specified in 4590
Chapters 2101. to 2131., ~~inclusive,~~ of the Revised Code. 4591

Sec. 2111.09. Unless expressly appointed or designated to act 4592
both as guardian and executor by a ~~last~~ will in writing, no person 4593
who is or has been an administrator or executor of a ~~last~~ will 4594
shall, prior to the approval of ~~his~~ the person's final account as 4595
~~such~~ executor or administrator, be appointed a guardian of the 4596
person and estate or of the estate only of a ward who is 4597
interested in the estate administered upon or entitled to an 4598
interest under ~~such~~ the will, except that a surviving spouse may 4599
be executor or administrator of the deceased spouse's estate and 4600
also guardian of the person and estate or of the estate only of a 4601
minor child of ~~such~~ the surviving spouse, whether or not ~~such~~ the 4602
minor child is interested in the estate of the deceased spouse. 4603
~~But However,~~ an executor or an administrator may be appointed a 4604
guardian of the person only of a ward. 4605

Sec. 2111.091. No attorney who represents any other person 4606
~~other than himself~~ and who is appointed as a guardian under this 4607

chapter or under any other provision of the Revised Code shall do 4608
either of the following: 4609

(A) Act as a person with co-responsibility for any 4610
guardianship asset for which the guardian ~~he represents~~ is 4611
responsible; 4612

(B) Be a cosignatory on any financial account related to the 4613
guardianship, including any checking account, savings account, or 4614
other banking or trust account. 4615

Sec. 2111.12. (A) A minor over the age of fourteen years may 4616
select a guardian who shall be appointed if a suitable person. If 4617
~~such~~ the minor fails to select a suitable person, an appointment 4618
may be made without reference to the minor's wishes. The minor 4619
shall not select one person to be the guardian of the minor's 4620
estate only and another to be the guardian of the person only, 4621
unless the court ~~which that~~ appoints the guardian is of the 4622
opinion that the interests of ~~such~~ the minor will ~~thereby~~ be 4623
promoted by that selection. 4624

(B) A surviving parent by ~~last~~ a will in writing may appoint 4625
a guardian for any of the surviving parent's children, whether 4626
born at the time of making the will or afterward, to continue 4627
during the minority of the child or for a less time. 4628

When the father or mother of a minor names a person as 4629
guardian of the estate of ~~such~~ the minor in a will, the person 4630
named shall have preference in appointment over the person 4631
selected by ~~such~~ the minor. A person named in ~~such a~~ that will as 4632
guardian of the person of ~~such~~ the minor shall have no preference 4633
in appointment over the person selected by ~~such~~ the minor, but in 4634
~~such~~ that event the probate court may appoint the person named in 4635
the will, the person selected by the minor, or some other person. 4636

Whenever a testamentary guardian is appointed, the 4637

testamentary guardian's duties, powers, and liabilities in all 4638
other respects shall be governed by the law regulating guardians 4639
not appointed by will. 4640

(C) A parent pursuant to a durable power of attorney as 4641
described in division (D) of section 1337.09 or a writing as 4642
described in division (A) of section 2111.121 of the Revised Code 4643
may nominate a person to be a guardian for one or more of the 4644
parent's minor children, whether born at the time of the making of 4645
the ~~petition~~ nomination or afterward. 4646

Sec. 2111.131. (A) The probate court may enter an order that 4647
authorizes a person under a duty to pay or deliver money or 4648
personal property to a minor who does not have a guardian of the 4649
person and estate or a guardian of the estate, to perform that 4650
duty in amounts not exceeding five thousand dollars annually, by 4651
paying or delivering the money or property to any of the 4652
following: 4653

(1) The guardian of the person only of the minor; 4654

(2) The minor's natural guardians, if any, as determined 4655
pursuant to section 2111.08 of the Revised Code; 4656

(3) The ~~minor's own self~~ minor; 4657

(4) Any person who has the care and custody of the minor and 4658
with whom the minor resides, other than a guardian of the person 4659
only or a natural guardian; 4660

(5) A financial institution incident to a deposit in a 4661
federally insured savings account in the sole name of the minor; 4662

(6) A custodian designated by the court in its order, for the 4663
minor under sections 5814.01 to 5814.09 of the Revised Code. 4664

(B) An order entered pursuant to division (A) of this section 4665
authorizes the person or entity specified in it, to receive the 4666
money or personal property on behalf of the minor from the person 4667

under the duty to pay or deliver it, in amounts not exceeding five 4668
thousand dollars annually. Money or personal property so received 4669
by guardians of the person only, natural guardians, and custodians 4670
as described in division (A)(4) of this section may be used by 4671
them only for the support, maintenance, or education of the minor 4672
involved. The order of the court is prima-facie evidence that a 4673
guardian of the person only, a natural guardian, or a custodian as 4674
described in division (A)(4) of this section has the authority to 4675
use the money or personal property received. 4676

(C) A person who pays or delivers moneys or personal property 4677
in accordance with a court order entered pursuant to division (A) 4678
of this section is not responsible for the proper application of 4679
the moneys or property by the recipient. 4680

Sec. 2111.14. (A) In addition to ~~his~~ a guardian's other 4681
duties, every guardian appointed to take care of the estate of a 4682
ward shall have the following duties: 4683

~~(A)(1)~~ To make and file within three months after ~~his~~ the 4684
guardian's appointment a full inventory of the real and personal 4685
property of the ward, its value, and the value of the yearly rent 4686
of the real property, provided that, if the guardian fails to file 4687
the inventory for thirty days after ~~he has~~ having been notified of 4688
the expiration of the time by the probate judge, the judge shall 4689
remove ~~him~~ the guardian and appoint a successor; 4690

~~(B)(2)~~ To manage the estate for the best interest of the 4691
ward; 4692

~~(C)(3)~~ To pay all just debts due from the ward out of the 4693
estate in ~~his hands~~ the possession or under the control of the 4694
guardian, collect all debts due to the ward, compound doubtful 4695
debts, and appear for and defend, or cause to be defended, all 4696
suits against the ward; 4697

~~(D)~~(4) To obey all orders and judgments of the courts 4698
touching the guardianship; 4699

~~(E)~~(5) To bring suit for the ward when a suit is in the best 4700
interests of the ward; 4701

~~(F)~~(6) To settle and adjust, when necessary or desirable, the 4702
assets that ~~he~~ the guardian may receive in kind from an executor 4703
or administrator to the greatest advantage of the ward. Before a 4704
settlement and adjustment is valid and binding, it shall be 4705
approved by the probate court and the approval shall be entered on 4706
its journal. The guardian also shall have the approval of the 4707
probate court to hold the assets as received from the executor or 4708
administrator or to hold what may be received in the settlement 4709
and adjustment of those assets. 4710

(B) No guardian appointed to take care of the estate of a 4711
ward may open a safety deposit box held in the name of the ward, 4712
until the contents of the box have been audited by an employee of 4713
the county auditor in the presence of the guardian and until a 4714
verified report of the audit has been filed by the auditor with 4715
the probate court, ~~which~~. The court then shall issue a release to 4716
the guardian permitting the guardian to have access to the safety 4717
deposit box of the ward. 4718

Sec. 2111.141. The court, by order or rule, may require that 4719
any inventory filed by a guardian pursuant to section 2111.14 of 4720
the Revised Code be supported by evidence that the inventory is a 4721
true and accurate inventory of the estate of the ward of the 4722
guardian, ~~which~~. The evidence may include, but is not limited to, 4723
prior income tax returns, bank statements, and social security 4724
records of the ward or other documents that are relevant to 4725
determining the accuracy of the inventory. In order to verify the 4726
accuracy of an inventory, the court may order a guardian to 4727
produce any additional evidence that may tend to prove that the 4728

guardian is in possession of or has knowledge of assets that 4729
belong to the estate of ~~his~~ the ward and that have not been 4730
included in the guardianship inventory, ~~which~~. The additional 4731
evidence may include, but is not limited to, the guardian's income 4732
tax returns and bank statements and any other documents that are 4733
relevant to determining the accuracy of an inventory. The court 4734
may assign court employees or appoint an examiner to verify an 4735
inventory filed by a guardian. Upon appointment, the assigned 4736
court employees or appointed examiner shall conduct an 4737
investigation to verify the accuracy of the inventory filed by the 4738
guardian. Upon order of the court, the assigned court employees or 4739
appointed examiner may subpoena any documents necessary for ~~his~~ 4740
the investigation. Upon completion of the investigation, the 4741
assigned court employees or appointed examiner shall file a report 4742
with the court. The court shall hold a hearing on the report with 4743
notice to all interested parties. At the hearing, the guardian 4744
shall have the right to examine and cross-examine any assigned 4745
court employees or appointed examiner who conducted the 4746
investigation and filed the report that is the subject of the 4747
hearing. The court shall charge any costs associated with the 4748
verification of an inventory filed by a guardian against the 4749
estate of the ward, except that, if the court determines that the 4750
guardian wrongfully withheld, or aided in the wrongful 4751
withholding, of assets from the inventory filed by the guardian, 4752
the court shall charge the costs against the guardian. 4753

Sec. 2111.16. Unless previously authorized by the court, no 4754
voucher that is signed or purports to be signed by the ward shall 4755
be received from or allowed as a credit in the settlement of a 4756
guardian's account ~~which is signed or purports to be signed by his~~ 4757
~~ward.~~ 4758

Sec. 2111.17. A guardian may sue in ~~his~~ the guardian's own 4759

name, describing ~~himself as the~~ guardian as suing on behalf of the 4760
ward ~~for whom he sues~~. When ~~his~~ the guardianship ceases, actions 4761
or proceedings then pending shall not abate, if the right 4762
survives. ~~His~~ The guardian's successor as guardian, the executor 4763
or administrator of the ward, or the ward ~~himself~~, if the 4764
guardianship has terminated other than by the ward's death, shall 4765
be made party to the suit or other proceeding as the case 4766
requires, in the same manner an executor or administrator is made 4767
a party to a similar suit or proceeding ~~where~~ if the plaintiff 4768
dies during its pendency. 4769

Sec. 2111.181. ~~When~~ If personal injury, damage to tangible or 4770
intangible property, or damage or loss on account of personal 4771
injury or damage to tangible or intangible property is caused to a 4772
minor, who claims to be emancipated, by wrongful act, neglect, or 4773
default ~~which~~ that would entitle the minor to maintain an action 4774
and recover damages for the injury, damage, or loss, and ~~when~~ if 4775
any minor who claims to be emancipated is entitled to maintain an 4776
action for damages or any other relief based on any claim, or is 4777
subject to any claim to recover damages or any other relief based 4778
on any claim, the minor, who claims to be emancipated, may file an 4779
application in the probate court in the county where ~~he~~ the minor 4780
then resides, praying for a finding by the court that the minor is 4781
in fact emancipated, and authorizing, approving, and consenting to 4782
the settlement of the claim by the minor without the appointment 4783
of a guardian. Upon hearing on the application, after five days' 4784
written notice of the time and place of the hearing has been given 4785
to each of the living parents of the minor, whose name and address 4786
is known, provided the parent is free from disability other than 4787
minority, or, if there is no living parent, after ~~such~~ that notice 4788
to the next of kin of the minor known to reside in the county, the 4789
court may find the minor to be emancipated ~~and~~, may authorize, 4790
approve, and consent to the settlement of the claim by the minor 4791

without the appointment of a guardian ~~and~~, may authorize the minor 4792
to receive and receipt for the settlement, and, upon the minor 4793
executing and delivering a full and complete release for the 4794
injuries, damages, losses, or claims, may authorize the delivery 4795
and payment of ~~such~~ the moneys to the minor, to a trustee or 4796
guardian of the estate of the minor appointed by the court for the 4797
benefit of the minor, or to a depository authorized to receive 4798
fiduciary funds to hold the moneys payable to the ward when ~~he~~ the 4799
ward attains majority, or for the benefit of the minor, as the 4800
court may direct. 4801

Upon the finding of the probate court that the minor was, at 4802
the time of the injury, damage, loss, or claim, an emancipated 4803
minor, and provided the notice required by this section has been 4804
given to each living parent, whose name and address is known, then 4805
the release executed by the emancipated minor shall be a full and 4806
complete discharge and release of any claim ~~which~~ that either or 4807
both of the parents might have by reason of the personal injury, 4808
damage to tangible or intangible property, damage or loss on 4809
account of personal injury, or damage to tangible or intangible 4810
property, or any other claim of the minor. 4811

Sec. 2111.19. A guardian, whether appointed by a court in 4812
this state or elsewhere, may complete the contracts of ~~his~~ the 4813
ward for the purchase or sale of real ~~estate~~ property or any 4814
authorized contract relating to real ~~estate~~ property entered into 4815
by a guardian who has died or been removed. ~~Said~~ The appointed 4816
guardian shall proceed in the manner provided by sections 2113.48 4817
to 2113.50, ~~inclusive~~, of the Revised Code. 4818

Sec. 2111.20. The guardian of the person and estate, or of 4819
the estate only, may sell all or any part of the personal ~~estate~~ 4820
property of the ward ~~when such~~ if the sale is for the interest of 4821
the ward. 4822

Sec. 2111.21. The guardian of a ward who has or is claimed to 4823
have a right of dower, or a contingent right to it, in ~~lands or~~ 4824
~~tenements~~ real property of which the spouse of ~~such the~~ ward was 4825
or is seized as an estate of inheritance, ~~where if~~ the dower has 4826
not been assigned, may sell, compromise, or adjust ~~such the~~ dower 4827
or may release ~~such the~~ contingent right of dower in the event the 4828
spouse of ~~such the~~ ward desires to mortgage ~~such the~~ property upon 4829
~~such the~~ terms ~~as such that the~~ guardian ~~deems~~ considers for the 4830
interest of ~~such the~~ ward and upon ~~such the~~ terms ~~as that~~ the 4831
probate court of the county in which the guardian was appointed 4832
approves, or if ~~such the~~ guardian was appointed to a foreign 4833
state, upon ~~such the~~ terms ~~as that~~ the probate court of the county 4834
~~wherein in which the land~~ real property is situated approves. 4835
After ~~such the~~ approval, the guardian may execute and deliver all 4836
the necessary deeds, mortgages, releases, and agreements for the 4837
sale, compromise, assignment, or mortgage of ~~such the~~ dower or 4838
contingent right to dower. As a basis for computing the value of 4839
an inchoate dower right in any sale, compromise, or adjustment 4840
pursuant to this section, the value of the ~~lands or tenements~~ real 4841
property may be considered to be the sale price or, if there is no 4842
sale, the appraised value. ~~Such The~~ sale, compromise, adjustment, 4843
or mortgage may be made upon application and entry in the pending 4844
proceedings. 4845

Sec. 2111.22. When a ward has title to real estate property 4846
by tax title only, the guardian, by deed of release and quitclaim, 4847
may convey ~~such the~~ ward's interest or title to the person 4848
entitled to redeem ~~such the~~ real estate property, upon receiving 4849
from ~~such that~~ person the amount paid for ~~such the~~ tax title with 4850
the forfeiture and interest allowed by sections 319.52 and 323.121 4851
of the Revised Code. If the guardian tenders ~~such that~~ deed to the 4852
person entitled to redeem ~~such the~~ real estate property and ~~he the~~ 4853

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. 4854
4855
4856

Sec. 2111.25. A guardian⁷ of the person and estate or of the 4857
estate only, without application to the probate court, may lease 4858
the possession or use of any real estate property of ~~his~~ the ward 4859
for a term not exceeding three years, provided ~~such~~ the term does 4860
not extend beyond the minority, if the ward is a minor. If the 4861
lease extends beyond the death of the ward or beyond the removal 4862
of the disability of a ward other than a minor, ~~such~~ the lease 4863
shall terminate on ~~such~~ that death or removal of disability, 4864
unless confirmed by the ward or ~~his~~ the ward's legal 4865
representatives. In the event of such determination, the tenant 4866
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 4867
compensation was not made in rent or otherwise. 4868
4869

Sec. 2111.26. A guardian may lease the possession and use of 4870
the real estate property of ~~his~~ the guardian's ward or any part of 4871
it for a term of years, renewable or otherwise, by perpetual 4872
lease, with or without the privilege of purchase, or may lease 4873
upon ~~such~~ the terms and for ~~such~~ the time ~~as~~ that the probate 4874
court approves any lands belonging to the ward containing coal, 4875
gypsum, petroleum oil, natural gas, gravel, stone, or any other 4876
mineral substance for the purpose of drilling, mining, or 4877
excavating for and removing any of ~~such~~ those substances, or ~~such~~
the guardian may modify or change in any respect any lease 4878
previously made. 4879
4880

~~Such~~ The lease, or modification or change in a lease 4881
previously made, may be made when the guardian of the person and 4882
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 4883
4884

modification or change is necessary for the support of the ward or 4885
of ~~his~~ the ward's family, for the payment of the just debts of the 4886
ward, for the ward's education, if a minor, to secure the 4887
improvement of the real ~~estate~~ property of the ward and increase 4888
the rent, to pay any liens or claims against ~~said the~~ the real estate 4889
property, ~~or~~ if ~~such the~~ the court finds that ~~such the~~ the real estate 4890
property is suffering unavoidable waste, or that in any other 4891
respect it will be for the best interests of the ward or those 4892
persons for whom the ward is required by law to provide. 4893

Sec. 2111.27. A guardian's application for authority to lease 4894
real ~~estate~~ property of a ward shall be by petition setting forth 4895
the following: 4896

(A) The legal capacity of the petitioner; 4897

(B) The name of the ward, the character of ~~his~~ the ward's 4898
disability, and if it is ~~idiocy, imbecility, or lunacy~~ 4899
incompetence, whether ~~such the~~ the disability is curable or not, 4900
temporary, or confirmed, and its duration; 4901

(C) The number, names, ages, and residence of the family of 4902
the ward, including the spouse and those residents of the county 4903
who have the next estate of inheritance from ~~such the~~ the ward, all of 4904
whom, as well as the ward, ~~must~~ shall be made defendants; 4905

(D) The indebtedness of the ward, the expense of supporting 4906
and maintaining ~~him~~ the ward, the expense of educating ~~him~~ the 4907
ward if ~~he~~ the ward is a minor, and any other expense of the ward; 4908

(E) The value of all the property and effects of the ward 4909
including the real ~~estate~~ property proposed to be leased; 4910

(F) The income of the ward and the net annual value to the 4911
ward of the real ~~estate~~ property proposed to be leased; 4912

(G) A description of the real ~~estate~~ property proposed to be 4913
leased and the probable amount for which ~~such the~~ the real estate 4914

property can be leased; 4915

(H) A detailed statement of the improvements proposed to be 4916
made to the real ~~estate~~ property sought to be leased; 4917

(I) The reasons for the proposed lease and the terms, 4918
covenants, conditions, and stipulations ~~thereof~~ of the proposed 4919
lease, including the time for which it is proposed the real ~~estate~~ 4920
property should be leased; 4921

(J) ~~Such~~ Any other facts necessary to apprise the court fully 4922
of the necessity or benefit to the ward or the estate of the 4923
proposed lease, or ~~such~~ any other facts ~~as that~~ may be required by 4924
the court; 4925

(K) A prayer for the proper authority. 4926

Sec. 2111.28. In an application for authority to lease real 4927
~~estate~~ property of a ward under sections 2111.26 and 2111.27 of 4928
the Revised Code, the guardian may act for two or more wards and 4929
two or more guardians of different wards may unite, ~~when if~~ all 4930
the wards are jointly or in common interested in the real ~~estate~~ 4931
property. ~~When If~~ the same person is guardian of two or more wards 4932
owning lands in common, ~~such the~~ wards may be joined as defendants 4933
in the same petition under section 2111.27 of the Revised Code. 4934

The ward's spouse shall be made a defendant to ~~such the~~ 4935
petition, and if the proposed lease is for the purpose of mining 4936
or removing mineral or other substances, ~~and if such the~~ spouse 4937
files an answer consenting to the lease, free and discharged of 4938
all right and expectancy of dower ~~therein~~, ~~such the~~ answer shall 4939
be a full release of ~~such the~~ spouse's expectancy of dower when 4940
the lease is confirmed. Unless in ~~such the~~ answer an allowance in 4941
lieu of dower is waived, the court shall allow, out of the 4942
proceeds of the lease, ~~such a~~ sum in money ~~as that~~ is the just and 4943
reasonable value of ~~such the~~ expectancy of dower. 4944

Sec. 2111.29. When a guardian files an application for 4945
authority to lease the real ~~estate~~ property of a ward, the same 4946
rules shall apply as to the parties and, upon the filing of the 4947
petition described in section 2111.27 of the Revised Code, ~~like~~ 4948
similar proceedings shall be had as in an action to sell real 4949
~~estate~~ property belonging to the ward under sections 2127.01 to 4950
2127.43, ~~inclusive,~~ of the Revised Code, including services of 4951
summons, notice, appraisal, pleading, rule days, and proof. 4952

Sec. 2111.30. When a guardian applies for authority to lease 4953
the real ~~estate~~ property of a ward, the duties of the appraisers 4954
shall be the same as in proceedings to sell real ~~estate~~ property 4955
belonging to the ward under sections 2127.22 and 2127.23 of the 4956
Revised Code, except that they shall appraise not only the value 4957
of the real ~~estate~~ property but also the value of the annual 4958
rental upon the terms, covenants, conditions, and stipulations of 4959
the proposed lease. If ~~said~~ the proposed lease is for the mining 4960
or removal of mineral or other substances, the appraisers shall 4961
report in writing to the probate court their opinion as to the 4962
probability of the lands containing ~~such~~ those substances, the 4963
probable quantity of ~~such~~ the substances, and the terms upon which 4964
it would be advantageous to the ward to lease the lands for mining 4965
or removing ~~such~~ the substances. In their report the appraisers 4966
shall state whether in their opinion, the proposed lease will be 4967
for the best interests of the ward, those whom ~~he~~ the ward is 4968
required by law to support, or the estate. They may also suggest 4969
any change in the terms, covenants, and stipulations proposed in 4970
the petition. The report of the appraisers shall be returned on or 4971
before the day named in the order for the final hearing of the 4972
case. On the return of the appraisal, the guardian need not 4973
give an additional bond, but in case of sale under the terms of 4974
the lease, ~~such~~ the guardian ~~must~~ shall give ~~such~~ the additional 4975

bond before the confirmation of the sale. 4976

Sec. 2111.31. If the report of the appraisers under section 4977
2111.30 of the Revised Code is favorable to the lease and on the 4978
final hearing the court is of the opinion that it will be to the 4979
advantage of the ward, those whom ~~he~~ the ward is required by law 4980
to support, or the estate to lease the real ~~estate~~ property, the 4981
probate court shall make an order authorizing the lease to be made 4982
by public or private letting, as it ~~deems~~ considers best, on ~~such~~ 4983
the terms, covenants, conditions, and stipulations, either in 4984
accordance with those set forth in the petition or otherwise, ~~as~~ 4985
that it directs, provided ~~such~~ the terms, covenants, conditions, 4986
and stipulations are not less favorable to the ward than those 4987
reported by the appraisers. The lease shall not take effect until 4988
~~such~~ the lease and the security, if any, ~~therein~~ prescribed in the 4989
lease are approved and confirmed. 4990

~~In the~~ The lease made ~~in pursuance of such~~ pursuant to the 4991
court order ~~it may be provided~~ provide that the improvements shall 4992
be made by the tenant as part of the rent, or by the guardian, 4993
either out of the rent or other means of the ward as the court 4994
directs. 4995

If the lease is for the mining or removal of mineral or other 4996
substances and the guardian is unable to lease the lands upon the 4997
terms ordered, ~~he~~ the guardian may report the fact to the court 4998
and ~~such~~ the court may change the terms of leasing, but not below 4999
the customary royalty in the vicinity of ~~such~~ the lands. 5000

Sec. 2111.33. (A) A guardian may use the moneys and personal 5001
~~estate~~ property of ~~his~~ the guardian's ward to improve ~~his~~ the 5002
ward's real ~~estate~~ property. ~~Such~~ The guardian shall file in the 5003
probate court in which ~~he~~ the guardian was appointed a petition 5004
containing the following: 5005

~~(A)~~(1) A description of the premises to be improved; 5006

~~(B)~~(2) The amount of rent the premises yield at the time the 5007
petition is filed; 5008

~~(C)~~(3) In what manner ~~it~~ the improvement is proposed to ~~make~~ 5009
~~such improvement be made~~; 5010

~~(D)~~(4) The proposed expenditures for ~~such~~ the improvement; 5011

~~(E)~~~~What~~ (5) The rent the premises will probably yield when 5012
so improved; 5013

~~(F)~~(6) A statement of the value of the ward's personal ~~estate~~ 5014
property; 5015

~~(G)~~(7) Other facts ~~which~~ that are pertinent to the question 5016
whether the improvement should be made; 5017

~~(H)~~(8) A prayer that ~~such~~ the guardian be authorized to use 5018
so much of ~~his~~ the ward's money and personal ~~estate as~~ property 5019
that is necessary to make ~~such~~ the improvement; 5020

~~(I)~~(9) The character of the disability of the ward, and if it 5021
is incompetency, whether ~~such~~ the disability is curable or not, 5022
temporary, or confirmed, and its duration; 5023

~~(J)~~(10) The names, ages, and residence of the family of the 5024
ward, including the spouse and those known to be residents of the 5025
county who have the next estate of inheritance from the ward. All 5026
~~such of those~~ persons, as well as the ward, ~~must~~ shall be made 5027
defendants and notified of the pendency and prayer of the petition 5028
in ~~such~~ the manner ~~as~~ that the court directs. 5029

(B) If the property is so situated that, to the best 5030
interests of the ward's estate, it can be advantageously improved 5031
in connection with the improvement of property adjacent to it, the 5032
petition shall show this and have a prayer ~~in accordance therewith~~ 5033
to so improve the property. 5034

Sec. 2111.34. Upon the filing of the petition described in 5035
section 2111.33 of the Revised Code, like similar proceedings 5036
shall be had as to pleadings and proof as on petition by a 5037
guardian to sell the real ~~estate~~ property of a ward under sections 5038
2127.01 to 2127.43, ~~inclusive~~, of the Revised Code. The probate 5039
court shall appoint three disinterested freeholders of the county 5040
as commissioners to examine the premises to be improved, to 5041
examine the surroundings, and to report to the court their opinion 5042
whether the improvement proposed will be advantageous to the 5043
estate of the ward. 5044

Sec. 2111.35. On the final hearing of a guardian's proceeding 5045
to improve the real ~~estate~~ property of ~~his~~ the guardian's ward, if 5046
the prayer of the petition is granted, the probate court shall fix 5047
the amount of money and personal ~~estate~~ property that may be used 5048
in making ~~such~~ the improvement. ~~Such~~ The court may authorize ~~such~~ 5049
the guardian to unite with the owners of adjacent property, upon 5050
~~such~~ equitable terms and conditions ~~as~~ that the court approves, 5051
for the improvement of the premises of ~~his~~ the ward and for the 5052
proper management and repair of the property when so improved. 5053
5054

Sec. 2111.36. A guardian shall distinctly report to the 5055
probate court the amount of money and personal property expended 5056
in making an improvement to the ward's real property under section 5057
2111.35 of the Revised Code, within forty days after the 5058
improvement is completed. If the ward dies before the removal of 5059
the disability and there are heirs who inherit real property only 5060
from ~~him~~ the ward, the money expended shall descend and pass in 5061
the same manner as ~~his~~ the ward's other personal property and 5062
shall be a charge on the premises improved in favor of the heirs 5063
who inherit the personal property. 5064

Sec. 2111.37. ~~When~~ If a nonresident minor, incompetent, or 5065
person confined in a state, charitable, or correctional 5066
institution has real ~~estate, chattels,~~ property or rights, 5067
credits, ~~or~~ moneys, or other personal property in this state, the 5068
probate court of the county in which the property or a part of it 5069
is situated may appoint a resident guardian of the ward to manage, 5070
collect, lease, and take care of the ward's property. The 5071
appointment may be made whether or not a ward has a guardian, 5072
trustee, or other conservator in the state of the ward's 5073
residence, and, if the ward has a guardian, trustee, or other 5074
conservator in the state of the ward's residence, the control and 5075
authority of the resident guardian appointed in ~~Ohio~~ this state 5076
shall be superior as to all property of the ward in ~~Ohio~~ this 5077
state. 5078

The first appointment of a resident guardian of a nonresident 5079
ward shall extend to all the property and effects of the ward in 5080
this state and exclude the jurisdiction of the probate court of 5081
any other county. 5082

Sec. 2111.38. The resident guardian of a nonresident ward 5083
shall give bond and be bound and controlled by all the statutes of 5084
~~Ohio~~ this state as though ~~he~~ the resident guardian were a guardian 5085
of a ward resident in this state, and shall have all of the 5086
authority of a guardian of a resident ward including the authority 5087
to lease or sell real ~~estate~~ property belonging to the ward. 5088

Unless removed by the probate court, a resident guardian of a 5089
nonresident minor shall hold ~~his~~ that appointment until ~~such~~ the 5090
minor dies or arrives at the age of majority, whether or not ~~such~~ 5091
the minor is over fourteen years of age at the time of 5092
appointment. A resident guardian of any other nonresident ward 5093
shall hold ~~his~~ that appointment until the death of the ward or 5094
until the court is satisfied that the necessity for the 5095

guardianship no longer exists. 5096

All moneys due to ~~such the~~ nonresident ward while ~~such the~~ 5097
resident guardianship continues shall be paid over to ~~his the~~ 5098
ward's foreign guardian so far as necessary or proper for the 5099
ward's support and maintenance. If the ward dies, ~~such the~~ moneys 5100
shall be paid to ~~his the ward's~~ ancillary administrator or other 5101
legal representative, provided that the court ~~which that~~ appointed 5102
~~such the~~ resident guardian has satisfactory proof, as provided by 5103
section 2111.39 of the Revised Code, of the authority of ~~such the~~ 5104
foreign guardian, administrator, or other legal representative to 5105
receive the moneys or ~~estates properties~~ of ~~such the~~ nonresident 5106
ward, that the security given by ~~such the~~ foreign guardian, 5107
administrator, or other legal representative is sufficient to 5108
protect ~~such the~~ ward's interest or estate, and ~~provided such that~~ 5109
the court deems considers it best for ~~him the ward~~ or ~~his the~~ 5110
ward's estate. 5111

Sec. 2111.39. When a foreign legal representative of a 5112
nonresident ward applies to have all or any of the moneys or 5113
property in the ~~hands~~ possession or under the control of the 5114
resident guardian of ~~such the~~ ward paid or delivered to ~~him the~~ 5115
foreign representative, he must the foreign representative shall 5116
file ~~his a~~ petition or motion in the probate court by which ~~such~~ 5117
the resident guardian was appointed. ~~Such The~~ resident guardian 5118
~~must shall~~ be given thirty days' notice of the time of hearing 5119
~~thereon on the petition or motion,~~ and ~~such the~~ foreign 5120
representative ~~must shall~~ produce an exemplification under the 5121
seal of the office, if there ~~be is~~ a seal, of the proper court of 5122
the state of ~~his the foreign representative's~~ residence containing 5123
all the entries on record in relation to ~~his the foreign~~ 5124
representative's appointment and qualification, authenticated as 5125
required by the act of congress in ~~such those~~ cases. Upon the 5126
hearing ~~thereof~~, the court shall make ~~such an~~ order ~~as that~~ it 5127

~~deems~~ considers for the best interests of ~~such~~ the nonresident 5128
ward or ~~his~~ the nonresident ward's estate. 5129

Sec. 2111.40. ~~When~~ If a nonresident ward for whom a resident 5130
guardian was appointed has become a resident since the appointment 5131
and a guardian has been appointed for ~~such~~ the ward, the probate 5132
court shall remove the resident guardian previously appointed and 5133
require an immediate settlement of ~~his~~ the account of the resident 5134
guardian previously appointed. 5135

Sec. 2111.41. ~~When~~ If a ward for whom a guardian has been 5136
appointed in this state removes to another state or territory, and 5137
a guardian of the ward is there appointed, the guardian in this 5138
state may be removed and required to settle ~~his~~ that guardian's 5139
account. 5140

~~Such a~~ That removal of the guardian in this state shall not 5141
be made unless the guardian appointed in another state or 5142
territory applies to the probate court in this state that made the 5143
former appointment, and files an exemplification from the record 5144
of the court making the foreign appointment containing all the 5145
entries and proceedings relating to ~~his~~ the foreign guardian's 5146
appointment, ~~his~~ and giving bond, with a copy ~~thereof,~~ of the bond 5147
and of the letters of guardianship, all authenticated as required 5148
by the act of congress. Before ~~such an~~ the application is heard or 5149
action taken by the court, at least thirty days' written notice 5150
shall be served on the guardian appointed in this state specifying 5151
the object of the application, and the time it is to be heard. 5152

No ~~such~~ removal of a guardian under this section shall be 5153
made in favor of a foreign guardian, unless at the time of the 5154
hearing the state or territory in which ~~he~~ the foreign guardian 5155
was appointed has a similar provision as to wards removing from 5156
that state or territory. The court shall grant the application 5157

unless it makes an affirmative finding that the removal of the 5158
guardian appointed in this state would not be in the interest of 5159
the ward. 5160

If on ~~such a~~ the hearing the court removes the guardian, it 5161
shall make all suitable orders for discharging the guardian and 5162
shall deliver to the foreign guardian all moneys and other 5163
property in the ~~hands~~ possession or under the control of the 5164
resident guardian after ~~his~~ the resident guardian's settlement. 5165

Sec. 2111.44. Applications for the sale of real ~~estate~~ 5166
property by guardians of wards who live out of this state shall be 5167
made in the county in which the land is situated. If ~~such the~~ real 5168
~~estate~~ property is situated in two or more counties, ~~such the~~ 5169
application shall be made in one of the counties in which a part 5170
of it is situated. Additional security, ~~which that~~ may be approved 5171
by the probate court of the county in which the application is 5172
made, shall be required from ~~such the~~ guardian ~~when deemed if~~ 5173
considered necessary. 5174

Sec. 2111.46. When a guardian has been appointed for a minor 5175
before ~~such the~~ minor is over fourteen years of age, ~~such the~~ 5176
guardian's power shall continue until the ward arrives at the age 5177
of majority, unless removed for good cause or unless ~~such the~~ ward 5178
selects another suitable guardian. After ~~such the~~ selection is 5179
made and approved by the probate court and the person selected is 5180
appointed and qualified, the powers of the former guardian shall 5181
cease. ~~Thereupon his~~ The former guardian's final account as 5182
guardian shall then be filed and settled in court. 5183

Upon the termination of a guardianship of the person, estate, 5184
or both of a minor before ~~such the~~ minor reaches eighteen years of 5185
age, if a successor guardian is not appointed and if the court 5186
finds that ~~such the~~ minor is without proper care, the court shall 5187

certify a copy of its finding together with as much of the record 5188
and ~~such~~ any further information ~~as that~~ the court ~~deems~~ considers 5189
necessary, or as the juvenile court may request, to the juvenile 5190
court for further proceedings ~~and thereupon such~~. Upon that 5191
certification, the juvenile court shall have exclusive 5192
jurisdiction respecting ~~such child~~ the minor. 5193

Sec. 2111.48. All sales, leases, encumbrances, or liens made 5194
or created on any real ~~estate~~ property located in ~~Ohio~~ this state 5195
by guardians for persons who are incompetent by reason of advanced 5196
age or mental or physical disability since August 17, 1919, by 5197
order of any court of this state shall not be declared invalid for 5198
the reason that ~~such the~~ guardians for the incompetents were not 5199
vested with all the statutory powers given to guardians of ~~idiots,~~ 5200
~~imbeciles, and lunatics~~ incompetents. ~~Such~~ Those acts of guardians 5201
for incompetents are legal and effective. 5202

Sec. 2111.50. (A)(1) At all times, the probate court is the 5203
superior guardian of wards who are subject to its jurisdiction, 5204
and all guardians who are subject to the jurisdiction of the court 5205
shall obey all orders of the court that concern their wards or 5206
guardianships. 5207

(2)(a) Subject to divisions (A)(2)(b) and (c) of this 5208
section, the control of a guardian over the person, the estate, or 5209
both of ~~his~~ the guardian's ward is limited to the authority that 5210
is granted to the guardian by the Revised Code, relevant decisions 5211
of the courts of this state, and orders or rules of the probate 5212
court. 5213

(b) Except for the powers specified in division (E) of this 5214
section and unless otherwise provided in or inconsistent with 5215
another section of the Revised Code, the probate court may confer 5216
upon a guardian any power that this section grants to the probate 5217

court in connection with wards. 5218

(c) For good cause shown, the probate court may limit or 5219
deny, by order or rule, any power that is granted to a guardian by 5220
a section of the Revised Code or relevant decisions of the courts 5221
of this state. 5222

(B) In connection with any person whom the probate court has 5223
found to be an incompetent or a minor subject to guardianship and 5224
for whom the court has appointed a guardian, the court has, 5225
subject to divisions (C) to (E) of this section, all the powers 5226
that relate to the person and estate of the ~~person~~ ward and that 5227
~~he the ward~~ could exercise if present and not a minor or under a 5228
disability, except the power to make or revoke a will. These 5229
powers include, but are not limited to, the power to do any of the 5230
following: 5231

(1) Convey or release the present, contingent, or expectant 5232
interests in real or personal property of the ~~person~~ ward, 5233
including, but not limited to, dower and any right of survivorship 5234
incident to a survivorship tenancy, joint tenancy, or tenancy by 5235
the entirety; 5236

(2) Exercise or release powers as a trustee, personal 5237
representative, custodian for a minor, guardian, or donee of a 5238
power of appointment; 5239

(3) Enter into contracts, or create revocable trusts of 5240
property of the estate of the ~~person~~ ward, that may not extend 5241
beyond the minority, disability, or life of the ~~person or~~ ward; 5242

(4) Exercise options to purchase securities or other 5243
property; 5244

(5) Exercise rights to elect options under annuities and 5245
insurance policies, and to surrender an annuity or insurance 5246
policy for its cash value; 5247

(6) Exercise the right to an elective share in the estate of 5248
the deceased spouse of the ~~person~~ ward pursuant to section ~~2107.45~~ 5249
2106.08 of the Revised Code; 5250

(7) Make gifts, in trust or otherwise, to relatives of the 5251
~~person~~ ward and, consistent with any prior pattern of the ~~person~~ 5252
ward of giving to charities or of providing support for friends, 5253
to charities and friends of the ~~person~~ ward. 5254

(C) Except for the powers specified in division (D) of this 5255
section, all powers of the probate court that are specified in 5256
this chapter and that relate either to any person whom it has 5257
found to be an incompetent or a minor subject to guardianship and 5258
for whom it has appointed a guardian and all powers of a guardian 5259
that relate to ~~his~~ the guardian's ward or guardianship as 5260
described in division (A)(2) of this section, shall be exercised 5261
in the best interest, as determined in the court's or guardian's 5262
judgment, of the following: 5263

(1) The ~~person~~ ward whom the probate court has found to be an 5264
incompetent or a minor subject to guardianship; 5265

(2) The dependents of the ~~person~~ ward; 5266

(3) The members of the household of the ~~person~~ ward. 5267

(D) If the court is to exercise or direct the exercise, 5268
pursuant to division (B) of this section, of the power to make 5269
gifts in trust or otherwise, the following conditions shall apply: 5270

(1) The exercise of the particular power shall not impair the 5271
financial ability of the estate of the ~~person~~ ward whom the 5272
probate court has found to be an incompetent or a minor subject to 5273
guardianship and for whom the court has appointed a guardian, to 5274
provide for ~~his~~ the ward's foreseeable needs for maintenance and 5275
care; 5276

(2) If applicable, the court shall consider any of the 5277

following: 5278

(a) The estate, income, and other tax advantages of the 5279
exercise of a particular power to the estate of a ~~person~~ ward whom 5280
the probate court has found to be an incompetent or a minor 5281
subject to guardianship and for whom the court has appointed a 5282
guardian; 5283

(b) Any pattern of giving of, or any pattern of support 5284
provided by, the ~~person~~ ward prior to ~~his~~ the ward's incompetence; 5285

(c) The disposition of property made by the ward's will ~~of~~ 5286
~~the person~~; 5287

(d) If there is no knowledge of a will of the ~~person~~ ward, 5288
~~his~~ the ward's prospective heirs; 5289

(e) Any relevant and trustworthy statements of the ~~person~~ 5290
ward, whether established by hearsay or other evidence. 5291

(E)(1) The probate court shall cause notice as described in 5292
division (E)(2) of this section to be given and a hearing to be 5293
conducted prior to its exercise or direction of the exercise of 5294
any of the following powers pursuant to division (B) of this 5295
section: 5296

(a) The exercise or release of powers as a donee of a power 5297
of appointment; 5298

(b) Unless the amount of the gift is no more than one 5299
thousand dollars, the making of a gift, in trust or otherwise. 5300

(2) The notice required by division (E)(1) of this section 5301
shall be given to the following persons: 5302

(a) Unless a guardian of a ward has applied for the exercise 5303
of a power specified in division (E)(1) of this section, to the 5304
guardian; 5305

(b) To the ~~person~~ ward whom the probate court has found to be 5306
an incompetent or a minor subject to guardianship; 5307

(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 5337
of the assets of the decedent's estate to a person who is named in 5338
the will as the decedent's spouse, and the decedent is survived by 5339
that person. 5340

(b) The decedent is survived by a spouse whose marriage to 5341
the decedent was solemnized in a manner consistent with Chapter 5342
3101. of the Revised Code or with a similar law of another state 5343
or nation, the decedent died without a valid will, and the 5344
decedent's surviving spouse is entitled to receive all of the 5345
assets of the decedent's estate under section 2105.06 of the 5346
Revised Code or by the operation of that section and division 5347
(B)(1) or (2) of section 2106.13 of the Revised Code. 5348

(B) Upon the application of any interested party, after 5349
notice of the filing of the application has been given to the 5350
surviving spouse and heirs at law in the manner and for the length 5351
of time the probate court directs, and after notice to all 5352
interested parties by publication in a newspaper of general 5353
circulation in the county, unless the notices are waived or found 5354
unnecessary, the court, when satisfied that division (A)(1) or (2) 5355
of this section is satisfied, may enter an order relieving the 5356
estate from administration and directing delivery of personal 5357
property and transfer of real ~~estate~~ property to the persons 5358
entitled to the personal property or real ~~estate~~ property. 5359

(C) For the purposes of this section, the value of an estate 5360
that reasonably can be considered to be in an amount specified in 5361
division (A)(1) or (2) of this section and that is not composed 5362
entirely of money, stocks, bonds, or other property the value of 5363
which is readily ascertainable, shall be determined by an 5364
appraiser selected by the applicant, subject to the approval of 5365
the court. The appraiser's valuation of the property shall be 5366
reported to the court in the application to relieve the estate 5367
from administration. The appraiser shall be paid in accordance 5368

with section 2115.06 of the Revised Code. 5369

(D) For the purposes of this section, the amount of property 5370
to be delivered or transferred to the surviving spouse, minor 5371
children, or both, of the decedent as the allowance for support 5372
shall be established in accordance with section 2106.13 of the 5373
Revised Code. 5374

~~When a delivery, sale, or transfer of personal property has~~ 5375
~~been ordered from an estate that has been relieved from~~ 5376
~~administration, the~~ (E) The court may appoint a commissioner to 5377
execute all necessary instruments of conveyance, including the 5378
instruments of conveyance and other documents required for the 5379
transfer of title upon the sale of real property pursuant to 5380
section 2127.011 of the Revised Code. The commissioner shall 5381
receipt for the property, distribute the proceeds of the 5382
conveyance upon court order, and report to the court after 5383
~~distribution the delivery, sale, or transfer of personal or real~~ 5384
~~property from an estate that has been relieved from~~ 5385
~~administration.~~ 5386

~~When~~ (F) If the decedent died testate, the will shall be 5387
presented for probate, and, if admitted to probate, the court may 5388
relieve the estate from administration and order distribution of 5389
the estate under the will. 5390

(G) An order of the court relieving an estate from 5391
administration shall have the same effect as administration 5392
proceedings in freeing ~~land~~ real property in the ~~hands~~ possession 5393
or under the control of an innocent purchaser for value from 5394
possible claims of unsecured creditors. 5395

~~(C)~~(H) Any delivery of personal property or transfer of real 5396
~~estate~~ property pursuant to an order relieving an estate from 5397
administration is made subject to the limitations pertaining to 5398
the claims of creditors set forth in divisions (B) and (C) of 5399

section 2117.06 of the Revised Code. 5400

~~(D)~~(I) The release of an estate from administration under 5401
this section does not affect any duty of any person to file an 5402
estate tax return and certificate under division (A) of section 5403
5731.21 of the Revised Code and does not affect the duties of a 5404
probate court set forth in that division. 5405

~~(E)~~(J) This section does not affect the ability of qualified 5406
persons to file an application for a summary release from 5407
administration under section 2113.031 of the Revised Code or to 5408
file an application for the grant of letters testamentary or 5409
letters of administration. 5410

Sec. 2113.04. (A) Any employer, including the state or a 5411
political subdivision, at any time after the death of ~~his or its~~ 5412
an employee, may pay all wages or personal earnings due to the 5413
deceased employee to: ~~(A) the surviving spouse; (B) any one or~~ 5414
~~more of the children eighteen years of age or older; or (C) the~~ 5415
~~father or mother of the deceased employee~~ the following, 5416
preference being given in the order named, without requiring 5417
letters testamentary or letters of administration to be issued 5418
upon the estate of the deceased employee, and without requiring an 5419
Ohio estate tax release ~~where~~ if the wages or personal earnings do 5420
not exceed ~~two~~ five thousand ~~five hundred~~ dollars. ~~The:~~ 5421

(1) The surviving spouse; 5422

(2) Any one or more of the children eighteen years of age or 5423
older; 5424

(3) The father or mother of the deceased employee. 5425

(B) The payment of wages or personal earnings under division 5426
(A) of this section is a full discharge and release to the 5427
employer from any claim for the wages or personal earnings. If 5428
letters testamentary or letters of administration are thereafter 5429

issued upon the estate of the deceased employee, any person 5430
receiving payment of wages or personal earnings under ~~this section~~ 5431
that division is liable to the executor or administrator for the 5432
sum received by ~~him~~ the person. 5433

Sec. 2113.05. When a will is approved and allowed, the 5434
probate court shall issue letters testamentary to the executor 5435
named in the will or to the executor nominated by holders of a 5436
power as described in section 2107.65 of the Revised Code, or to 5437
the executor named in the will and to a coexecutor nominated by 5438
holders of ~~such a~~ that power, if ~~he~~ the executor or coexecutor is 5439
suitable, competent, accepts the appointment, and gives bond if 5440
that is required. 5441

If no executor is named in a will and no power as described 5442
in section 2107.65 of the Revised Code is conferred in the will, 5443
or if the executor named in a will or nominated pursuant to ~~such a~~ 5444
that power dies, fails to accept the appointment, resigns, or is 5445
otherwise disqualified and the holders of ~~such a~~ the power do not 5446
have authority to nominate another executor or ~~no such~~ the power 5447
is not conferred in the will, or if ~~such a~~ the power is conferred 5448
in a will but the power cannot be exercised because of the death 5449
of a holder of the power, letters of administration with the will 5450
annexed shall be granted to a suitable person or persons, named as 5451
devisees or legatees in the will, who would have been entitled to 5452
administer the estate if the decedent had died intestate, unless 5453
the will indicates an intention that the person or persons shall 5454
not be granted letters of administration. Otherwise, the court 5455
shall grant letters of administration with the will annexed to 5456
some other suitable person. 5457

Sec. 2113.06. (A) Administration of the estate of an 5458
intestate shall be granted to persons mentioned in this ~~section~~ 5459
division, in the following order: 5460

~~(A)(1)~~ To the surviving spouse of the deceased, if resident 5461
of the state; 5462

~~(B)(2)~~ To one of the next of kin of the deceased, resident of 5463
the state. 5464

(B) If the persons entitled to administer the estate under 5465
division (A) of this section fail to take or renounce 5466
administration voluntarily, ~~they shall be cited by the probate~~ 5467
~~court for that purpose~~ the matter shall be set for hearing and 5468
notice given to the persons. 5469

(C) If there are no persons entitled to administration, ~~or~~ if 5470
they are for any reason unsuitable for the discharge of the trust, 5471
or if without sufficient cause they neglect to apply within a 5472
reasonable time for the administration of the estate, their right 5473
to priority shall be lost, and the court shall commit the 5474
administration to some suitable person who is a resident of the 5475
state, or to the attorney general or the attorney general's 5476
designee, if the department of job and family services is seeking 5477
to recover medical assistance from the deceased pursuant to 5478
section 5111.11 or 5111.111 of the Revised Code. ~~Such~~ The person 5479
granted administration may be a creditor of the estate. 5480

(D) This section applies to the appointment of an 5481
administrator de bonis non. 5482

Sec. 2113.07. Before being appointed executor or 5483
administrator, every person shall make and file an application 5484
that shall contain the names of the surviving spouse and all the 5485
next of kin of the deceased known to the applicant, their 5486
~~post-office~~ addresses of usual residence if known, a statement in 5487
general terms ~~as to~~ of what the estate consists ~~of~~ and its 5488
probable value, and a statement of any indebtedness the deceased 5489
had against the applicant. 5490

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 5522
executor until the minor arrives at full age when ~~such~~ the former 5523
minor may be admitted as executor ~~with him~~ upon giving bond as 5524
provided in section 2109.04 of the Revised Code. 5525

Sec. 2113.14. The executor of an executor has no authority, 5526
as such, to administer the estate of the first testator. On the 5527
death of the sole or surviving executor of a ~~last~~ will, 5528
administration of that part of the estate of the first testator 5529
not already administered may be granted, with the will annexed, to 5530
~~such~~ the person ~~as~~ that the probate court appoints. 5531

Sec. 2113.15. When there is delay in granting letters 5532
testamentary or of administration, the probate court may appoint a 5533
special administrator to collect and preserve the effects of the 5534
deceased and grant the special administrator any other authority 5535
that the court considers appropriate. 5536

~~Such~~ The special administrator ~~must~~ shall collect the 5537
~~chattels~~ assets and debts of the deceased and preserve them for 5538
the executor or administrator who thereafter is appointed. For 5539
that purpose ~~such~~ the special administrator may begin ~~and,~~ 5540
maintain, or defend suits as administrator and also sell ~~such~~ 5541
~~goods as~~ any assets the court orders sold. ~~He~~ The special 5542
administrator shall be allowed ~~such~~ the compensation for ~~his~~ the 5543
special administrator's services ~~as~~ that the court thinks 5544
reasonable, if ~~he forthwith delivers the property and effects of~~ 5545
~~the estate to the executor or administrator who supersedes him~~ the 5546
special administrator faithfully fulfills the fiduciary duties. 5547

Sec. 2113.16. Upon granting of letters testamentary or of 5548
administration, the power of a special administrator appointed 5549
under section 2113.15 of the Revised Code shall ~~cease~~ terminate 5550
~~and he forthwith must deliver~~ the special administrator shall 5551

transfer to the executor or administrator all the ~~chattels and~~ 5552
~~moneys~~ assets of the deceased in ~~his hands~~ the possession or under 5553
the control of the special administrator. The special 5554
administrator shall file an account of the special administration 5555
within thirty days of the appointment of the executor or 5556
administrator. The account shall be in conformance with section 5557
2109.30 of the Revised Code. The executor or administrator may be 5558
admitted to prosecute any suit begun by the special administrator, 5559
as an administrator de bonis non is authorized to prosecute a suit 5560
commenced by a former executor or administrator. 5561

If ~~such~~ the special administrator neglects or refuses to 5562
~~deliver over~~ transfer the ~~property~~ assets and estate to the 5563
executor or administrator, the probate court may compel ~~him to do~~ 5564
~~so~~ the transfer by citation and attachment. The executor or 5565
administrator also may proceed, by civil action, to recover the 5566
value of the assets from ~~such~~ the special administrator and ~~his~~ 5567
the special administrator's sureties. 5568

Sec. 2113.17. A creditor's claim may be presented in 5569
accordance with section 2117.06 of the Revised Code to a special 5570
administration appointed under section 2113.15 of the Revised 5571
Code. 5572

Sec. 2113.18. (A) The probate court may remove any executor 5573
or administrator if there are unsettled claims existing between 5574
~~him~~ the executor or administrator and the estate, ~~which~~ that the 5575
court thinks may be the subject of controversy or litigation 5576
between ~~him~~ the executor or administrator and the estate or 5577
persons interested ~~therein~~ in the estate. 5578

(B) The probate court may remove any executor or 5579
administrator upon motion of the surviving spouse, children, or 5580
other next of kin of the deceased person whose estate is 5581

administered by the executor or administrator if both of the 5582
following apply: 5583

(1) The executor or administrator refuses to bring an action 5584
for wrongful death in the name of the deceased person~~+~~. 5585

(2) The court determines that a prima-facie case for a 5586
wrongful death action can be made from the information available 5587
to the executor or administrator. 5588

Sec. 2113.19. When a sole executor or administrator dies 5589
without having fully administered the estate, the probate court 5590
shall grant letters of administration, with the will annexed or 5591
otherwise as the case requires, to some suitable person pursuant 5592
to section 2113.05 or 2113.06 of the Revised Code. ~~Such That~~ 5593
person shall administer the ~~goods and estate~~ assets of the 5594
deceased not previously administered, ~~in case there is personal~~ 5595
~~estate to be administered to the amount of twenty dollars or debts~~ 5596
~~to that amount due from the estate.~~ 5597

Sec. 2113.20. If a will of a deceased is proved and allowed 5598
after letters of administration have been granted as of an 5599
intestate estate, the first administration shall be revoked, 5600
unless before ~~such the~~ revocation a ~~petition~~ complaint contesting 5601
the probate of ~~such the~~ will is filed in the probate court ~~of~~ 5602
~~common pleas~~. If ~~such a petition~~ complaint of that nature is 5603
filed, the probate court may allow the administration to be 5604
continued ~~in the hands of~~ by the original administrators until the 5605
final determination of ~~such the~~ contest. If the will is sustained, 5606
the first administration ~~must~~ shall be revoked. In either case, 5607
upon revocation of the first administration and the appointment of 5608
an executor or administrator with the will annexed, ~~such that~~ 5609
executor or administrator shall be admitted to prosecute or defend 5610
any suit, proceeding, or matter begun by or against the original 5611

administrator, in ~~like~~ the same manner as an administrator de 5612
bonis non is authorized to prosecute or defend a suit commenced by 5613
a former executor or administrator. 5614

Sec. 2113.21. (A) When a will is contested, the executor, the 5615
administrator de bonis non, with the will annexed, or the 5616
testamentary trustee may, during the contest, do the following: 5617

~~(A)~~(1) Control all the real ~~estate which is included in the~~ 5618
~~will but not specifically devised~~ property and all the personal 5619
~~estate~~ property of the testator not administered before ~~such~~ the 5620
contest; 5621

~~(B)~~(2) Collect the debts and convert all assets into money, 5622
except those ~~which~~ that are specially bequeathed; 5623

~~(C)~~(3) Pay all taxes on ~~such~~ the real and personal property 5624
and all debts; 5625

~~(D)~~(4) Repair buildings and make other improvements if 5626
necessary to preserve the real property from waste; 5627

~~(E)~~(5) Insure ~~such~~ those buildings upon an order first 5628
obtained from the probate court having jurisdiction of ~~such~~ the 5629
executor, administrator, or testamentary trustee; 5630

~~(F)~~(6) Advance or borrow money on the credit of ~~such~~ the 5631
estate for ~~such~~ the repairs, taxes, and insurance ~~which~~ that shall 5632
be a charge ~~thereon~~ on the estate; 5633

~~(G)~~(7) Receive and receipt for a distributive share of an 5634
estate or trust to which ~~such~~ the testator would have been 5635
entitled, if living. 5636

(B) The court may require ~~such~~ additional bonds ~~as~~ that from 5637
time to time ~~seems~~ seem proper. 5638

Sec. 2113.22. An ~~administrator or~~ executor or administrator 5639
appointed in the place of an executor or administrator who has 5640

resigned or been removed, whose letters have been revoked, or 5641
whose authority has been extinguished is entitled to the 5642
possession of all the unadministered personal effects and assets 5643
of the estate ~~unadministered~~, and all other funds collected and 5644
unaccounted for by ~~such the former~~ executor or administrator, and 5645
may maintain a suit against the former executor or administrator 5646
and ~~his the former executor's or administrator's~~ sureties on the 5647
administration bond to recover ~~such those~~ effects, assets, and 5648
funds and for all damages arising from the maladministration or 5649
omissions of the former executor or administrator. 5650

Sec. 2113.25. ~~So far as the executor or administrator is~~ 5651
~~able, the~~ The executor or administrator of an estate shall collect 5652
the assets and complete the administration of that estate within 5653
~~thirteen~~ six months after the date of appointment unless an 5654
extension of the time to file a final and distributive account is 5655
authorized under division (B) of section 2109.301 of the Revised 5656
Code. 5657

~~Upon application of the executor or administrator and notice~~ 5658
~~to the interested parties, if the probate court considers that~~ 5659
~~notice necessary, the court may allow further time in which to~~ 5660
~~collect assets, to convert assets into money, to pay creditors, to~~ 5661
~~make distributions to legatees or distributees, to file partial,~~ 5662
~~final, and distributive accounts, and to settle estates. The~~ 5663
~~court, upon application of any interested party, may authorize the~~ 5664
~~examination under oath in open court of the executor or~~ 5665
~~administrator upon any matter relating to the administration of~~ 5666
~~the estate~~ For good cause shown, the court may grant an extension 5667
of the time to file the inventory and accounts. 5668

Sec. 2113.26. The court, upon application of any interested 5669
party, may authorize the examination of the executor or 5670
administrator under oath in open court on any matter relating to 5671

the administration of the estate. 5672

Sec. 2113.30. (A) Except as otherwise directed by the 5673
decedent in the decedent's ~~last will and testament~~, an executor or 5674
administrator, without personal liability for losses incurred, may 5675
continue the decedent's business during four months next following 5676
the date of the appointment of that executor or administrator, 5677
unless the probate court directs otherwise, and for any further 5678
time that the court may authorize upon a hearing and after notice 5679
to the surviving spouse and distributees. In either case, no debts 5680
incurred or contracts entered into shall involve the estate beyond 5681
the assets used in that business immediately prior to the death of 5682
the decedent without first obtaining the approval of the court. 5683
During the time the business is continued, the executor or 5684
administrator shall file monthly reports in the court, setting 5685
forth the receipts and expenses of the business for the preceding 5686
month and any other pertinent information that the court may 5687
require. The executor or administrator may not bind the estate 5688
without court approval beyond the period during which the business 5689
is continued. 5690

(B) As used in this section, "decedent's business" means a 5691
business that is owned by the decedent as a sole proprietor at the 5692
time of the decedent's death. "Decedent's business" does not 5693
include a business that is owned in whole or in part by the 5694
decedent as a shareholder of a corporation, a member of a limited 5695
liability company, or a partner of a partnership, or under any 5696
other form of ownership other than a sole proprietorship. 5697

Sec. 2113.31. Every executor or administrator is chargeable 5698
with all ~~chattels, rights, and credits~~ assets of the deceased 5699
~~which that~~ come into ~~his hands~~ the possession or under the control 5700
of the executor or administrator and are to be administered, 5701

although not included in the inventory required by section 2115.02 5702
of the Revised Code. ~~Such~~ The executor or administrator is also 5703
chargeable with all the proceeds of personal property and real 5704
~~estate property~~ sold for the payment of debts or legacies, and all 5705
the interest, profit, and income that in any way comes ~~to his~~ 5706
~~hands~~ into the possession or under the control of the executor or 5707
administrator from the personal ~~estate~~ property of the deceased. 5708

Sec. 2113.311. (A) If, within a reasonable time after the 5709
appointment of the executor or administrator, no one in authority 5710
has taken over the management and rental of any real ~~estate~~ 5711
property of which the decedent died seized, the executor or 5712
administrator, or an heir or devisee may, unless the will 5713
otherwise provides, make application to the probate court for an 5714
order authorizing the executor or administrator to assume ~~such~~ 5715
those duties. ~~Such~~ The application shall contain the following: 5716

(1) A brief statement of the facts upon which the application 5717
is based and ~~such~~ any other pertinent information ~~as that~~ the 5718
court may require; 5719

(2) A description or identification of the real ~~estate~~ 5720
property and the interest owned by the decedent at the time of ~~his~~ 5721
death; 5722

(3) The names and addresses, if known to the applicant, of 5723
the persons to whom ~~such~~ the real ~~estate~~ property passed by 5724
descent or devise. 5725

(B) Notice of the time of hearing on ~~such~~ the application 5726
shall be given to the persons designated in ~~sub-paragraph~~ division 5727
(A)(3) of this section, unless for good cause the court dispenses 5728
with ~~such~~ that notice, and also to the executor or administrator, 5729
unless the executor or administrator is the applicant. 5730

(C) If the court finds that the statements contained in the 5731

application are true and that it would be for the best interest of 5732
~~such~~ those heirs or devisees that the application be granted, it 5733
may authorize the executor or administrator to assume the 5734
management and rental of ~~such~~ the real estate property. 5735

(D) The court may require bond, new or additional, in an 5736
amount to be fixed by the court and conditioned that the executor 5737
or administrator will faithfully and honestly discharge the duties 5738
devolving ~~upon him by~~ from the provisions of this section. 5739

~~(B)~~(E) In the exercise of ~~such~~ the authority granted under 5740
this section, the executor or administrator shall be authorized to 5741
do the following: 5742

(1) Collect rents; 5743

(2) From the rents collected: 5744

(a) Pay all taxes and assessments due on ~~such~~ the real estate 5745
property, and all ~~such~~ usual operating expenses in connection with 5746
the its management ~~thereof~~; 5747

(b) Make repairs when necessary to preserve ~~such~~ the real 5748
estate property from waste, provided that an order of the court 5749
shall first be obtained if the cost of ~~such~~ repairs exceeds one 5750
hundred dollars; 5751

(c) Insure buildings against loss by fire or other casualty 5752
and against public liability~~+~~. 5753

(3) Advance money upon an order first obtained from the 5754
court, for ~~such~~ the repairs, taxes, insurance, and all usual 5755
operating expenses, ~~which that~~ shall be a charge on ~~such~~ the real 5756
estate property; 5757

(4) Rent the property on a month-to-month basis, or, upon an 5758
order first obtained from the court, for a period not to exceed 5759
one year; 5760

(5) Prosecute actions for forcible entry and ~~detention~~ 5761

detainer of such the real estate property. 5762

(F) The executor or administrator shall, at intervals not to 5763
exceed twelve months, pay over to the heirs or devisees, if known, 5764
their share of the net rents, and shall account for all money 5765
received and paid out under authority of this section in ~~his~~ the 5766
executor's or administrator's regular accounts of the 5767
administration of the estate, but in a separate schedule. If any 5768
share of the net rents remains unclaimed, it may be disposed of in 5769
the same manner as ~~is~~ provided for unclaimed money under section 5770
2113.64 of the Revised Code. 5771

(G) The authority granted under this section shall terminate 5772
upon the transfer of the real ~~estate~~ property to the heirs or 5773
devisees in accordance with section 2113.61 of the Revised Code, 5774
~~or~~ upon a sale ~~thereof~~ of the real property, ~~or~~ upon application 5775
of the executor or administrator, or for a good cause shown, upon 5776
the application of an heir or devisee. 5777

(H) Upon application the court may allow compensation to the 5778
executor or administrator for extraordinary services, ~~which that~~ 5779
shall be charged against the rents, and if ~~said the~~ rents be are 5780
insufficient, shall be a charge against ~~such the~~ real estate 5781
property. 5782

Upon application the court may allow reasonable attorney fees 5783
paid by the executor or administrator when an attorney is employed 5784
in connection with the management and rental of ~~such the~~ real 5785
~~estate, which property that~~ shall be charged against the rents, 5786
and if ~~said the~~ rents be are insufficient, shall be a charge 5787
against ~~such the~~ real estate property. 5788

Sec. 2113.33. An executor or administrator is not accountable 5789
for debts inventoried as due to the decedent, if it appears to the 5790
probate court that, without ~~his~~ the executor's or administrator's 5791
fault, they remain uncollected. 5792

Sec. 2113.34. If an executor or administrator neglects to 5793
sell personal property ~~which he~~ that is required to ~~sell be sold~~, 5794
and retains, consumes, or disposes of it for ~~his~~ the executor's or
administrator's own benefit, ~~he~~ the executor or administrator 5795
shall be charged ~~therewith~~ with the personal property at double 5796
the value affixed ~~thereto~~ to the property by the appraisers. 5797
5798

Sec. 2113.35. (A) Executors and administrators shall be 5799
allowed ~~commissions~~ fees upon the amount of all the personal 5800
estate property, including the income from the personal ~~estate~~ 5801
property, that is received and accounted for by them and upon the 5802
proceeds of real ~~estate~~ property that is sold, as follows: ~~(A)~~ 5803

(1) For the first one hundred thousand dollars, at the rate 5804
of four per cent; ~~(B)~~ 5805

(2) All above one hundred thousand dollars and not exceeding 5806
four hundred thousand dollars, at the rate of three per cent; ~~(C)~~ 5807

(3) All above four hundred thousand dollars, at the rate of 5808
two per cent. ~~Executors~~ 5809

(B) Executors and administrators ~~also~~ shall be allowed a 5810
~~commission~~ fee of one per cent on the value of real ~~estate~~ 5811
property that is not sold. Executors and administrators also shall 5812
be allowed a ~~commission~~ fee of one per cent on all property that 5813
is not subject to administration and that is includable for 5814
purposes of computing the Ohio estate tax, except joint and 5815
survivorship property. ~~The~~ 5816

(C) The basis of valuation for the allowance of ~~such~~ 5817
~~commissions~~ the fees on real ~~estate~~ property sold shall be the 5818
gross proceeds of sale, and for all other property the fair market 5819
value of the other property as of the date of death of the 5820
decedent. The ~~commissions~~ fees allowed to executors and 5821
administrators in this section shall be received in full 5822

compensation for all their ordinary services. ~~If~~ 5823

(D) If the probate court finds, after a hearing, that an 5824
executor or administrator, in any respect, has not faithfully 5825
discharged ~~his~~ the duties as executor or administrator, the court 5826
may deny the executor or administrator any compensation whatsoever 5827
or may allow the executor or administrator the reduced 5828
compensation that the court thinks proper. 5829

Sec. 2113.36. Allowances, in addition to those provided by 5830
section 2113.35 of the Revised Code for an executor or 5831
administrator, ~~which~~ that the probate court considers just and 5832
reasonable shall be made for actual and necessary expenses and for 5833
extraordinary services not required of an executor or 5834
administrator in the common course of ~~his duty~~ the executor's or 5835
administrator's duties. 5836

Upon the application of an executor or administrator for 5837
further allowances for extraordinary services rendered, the court 5838
shall review both ordinary and extraordinary services claimed to 5839
have been rendered. If the ~~commissions~~ fees payable pursuant to 5840
section 2113.35 of the Revised Code, exceed the reasonable value 5841
of ~~such~~ the ordinary services rendered, the court ~~must~~ shall 5842
adjust any allowance made for extraordinary services so that the 5843
total ~~commissions~~ fees and allowances to be made fairly reflect 5844
the reasonable value of both ordinary and extraordinary services. 5845

~~When~~ If an attorney has been employed in the administration 5846
of the estate, reasonable attorney fees paid by the executor or 5847
administrator shall be allowed as a part of the expenses of 5848
administration. The court may at any time during administration 5849
fix the amount of ~~such~~ those fees and, on application of the 5850
executor or administrator or the attorney, shall fix the amount 5851
~~thereof~~ of the fees. ~~When~~ If provision is made by the will of the 5852
deceased for compensation to an executor, the amount provided 5853

shall be a full satisfaction for ~~his~~ the executor's or 5854
administrator's services, in lieu of ~~such commissions~~ the fees or 5855
~~his share thereof~~ of the fees, unless by an instrument filed in 5856
the court within four months after ~~his~~ appointment ~~he~~ the executor 5857
or administrator renounces all claim to the compensation given by 5858
the will. 5859

Sec. 2113.39. If a qualified executor, administrator, or 5860
testamentary trustee is authorized by will or devise to sell any 5861
class of personal property ~~whatsoever~~ or real ~~estate~~ property, no 5862
order shall be required from the probate court ~~to enable him for~~ 5863
~~the executor, administrator, or testamentary trustee to act in~~ 5864
~~pursuance of the power vested in him~~ proceed with the sale. A 5865
power to sell authorizes a sale for any purpose ~~deemed~~ considered 5866
by ~~such~~ the executor, administrator, or testamentary trustee to be 5867
for the best interest of the estate, unless the power is expressly 5868
limited by ~~such~~ the will or devise. 5869

Sec. 2113.40. (A) At any time after the appointment of an 5870
executor or administrator, the probate court, ~~when~~ if satisfied 5871
that it would be for the best interests of the estate, may 5872
authorize ~~such~~ the executor or administrator to sell at public or 5873
private sale, at a fixed price or for the best price obtainable, 5874
and for cash or on ~~such~~ the terms ~~as~~ that the court may determine, 5875
any part or all of the personal property belonging to the estate, 5876
except the following: 5877

~~(A)~~ Such property as (1) Property that the surviving spouse 5878
desires to take at the appraised value; 5879

~~(B)~~ (2) Property specifically bequeathed, when if the sale of 5880
~~such~~ that property is not necessary for the payment of debts, 5881
provided that ~~such~~ the property may be sold with the consent of 5882
the person entitled ~~thereto~~ to the property, including executors, 5883

administrators, guardians, and trustees; 5884

~~(C)~~(3) Property as to which distribution in kind has been 5885
demanded prior to the sale by the surviving spouse or other 5886
beneficiary entitled to ~~such~~ the distribution in kind; 5887

~~(D)~~(4) Property ~~which~~ that the court directs shall not be 5888
sold pursuant to a wish expressed by the decedent in ~~his~~ the 5889
decedent's will; but at any later period, on application of a 5890
party interested, the court may, and for good cause shall, require 5891
~~such~~ the sale to be made. 5892

(B) In case of a sale before expiration of the time within 5893
which the surviving spouse may elect to take at the appraised 5894
value, not less than ten days' notice of ~~such~~ the sale shall be 5895
given to the surviving spouse, unless ~~such~~ the surviving spouse 5896
consents to ~~such~~ the sale or waives notice ~~thereof~~ of the sale. 5897
~~Such~~ The notice shall not be required as to perishable property. 5898

(C) The court may permit the itemized list of personal 5899
property being sold to be incorporated in documents and records 5900
relating to the sale, by reference to other documents and records 5901
~~which~~ that have been filed in the court. ~~Provided, provided~~ that a 5902
court order shall not be required to permit the public sale of 5903
personal ~~goods and chattels~~ property. 5904

Sec. 2113.41. (A) Public sales of personal property ~~mentioned~~ 5905
as provided in section 2113.40 of the Revised Code shall be at 5906
public auction and, unless otherwise directed by the probate 5907
court, after notice of ~~such~~ the sale has been given by any of the 5908
following methods: 5909

~~(A)~~(1) By advertisement appearing at least three times in a 5910
newspaper of general circulation in the county during a period of 5911
fifteen days next preceding ~~such~~ the sale; 5912

~~(B)~~(2) By advertisement posted not less than fifteen days 5913

next preceding ~~such~~ the sale in at least five public places in the 5914
township or municipal corporation where ~~such~~ the sale is to take 5915
place; 5916

~~(C)~~ (3) By both ~~such~~ forms of advertisement specified in 5917
divisions (A)(1) and (2) of this section. 5918

~~Such~~ (B) The advertisement published or posted as described 5919
in divisions (A)(1) and (2) of this section shall specify 5920
generally the property to be sold and the date, place, and terms 5921
of the sale. The executor or administrator, if considered in the 5922
best interests of the estate, may employ an auctioneer or clerk, 5923
or both, to conduct ~~such~~ the sale, and their reasonable fees and 5924
charges shall be deducted from the proceeds of the sale. The court 5925
for good cause may extend the time for sale. 5926

Sec. 2113.45. When a mortgagee of real ~~estate~~ property, or an 5927
assignee of ~~such~~ the mortgagee, dies without foreclosing the 5928
mortgage, the mortgaged premises and the debts secured ~~thereby~~ by 5929
the mortgage shall be considered personal assets in the ~~hands~~ 5930
possession or under the control of the executor or administrator 5931
of ~~such~~ the estate of ~~the~~ mortgagee or assignee, and shall be 5932
administered and accounted for as such. 5933

If the mortgagee or assignee did not obtain possession of the 5934
mortgaged premises in ~~his~~ the mortgagee's or assignee's lifetime, 5935
~~his~~ the executor or administrator of the estate of the deceased 5936
mortgagee or assignee may take possession of the premises by open 5937
and peaceable entry or by action, as the deceased might have done 5938
if living. 5939

Sec. 2113.46. In case of the redemption of a mortgage 5940
belonging to the estate of a decedent, the money paid ~~thereon must~~ 5941
on the redemption shall be received by the executor or 5942
administrator, ~~and thereupon he~~ the executor or administrator 5943

shall release and discharge the mortgage. Until ~~such~~ that 5944
redemption, if the executor, administrator, or decedent has taken 5945
possession of the mortgaged premises, the executor or 5946
administrator, ~~if possession has been taken by him or by the~~ 5947
~~decedent,~~ shall be seized of the mortgaged premises in trust for 5948
the same persons who would be entitled to the money if the 5949
premises had been redeemed. 5950

Sec. 2113.48. When a person who has entered into a written 5951
contract for the sale and conveyance of an interest in real ~~estate~~ 5952
~~property~~ dies before its completion, ~~his~~ the executor or 5953
administrator ~~when~~ of the decedent's estate, if not required to 5954
otherwise dispose of ~~such~~ the contract, may, with the consent of 5955
the purchaser, obtain authority to complete ~~such~~ the contract by 5956
filing an application ~~therefor~~ for that authority in the probate 5957
court of the county in which ~~he~~ the executor or administrator was 5958
appointed. Notice of the time of hearing on ~~such~~ the application 5959
shall be given to the surviving spouse and heirs, if the decedent 5960
died intestate, and to the surviving spouse, and devisees or 5961
legatees having an interest in ~~such~~ the contract, if the decedent 5962
died testate. If the court is satisfied that it would be for the 5963
best interests of the estate, it may authorize the executor or 5964
administrator to complete ~~said~~ the contract and to execute and 5965
deliver to the purchaser ~~such~~ the instruments ~~as~~ that are required 5966
to make the order of the court effective. 5967

Sec. 2113.49. When a person who has entered into a written 5968
contract for the sale and conveyance of an interest in real ~~estate~~ 5969
~~property~~ dies before its completion, ~~his~~ the executor or 5970
administrator of the decedent's estate, ~~when~~ if not required to 5971
otherwise dispose of the contract, may file a ~~petition~~ complaint 5972
for the alteration or cancellation of the contract, in the probate 5973
court of the county in which ~~he~~ the executor or administrator was 5974

appointed, or in which the real ~~estate~~ property or any part of it 5975
is situated. If the decedent died intestate, the surviving spouse 5976
and heirs, and if the decedent died testate, the surviving spouse, 5977
and devisees or legatees having an interest in the contract, ~~when~~ 5978
if not the plaintiffs, shall, together with the purchaser, be made 5979
parties defendant. 5980

If, upon hearing, the court is satisfied that it is for the 5981
best interests of the estate, it may, with the consent of the 5982
purchaser, authorize the executor or administrator to agree to the 5983
alteration or cancellation of the contract, and to execute and 5984
deliver to the purchaser the instruments required to make the 5985
order of the court effective. Before making ~~such an~~ its order, the 5986
court shall cause to be secured, to and for the benefit of the 5987
estate of the deceased, its just part of the consideration of the 5988
contract. The instruments executed and delivered pursuant to ~~such~~ 5989
~~an~~ the court's order shall recite the order, and be as binding on 5990
the heirs and other parties in interest, as if made by the 5991
deceased ~~in his lifetime~~ prior to death. 5992

Sec. 2113.50. When a person who has entered into a written 5993
contract for the purchase of an interest in real ~~estate~~ property 5994
dies before a the conveyance ~~thereof of the interest~~ to ~~him~~ the 5995
person, ~~his~~ the executor or administrator of the decedent's 5996
estate, ~~or the~~ surviving spouse, ~~or~~ any heir, or any devisee or 5997
legatee having an interest in ~~such the~~ contract, may file an 5998
application for authority to complete ~~such the~~ contract in the 5999
probate court of the county in which the executor or administrator 6000
was appointed. Notice of the time of the hearing on ~~such the~~ 6001
application shall be given to the surviving spouse and heirs, if 6002
the decedent died intestate, and to the surviving spouse, and 6003
devisees or legatees having an interest in ~~such the~~ contract, if 6004
the decedent died testate, to the executor or administrator, if 6005
not the applicant, and to all other persons having an interest in 6006

~~such~~ the real estate property that is the subject of the contract. 6007
If the court is satisfied that it would be for the best interests 6008
of the estate, it may, with the consent of the vendor, authorize 6009
the executor or administrator to complete the contract, pay to the 6010
vendor the amount due on the contract, and authorize a conveyance 6011
of the interest in the real ~~estate~~ property to the persons 6012
entitled ~~thereto~~ to it. If, however, the court finds that the 6013
condition of the estate at the time of the hearing does not 6014
warrant the payment out of the estate of the amount due under the 6015
contract, it may authorize the persons entitled to the interest of 6016
the decedent in the contract to pay to the vendor the amount due 6017
on the contract. The real ~~estate~~ property so conveyed shall 6018
thereafter be chargeable with the debts of the estate to the 6019
extent of the equitable interest of the estate ~~therein~~ in the real 6020
property, and may be sold in land sale proceedings, except that in 6021
the event of ~~such~~ that sale, the persons to whom the real ~~estate~~ 6022
property shall have been conveyed shall have a prior lien on the 6023
proceeds as against the estate to the extent of any portion of the 6024
purchase price paid by them. 6025

The executor or administrator, ~~or~~ surviving spouse, ~~or~~ any 6026
heir, or any devisee or legatee having an interest in ~~such a~~ the 6027
contract, may file a ~~petition~~ complaint for the alteration or 6028
cancellation of the contract in the probate court of the county in 6029
which the executor or administrator was appointed. If the decedent 6030
died intestate, the surviving spouse and heirs, and if the 6031
decedent died testate, the surviving spouse, and devisees or 6032
legatees having an interest in ~~such~~ the contract, and the executor 6033
or administrator, ~~when~~ if not the plaintiff, together with the 6034
vendor, and all other persons having an interest in the real 6035
~~estate which~~ property that is subject to the contract, shall be 6036
made parties defendant. If the court is satisfied that it would be 6037
for the best interests of the estate, the court, with the consent 6038
of the vendor, may authorize the executor or administrator to 6039

agree to the alteration or cancellation of the contract and to 6040
execute and deliver ~~such the~~ deeds or other instruments to the 6041
vendor ~~as that~~ are required to make the order of the court 6042
effective. ~~Such~~ The deeds or other instruments ~~as that~~ are 6043
executed and delivered pursuant to ~~such the court's~~ order shall 6044
recite the order and be as binding on the parties to the suit as 6045
if made by the deceased ~~in his lifetime~~ prior to death. 6046

Sec. 2113.51. The property of an estate ~~which that~~ is 6047
specifically bequeathed may be delivered over to the legatee 6048
entitled ~~thereto to the property~~. ~~Such~~ The legatee ~~must shall~~ 6049
secure its redelivery on demand to the executor or administrator. 6050
Otherwise, ~~such the~~ property ~~must shall~~ remain in the ~~hands~~ 6051
possession or under the control of the executor or administrator 6052
to be distributed or sold, as required by law and the condition of 6053
the estate. 6054

Sec. 2113.52. (A) A devisee taking real ~~estate~~ property under 6055
a devise in a will, unless the will otherwise provides, or an heir 6056
taking real ~~estate~~ property under the statutes of descent and 6057
distribution shall take the real ~~estate~~ property subject to all 6058
taxes, penalties, interest, and assessments ~~which that~~ are a lien 6059
against that real ~~estate~~ property. 6060

(B) If real ~~estate~~ property devised in a will is subject to a 6061
mortgage lien that exists on the date of the testator's death, the 6062
person taking the real ~~estate~~ property under the devise has no 6063
right of exoneration for the mortgage lien, regardless of a 6064
general direction in the will to pay the testator's debts, unless 6065
the will specifically provides a right of exoneration that extends 6066
to that lien. 6067

Sec. 2113.54. When five months have expired after the 6068
appointment of an executor or administrator and the surviving 6069

spouse has made an election under section 2106.01 of the Revised 6070
Code, a legatee or distributee may apply to the probate court for 6071
an order requiring the executor or administrator to distribute the 6072
assets of the estate, either in whole or in part, in cash or in 6073
kind. Upon notice to the executor or administrator, the court 6074
shall inquire into the condition of the estate, and if all claims 6075
have been paid, or adequate provision has been or can be made for 6076
their payment, the court shall make ~~such~~ that order with reference 6077
to distribution of the estate as the condition of the estate and 6078
the protection of all parties interested in the estate may demand. 6079
The order of the court shall provide that assets be set aside for 6080
the payment of claims rejected within two months or in suit, and 6081
each claimant for whom assets are to be set aside shall be 6082
entitled to be fully heard as to the nature and amount of the 6083
assets to be set aside for payment of ~~his~~ the claim, and as to all 6084
other conditions in connection with the claim. Each legatee or 6085
distributee receiving distribution from the estate shall be liable 6086
to return the assets distributed to ~~him~~ the legatee or 6087
distributee, or the proceeds from the assets, if they are 6088
necessary to pay ~~such~~ those claims. The court, upon its own motion 6089
or upon application of the executor or administrator, as a 6090
condition precedent to any distribution, may require any legatee 6091
or distributee to give bond to the state with surety approved and 6092
in an amount fixed by the court, conditioned as provided in 6093
section 2113.53 of the Revised Code or as may be directed by the 6094
court. ~~Such~~ The bond may be in addition to the assets to be set 6095
aside or partially or wholly in lieu of those assets, as the court 6096
shall determine. 6097

Sec. 2113.58. ~~When~~ If by a ~~last will and testament~~ the use or 6098
income of personal property is given to a person for a term of 6099
years or for life and some other person has ~~an~~ a remainder 6100
interest in ~~such~~ the property ~~as remainderman~~, the probate court, 6101

unless ~~such last the~~ will and testament otherwise provides, may 6102
~~deliver such~~ authorize delivery of the personal property to the 6103
person having the limited estate, with or without bond, as the 6104
court may determine; or the court may order that ~~such the~~ property 6105
be held by the executor or some other trustee, with or without 6106
bond, for the benefit of the person having the limited estate. If 6107
bond is required of the person having the limited estate, or of 6108
the trustee, it may be increased or decreased, and if bond is not 6109
required in the first instance it may be required by the court at 6110
any time prior to the termination of the limited estate. 6111

Sec. 2113.61. (A)(1) When real property passes by the laws of 6112
intestate succession or under a will, the administrator or 6113
executor shall file in probate court, at any time after the filing 6114
of an inventory that includes the real property but prior to the 6115
filing of the administrator's or executor's final account, an 6116
application requesting the court to issue a certificate of 6117
transfer as to the real property. Real property sold by an 6118
executor or administrator or land registered under Chapters 5309. 6119
and 5310. of the Revised Code is excepted from the application 6120
requirement. Cases in which an order has been made under section 6121
2113.03 of the Revised Code relieving an estate from 6122
administration and in which the order directing transfer of real 6123
property to the person entitled to it may be substituted for the 6124
certificate of transfer also are excepted from the application 6125
requirement. 6126

(2) In accordance with division (C)(3)(b) of section 2113.031 6127
of the Revised Code, an application for a certificate of transfer 6128
of an interest in real property included in the assets of the 6129
decedent's estate shall accompany an application for a summary 6130
release from administration under that section. This section 6131
applies to the application for and the issuance of the requested 6132
certificate of transfer except to the extent that the probate 6133

court determines that the nature of any of the provisions of this 6134
section is inconsistent with the nature of a grant of a summary 6135
release from administration. 6136

(B) Subject to division (A)(2) of this section, the 6137
application for a certificate of transfer shall contain all of the 6138
following: 6139

(1) The name, place of ~~residence~~ domicile at death, and date 6140
of death of the decedent; 6141

(2) A statement whether the decedent died testate or 6142
intestate; 6143

(3) ~~The fact and date of the filing and probate of the will,~~ 6144
~~if applicable, and the fact and date of the appointment of the~~ 6145
~~administrator or executor~~ reason the property is being transferred 6146
to the devisee or devisees; 6147

(4) ~~A description of each parcel of real property situated in~~ 6148
~~this state that is owned by the decedent at the time of death~~ 6149
Whether any spousal elections have been exercised; 6150

(5) ~~Insofar as they can be ascertained, the names, ages,~~ 6151
~~places of residence, and relationship to the decedent of the~~ 6152
~~persons to whom each parcel of real property described in division~~ 6153
~~(B)(4) of this section passed by descent or devise~~ Whether any 6154
disclaimers or assignments have been filed; 6155

(6) A statement that all the known debts of the decedent's 6156
estate have been paid or secured to be paid, or that sufficient 6157
other assets are in hand to complete the payment of those debts or 6158
a statement that the estate is insolvent and the transfer is of 6159
the mansion house and is being made to satisfy all or a portion of 6160
the spousal allowance for support; 6161

(7) Other pertinent information that the court requires. 6162

(C) Subject to division (A)(2) of this section, within five 6163

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 6195
real property of the decedent is located. 6196

(E) A foreign executor or administrator, ~~when~~ if no ancillary 6197
administration proceedings have been had or are being had in this 6198
state, may file in accordance with this section an application for 6199
a certificate of transfer in the probate court of any county of 6200
this state in which real property of the decedent is located. 6201

(F) When a person who has entered into a written contract for 6202
the sale and conveyance of an interest in real property dies 6203
before its completion, the interest of the decedent in the 6204
contract and the record title to the real property described in 6205
the contract may be transferred to the ~~persons, legatees,~~ 6206
~~devisees,~~ or heirs at law entitled to the interest of the decedent 6207
in the real property, in the same manner as provided in this 6208
section and ~~sections~~ section 2113.62 ~~and 2113.63~~ of the Revised 6209
Code for the transfer of real property. The application for the 6210
certificate of transfer and the certificate itself also shall 6211
recite that the real property described in the application or 6212
certificate is subject to a written contract for its sale and 6213
conveyance. 6214

Sec. 2113.62. Upon receipt of the certificate provided for in 6215
section 2113.61 of the Revised Code, the county recorder shall 6216
record it in the books provided for the recording of deeds and 6217
index ~~such~~ those records in the name of the decedent as grantor 6218
and the person to whom the real ~~estate~~ property passes as grantee 6219
in the index provided for the record of deeds. 6220

Sec. 2113.67. When a person entitled to the money invested or 6221
turned into the county treasury under section 2113.64 of the 6222
Revised Code satisfies the probate court of ~~his~~ the person's right 6223
to receive it, the court shall order it to be paid over and 6224

transferred to ~~him~~ the person. In case it has been turned into the 6225
treasury, the county auditor shall give to ~~him~~ the person a 6226
warrant ~~therefor~~ for the money upon the certificate of the probate 6227
judge. 6228

Sec. 2113.68. The probate judge with whom the certificates or 6229
evidences of title required by section 2113.65 of the Revised Code 6230
are deposited and each succeeding judge to whom they come, and ~~his~~ 6231
the judges' sureties, shall be responsible for their safekeeping 6232
and application, as provided in sections 2113.64 to 2113.67~~7~~, 6233
~~inclusive~~, of the Revised Code. 6234

Sec. 2113.69. When newly discovered assets come into the 6235
~~hands~~ possession or under the control of an executor or 6236
administrator after the filing of the original inventory required 6237
by section 2115.02 of the Revised Code, ~~he~~ the executor or 6238
administrator shall administer, account for, and distribute ~~such~~ 6239
those assets in ~~like~~ the same manner as if received prior to the 6240
filing of ~~such~~ the inventory. Within thirty days, ~~he~~ the executor 6241
or administrator shall file in the probate court an itemized 6242
report of ~~such~~ those assets, with an estimate of ~~the~~ their value 6243
~~thereof~~, but shall not be required to make an inventory or 6244
appraisement of the ~~same~~ assets unless ordered to do so by the 6245
court, either upon its own motion or upon the application of any 6246
interested party. 6247

Sec. 2113.70. An executor or administrator appointed in any 6248
other state or country, or ~~his~~ the executor's or administrator's 6249
legal representatives, may be prosecuted in any appropriate court 6250
in this state in ~~his~~ the capacity of executor or administrator. 6251

Sec. 2113.72. Any court of common pleas may compel a foreign 6252
administrator or executor residing in this state, or having assets 6253

or property ~~herein~~ in this state, to account at the suit of an 6254
heir, distributee, or legatee, who is resident in this state, and 6255
make distribution of the amount found in ~~his hands~~ the possession 6256
or under the control of the foreign administrator or executor to 6257
the respective heirs, distributees, or legatees according to the 6258
law of the state granting ~~such~~ the letters of administration. ~~When~~ 6259
If suits are pending or there are unsettled demands against ~~such~~ 6260
the estate, the court also may require a refunding bond to be 6261
given to ~~such~~ the foreign executor or administrator by the heirs, 6262
distributees, or legatees entitled ~~thereto~~ to that distribution in 6263
case the amount paid is needed to pay debts of the estate. 6264

Sec. 2113.73. ~~When~~ If a foreign administrator or executor has 6265
wasted, misapplied, or converted assets of an estate, or has 6266
insufficient property to discharge ~~his~~ the foreign administrator's 6267
or executor's liability on account of the trust, or ~~his~~ the 6268
foreign administrator's or executor's sureties are irresponsible, 6269
the distributees, heirs, or legatees, in any court of common pleas 6270
or probate court may compel ~~him~~ the foreign administrator or 6271
executor to secure the amounts respectively due to them and any of 6272
~~his~~ the foreign administrator's or executor's sureties may require 6273
indemnity on account of their liability as bail. 6274

Sec. 2113.74. The several provisional remedies and 6275
proceedings authorized by sections 2113.70 to 2113.73, ~~inclusive,~~ 6276
of the Revised Code, against a foreign executor or administrator 6277
also apply to the person and property of a foreign administrator 6278
or executor. The probate court or the court of common pleas may 6279
make any order or decree touching ~~his~~ a foreign executor's or 6280
administrator's property and effects, or the assets of ~~such~~ the 6281
estate, necessary for the security of those interested ~~therein~~ in 6282
the property, effects, or assets. 6283

Sec. 2113.75. An executor or administrator appointed in any 6284
other state or country may commence and prosecute an action or 6285
proceeding in any court in this state, in ~~his~~ the capacity as 6286
executor or administrator, in ~~like the same~~ manner and under ~~like~~ 6287
the same restrictions as a ~~non-resident~~ nonresident is permitted 6288
to sue. 6289

Sec. 2113.81. ~~Where~~ If it appears that a legatee or a 6290
distributee, or a beneficiary of a trust not residing within the 6291
United States or its territories will not have the benefit ~~or,~~ 6292
use, or control of the money or other property due ~~him~~ the legatee 6293
or distributee from ~~an~~ the estate or due the beneficiary from the 6294
trust, because of circumstances prevailing at the place of 6295
residence of ~~such~~ the legatee, or distributee, or a the 6296
beneficiary of a the trust, the probate court may direct that ~~such~~ 6297
the money be paid into the county treasury to be held in trust or 6298
the probate court may direct that ~~such~~ the money or other property 6299
be delivered to a trustee ~~which.~~ The trustee shall have the same 6300
powers and duties provided in section 2119.03 of the Revised Code 6301
for ~~such~~ that legatee, distributee, beneficiary of a the trust, or 6302
~~such~~ the persons who may thereafter be entitled ~~thereto~~ to the 6303
money or other property. ~~Such~~ The money or other property held in 6304
trust by ~~such~~ the county treasurer or trustee shall be paid out by 6305
order of the probate judge in accordance with section 2113.82 of 6306
the Revised Code. 6307

The county treasury shall not be liable for interest on ~~such~~ 6308
the money held in trust. 6309

Sec. 2113.82. When a person entitled to money or other 6310
property invested or turned into the county treasurer or to a 6311
trustee under section 2113.81 of the Revised Code satisfies the 6312
probate court of ~~his~~ the person's right to receive it, the court 6313

shall order the county treasurer or the trustee to pay it over to 6314
~~such~~ the person. 6315

Sec. 2113.85. As used in sections 2113.85 to 2113.90 of the 6316
Revised Code: 6317

(A) "Estate" means the gross estate of a decedent who is 6318
domiciled in this state, as determined for federal estate tax 6319
purposes under Subtitle B of the Internal Revenue Code of 1954, 26 6320
U.S.C. 2001, as amended, for Ohio estate tax purposes under 6321
Chapter 5731. of the Revised Code, and for estate tax purposes of 6322
any other jurisdiction that imposes a tax on the transfer of 6323
property by a decedent who is domiciled in this state. 6324

(B) "Person interested in the estate" means any person who is 6325
entitled to receive, or who has received, any property or property 6326
interest included in the decedent's estate. A "person interested 6327
in the estate" includes, but is not limited to, a personal 6328
representative, guardian, ~~and~~ or trustee. A "person interested in 6329
the estate" does not include a creditor of the decedent or of ~~his~~ 6330
the decedent's estate. 6331

(C) "Tax" means the federal estate tax determined under 6332
Subtitle B of the "Internal Revenue Code of 1954, 26 U.S.C. 2001, 6333
as amended, an Ohio estate tax determined under Chapter 5731. of 6334
the Revised Code, and the estate tax determined by any other 6335
jurisdiction that imposes a tax on the transfer of property by a 6336
decedent who is domiciled in this state. 6337

(D) "Fiduciary" means an executor, administrator, or other 6338
person who, by virtue of ~~his representation of~~ representing the 6339
decedent's estate, is required to pay the tax. 6340

Sec. 2113.86. (A) Unless a will or another governing 6341
instrument otherwise provides, and except as otherwise provided in 6342
this section, a tax shall be apportioned equitably in accordance 6343

with the provisions of this section among all persons interested 6344
in an estate in proportion to the value of the interest of each 6345
person as determined for estate tax purposes. 6346

(B) Except as otherwise provided in this division, any tax 6347
that is apportioned against a gift made in a clause of a will 6348
other than a residuary clause or in a provision of an inter vivos 6349
trust other than a residuary provision, shall be reapportioned to 6350
the residue of the estate or trust. It shall be charged in the 6351
same manner as a general administration expense. However, when a 6352
portion of the residue of the estate or trust is allowable as a 6353
deduction for estate tax purposes, the tax shall be reapportioned 6354
to the extent possible to the portion of the residue that is not 6355
so allowable. 6356

(C)(1) A tax shall not be apportioned against an interest 6357
that is allowable as an estate tax marital or charitable 6358
deduction, except to the extent that the interest is a part of the 6359
residue of an estate or trust against which tax is reapportioned 6360
pursuant to division (B) of this section. 6361

(2) Estate tax of this state or another jurisdiction shall 6362
not be reapportioned against an interest that is allowable as a 6363
deduction for federal estate tax purposes, to the extent that 6364
there is other property in the estate or trust that is not 6365
allowable as a deduction for federal estate tax purposes and 6366
against which estate tax of this state or another jurisdiction can 6367
be apportioned. 6368

(D) A tax shall not be apportioned against property that 6369
passes to a surviving spouse as an elective share under section 6370
2106.01 of the Revised Code or as an intestate share under section 6371
2105.06 of the Revised Code, to the extent that there is other 6372
property in the estate that is not allowable as a deduction for 6373
estate tax purposes against which the tax can be apportioned. 6374

(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
of which is included in the gross estate of the decedent by reason
of section 2044 of the "Internal Revenue Code of 1986," 100 Stat.
2085, 26 N 2044, as amended, or of section 5731.131 of the Revised
Code, the estate is entitled to recover from the persons holding
or receiving the property any amount by which the estate tax
payable exceeds the estate tax that would have been payable if the
value of the property had not been included in the gross estate of
the decedent. This division does not apply if ~~a decedent provides~~
~~otherwise in his~~ the decedent's will or another governing
instrument provides otherwise and the will or instrument refers to
either section mentioned in this division or to qualified
terminable interest marital deduction property.

Sec. 2113.87. (A) The fiduciary, or any person interested in
the estate who objects to the manner of apportionment of a tax,
may apply to the court that has jurisdiction of the estate and
request the court to determine the apportionment of the tax. If
there are no probate proceedings, the probate court of the county
in which the decedent was domiciled at death, upon application by
the fiduciary or any other person interested in the estate who
objects to the manner of apportionment of a tax, shall determine
the apportionment of the tax.

(B) The fiduciary may notify any person interested in the
estate of the manner of the apportionment of tax determined by the
fiduciary. Upon receipt of ~~such a~~ that notice, a person interested
in the estate, within thirty days after the date of receipt of the
notice, may indicate ~~his~~ the person's objection to the manner of
apportionment by application to a probate court as described in
division (A) of this section. If the person interested in the
estate fails to make the application within the thirty-day period,
~~he~~ the person is bound by the manner of apportionment determined
by the fiduciary. The notice described in this division shall

state the name and address of the probate court with jurisdiction 6438
over the apportionment and include the following statement: 6439

"If you fail to file an objection to this proposed 6440
apportionment with the probate court within thirty days of the 6441
receipt of this notice, you are bound by the proposed 6442
apportionment." 6443

(C) If a probate court finds that an assessment of penalties 6444
and interest assessed with respect to a tax is due to delay caused 6445
by the negligence of the fiduciary, the court may charge the 6446
fiduciary with the amount of the assessed penalties and interest. 6447
In any suit or judicial proceeding to recover from any person 6448
interested in the estate the amount of the tax apportioned to that 6449
person, the determination of the probate court is conclusive. 6450

Sec. 2113.88. (A) The fiduciary may withhold from any 6451
property distributable to any person interested in the estate the 6452
amount of tax attributable to the person's interest. If the 6453
property in possession of the fiduciary and distributable to any 6454
person interested in the estate is insufficient to satisfy the 6455
proportionate amount of the tax determined to be due from that 6456
person, the fiduciary may recover the deficiency from that person. 6457
If the property is not in the possession of the fiduciary, the 6458
fiduciary may recover from any person interested in the estate the 6459
amount of the tax apportioned to that person in accordance with 6460
this section by filing a complaint to recover the tax in the 6461
probate court that has jurisdiction of the administration of the 6462
estate. 6463

(B) If the property held by the fiduciary is distributed 6464
prior to final apportionment of the tax, the distributee shall 6465
provide a bond or other security for the apportionment liability 6466
in the form and amount prescribed by the fiduciary, with the 6467
approval of the probate court that has jurisdiction of the 6468

administration of the estate. 6469

Sec. 2115.02. Within three months after the date of the 6470
executor's or administrator's appointment, unless the probate 6471
court grants an extension of time for good cause shown, the 6472
executor or administrator shall file with the court an inventory 6473
of the decedent's interest in real ~~estate~~ property located in this 6474
state and of the tangible and intangible personal property of the 6475
decedent that is to be administered and that has come to the 6476
executor's or administrator's possession or knowledge. The 6477
inventory shall set forth values as of the date of death of the 6478
decedent. If a prior executor or administrator has done so, a 6479
successor executor or administrator need not file an inventory, 6480
unless, in the opinion of the court, it is necessary. 6481

Any asset, the value of which is readily ascertainable, is 6482
not required to be appraised but shall be included in the 6483
inventory. 6484

Sec. 2115.03. If an executor or administrator neglects or 6485
refuses to return an inventory as provided by section 2115.02 of 6486
the Revised Code, the probate court shall issue an order requiring 6487
~~him~~ the executor or administrator, at an early day specified in 6488
the order, to return an inventory. After personal service of the 6489
order by a person authorized to make the service, if the executor 6490
or administrator, by the day appointed, does not return the 6491
inventory or fails to obtain further time from the court to return 6492
it, or if the order cannot be served personally by reason of ~~his~~ 6493
the executor or administrator absconding or concealing ~~himself~~ 6494
self, the court may remove the executor or administrator and new 6495
letters shall be granted. The letters shall supersede all former 6496
letters testamentary or of administration, deprive the former 6497
executor or administrator of all power, authority, or control over 6498
the estate of the deceased, and entitle the person appointed to 6499

take, demand, and receive the effects of the deceased wherever 6500
they are found. 6501

In every case of the revocation of letters under this 6502
section, the bond given by the former executor or administrator 6503
shall be prosecuted and a recovery had on the bond to the full 6504
extent of any injury sustained by the estate of the deceased by 6505
the former executor's or administrator's acts or omissions, and to 6506
the full value of all the property of the deceased received and 6507
not administered by ~~him~~ the former executor or administrator. 6508

Sec. 2115.06. The real ~~estate~~ property and personal property 6509
comprised in the inventory required by section 2115.02 of the 6510
Revised Code, unless an appraisement ~~thereof~~ of that real property 6511
or personal property has been dispensed with by an order of the 6512
probate court, shall be appraised by one suitable disinterested 6513
person appointed by the executor or administrator, subject to the 6514
approval of the court and sworn to a faithful discharge of ~~his~~ the 6515
trust. The executor or administrator, subject to the approval of 6516
the court, may appoint separate appraisers of property located in 6517
any other county and appoint separate appraisers for each asset. 6518

In lieu of the appointment of an appraiser for real property, 6519
the executor or administrator may accept the valuation of the real 6520
property by the county auditor. 6521

If appraisers fail to attend to the performance of their 6522
duty, the executor or administrator, subject to the approval of 6523
the probate judge, may appoint others to supply the place of ~~such~~ 6524
~~delinquents~~ the delinquent appraisers. 6525

Each appraiser shall be paid ~~such an~~ an amount for ~~his~~ the 6526
appraiser's services ~~as~~ that is determined by the executor or 6527
administrator, subject to the approval of the probate judge, 6528
taking into consideration ~~his~~ the appraiser's training, 6529
qualifications, experience, time reasonably required, and the 6530

value of the property appraised. The amount of ~~such~~ the fees may 6531
be charged against the estate as part of the cost of the 6532
proceeding. 6533

Sec. 2115.09. The inventory required by section 2115.02 of 6534
the Revised Code shall contain a particular statement of all 6535
securities for the payment of money that belong to the deceased 6536
and are known to the executor or administrator. ~~Such~~ The inventory 6537
shall specify the name of the debtor in each security, the date, 6538
the sum originally payable, the ~~indorsements thereon~~ endorsements 6539
on the securities with their dates, the serial numbers or other 6540
identifying data as to each security, and the sum that, in the 6541
judgment of the appraisers, can be collected on each claim. 6542

~~Such~~ The inventory shall contain a statement of all debts and 6543
accounts belonging to the deceased that are known to ~~such~~ the 6544
executor or administrator and specify the name of the debtor, the 6545
date, the balance or thing due, and the value or sum that can be 6546
collected ~~thereon~~ on the debt, in the judgment of the appraisers. 6547

~~Such~~ The inventory shall contain an account of all moneys 6548
that belong to the deceased and have come ~~to~~ into the ~~hands~~ 6549
possession or under the control of the executor or administrator. 6550
If none has come ~~to~~ into the ~~executor's or administrator's hands~~ 6551
possession or under the control of the executor or administrator, 6552
the fact shall be stated in the inventory. 6553

The inventory shall contain a statement whether or not, 6554
insofar as it can be ascertained, the filing of an Ohio estate tax 6555
return will be required. 6556

Sec. 2115.10. The emblements raised by labor, whether severed 6557
or not from the land of the deceased at the time of ~~his~~ the 6558
decedent's death, are assets in the ~~hands~~ possession or under the 6559
control of the executor or administrator and shall be included in 6560

the inventory required by section 2115.02 of the Revised Code. 6561

The executor or administrator, or the person to whom ~~he~~ the 6562
executor or administrator sells ~~such~~ the emblements, at all 6563
reasonable times may enter upon the lands to cultivate, sever, and 6564
gather them. 6565

Sec. 2115.11. The discharge or bequest, in a will, of a debt 6566
or demand of a testator against an executor named ~~therein~~ in the 6567
will, or against any other person, is not valid as against the 6568
decedent's creditors, but is only a specific bequest of ~~such~~ that 6569
debt or demand. The amount ~~thereof must~~ of the debt or demand 6570
shall be included in the inventory of the credits and effects of 6571
the deceased and, if necessary, ~~such~~ that amount ~~must~~ shall be 6572
applied in the payment of ~~his~~ the decedent's debts. If not 6573
necessary for that purpose, ~~such~~ the amount shall be paid in the 6574
same manner and proportion as other specific legacies. 6575

Sec. 2115.12. The naming of a person as executor in a will 6576
shall not operate as a discharge or bequest of a just claim ~~which~~ 6577
that the testator had against ~~such~~ that executor. ~~Such~~ The claim 6578
shall be included among the assets of the deceased in the 6579
inventory required by section 2115.02 of the Revised Code. The 6580
executor shall be liable for it as for so much money in ~~his hands~~ 6581
the possession or under the control of the executor at the time 6582
~~such~~ that debt or demand becomes due, and ~~must~~ shall apply and 6583
distribute it as part of the personal estate property of the 6584
deceased. 6585

Sec. 2115.16. Upon the filing of the inventory required by 6586
section 2115.02 of the Revised Code, the probate court ~~forthwith~~ 6587
shall set a day, not later than one month after the day the 6588
inventory was filed, for a hearing on the inventory. 6589

The executor or administrator may serve notice of the 6590

hearing, or may cause the notice to be served, upon any person who 6591
is interested in the estate. The probate court, after notice to 6592
the executor or administrator, either upon the motion of any 6593
interested party for good cause shown or at its own instance, may 6594
order that notice of the hearing is to be served upon persons the 6595
court designates. 6596

For good cause, the hearing may be continued for the time 6597
that the court considers reasonable. Exceptions to the inventory 6598
or to the allowance for support provided by section 2106.13 of the 6599
Revised Code may be filed at any time prior to five days before 6600
the date set for the hearing or the date to which the hearing has 6601
been continued by any person interested in the estate or in any of 6602
the property included in the inventory, but the time limit for the 6603
filing of exceptions shall not apply in case of fraud or 6604
concealment of assets. When exceptions are filed, notice of them 6605
and the time of the hearing on them ~~forthwith~~ shall be given to 6606
the executor or administrator and ~~his~~ the attorney of the executor 6607
or administrator by certified mail or by personal service, unless 6608
the notice is waived. At the hearing, the executor or 6609
administrator and any witness may be examined under oath. The 6610
court shall enter its finding on the journal and tax the costs as 6611
may be equitable. 6612

Sec. 2115.17. When the inventory required by section 2115.02 6613
of the Revised Code has been approved by the probate court, the 6614
appraisement of the real ~~estate~~ property as set forth ~~therein~~ in 6615
the inventory shall be conclusive for all purposes except estate 6616
tax, unless a reappraisal is ordered by the court. 6617

Sec. 2117.01. No part of the assets of a deceased shall be 6618
retained by an executor or administrator in satisfaction of ~~his~~ 6619
the executor's or the administrator's own claim, until it has been 6620
proved to and allowed by the probate court. ~~Such~~ That debt is not 6621

entitled to preference over others of the same class.

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Sec. 2117.02. An executor or administrator within three months after the date of ~~his~~ appointment shall present any claim ~~he~~ the executor or administrator has against the estate to the probate court for allowance. The claim shall not be paid unless allowed by the court. When an executor or administrator presents a claim amounting to five hundred dollars or more, the court shall fix a day not less than four nor more than six weeks from its presentation, when the testimony touching it shall be heard. The court ~~forthwith~~ shall issue an order directed to the executor or administrator requiring ~~him~~ the executor or administrator to give notice in writing to all the heirs, legatees, or devisees of the decedent interested in the estate, and to the creditors named in the order. The notice shall contain a statement of the amount claimed, designate the time fixed for hearing the testimony, and be served upon the persons named in the order at least twenty days before the time for hearing. If any persons mentioned in the order are not residents of the county, service of notice may be made upon them by publication for three consecutive weeks in a newspaper published or circulating in the county, or as the court may direct. All persons named in the order shall be parties to the proceeding, and any other person having an interest in the estate may be made a party.

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Sec. 2117.03. At any time after the presentation by an executor or administrator of a claim ~~which he~~ that the executor or administrator owns against the estate ~~he~~ the executor or administrator represents to the probate court for allowance, the court on its own motion, or on motion by any interested party, may appoint an attorney to represent the estate, who shall receive ~~such~~ the compensation from the estate ~~as~~ that may be fixed by the court. The court shall ~~thereupon~~ require the executor or

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administrator to make available to ~~such~~ the attorney, for use in 6653
connection with the proceeding, all documents belonging to the 6654
estate relating to the subject matter of ~~such~~ the claim. 6655

Sec. 2117.04. Upon the hearing as to the allowance of an 6656
executor's or administrator's claim against the estate ~~he~~ the 6657
executor or administrator represents, an appeal may be taken from 6658
a final order or judgment of the probate court upon a matter of 6659
law by any person affected by the order or judgment. 6660

Sec. 2117.08. When a claim is presented against the estate of 6661
a deceased person, the executor or administrator may require 6662
satisfactory written proof in support of it and also the affidavit 6663
of the claimant that ~~such~~ the claim is justly due, that no 6664
payments have been made ~~thereon~~ on the claim, and that there are 6665
no counterclaims against it to ~~his~~ the claimant's knowledge. ~~Such~~ 6666
The affidavit shall set forth any security held for the payment of 6667
~~said~~ the claim and, if the claim is not due, the date of maturity. 6668
If ~~said~~ the claim arises out of tort, or if preference in payment 6669
is claimed, the facts in connection with the alleged tort or 6670
showing the right to ~~such~~ that preference shall be briefly set 6671
forth. 6672

Sec. 2117.09. If an executor or administrator doubts the 6673
justice of any claim presented against the estate ~~he~~ the executor 6674
or administrator represents, ~~he~~ the executor or administrator may 6675
enter into an agreement in writing with the claimant to refer the 6676
matter in controversy to three disinterested persons, who ~~must~~ 6677
shall be approved by the probate judge. 6678

Upon filing the agreement of reference in the probate court 6679
of the county in which the letters testamentary or of 6680
administration were issued, the judge shall docket the cause and 6681
make an order referring the matter in controversy to the referees 6682

selected. 6683

The referees ~~thereupon must~~ shall proceed to hear and 6684
determine the matter and make their report to the court. The 6685
referees shall have the same powers and be entitled to the same 6686
compensation and the same proceedings shall be followed as if the 6687
reference were made under the provisions for arbitrations under a 6688
rule of the court of common pleas. The court may set aside the 6689
report of the referees, appoint others in their places, or confirm 6690
~~such the~~ report and adjudge costs as in actions against executors 6691
and administrators. The judgment of the court ~~thereupon~~ shall be 6692
valid and effectual. 6693

Sec. 2117.10. The failure of the holder of a valid lien upon 6694
any of the assets of an estate to present ~~his~~ the lienholder's 6695
claim upon the indebtedness secured by ~~such the~~ lien, as provided 6696
in ~~Chapter 2117. of the Revised Code~~ this chapter, shall not 6697
affect ~~such the~~ lien if the same is evidenced by a document 6698
admitted to public record, or is evidenced by actual possession of 6699
the real or personal property ~~which that~~ is subject to ~~such the~~ 6700
lien. 6701

Sec. 2117.13. If a devisee, legatee, heir, creditor, or other 6702
interested party files in the probate court a written requisition 6703
on the executor or administrator to reject a claim presented for 6704
allowance against the estate ~~he~~ the executor or administrator 6705
represents, whether the claim has been allowed or not, but which 6706
claim has not been paid in full, and enters into a sufficient bond 6707
running to ~~such the~~ executor or administrator, the amount, terms, 6708
and surety of which are to be approved by the probate judge, the 6709
claim shall be rejected by the executor or administrator. The 6710
notice of rejection shall inform the claimant of the filing of the 6711
requisition and of the name of the party filing the same. The 6712
condition of the bond shall be to pay all costs and expenses of 6713

contesting ~~such~~ the claim, including ~~such~~ any reasonable fee ~~as~~ 6714
that the court allows to the attorney for the executor or 6715
administrator, in case the claim finally is allowed in whole, and 6716
if ~~such~~ the claim is allowed only in part, to pay ~~such~~ that part 6717
of the expenses ~~as~~ that the court may determine, including ~~such~~ 6718
any reasonable fee ~~as~~ that the court may allow to the attorney for 6719
the executor or administrator. 6720

Sec. 2117.15. An executor or administrator may proceed to pay 6721
the debts due from the estate in accordance with Chapters 2113. to 6722
2125. of the Revised Code. If it appears at any time that the 6723
estate is insolvent, the executor or administrator may report that 6724
fact to the court, and apply for any order that ~~he~~ the executor or 6725
administrator considers necessary because of the insolvency. In 6726
case of insolvency, a creditor who has been paid according to law 6727
shall not be required to make any refund. 6728

Sec. 2117.17. (A) The probate court on its own motion may, 6729
and on motion of the executor or administrator shall, assign all 6730
claims against the estate that have been presented and any other 6731
known valid debts of the estate for hearing on a day certain. 6732
~~Forthwith upon such~~ Upon the assignment, and in no case less than 6733
ten days before the date fixed for hearing or ~~such~~ a longer period 6734
~~as~~ that the court may order, the executor or administrator shall 6735
cause written notice of the hearing to be served upon the 6736
following persons who have not waived the notice in writing or 6737
otherwise voluntarily entered their appearance: 6738

~~(A)(1)~~ (1) If it appears that the estate is fully solvent, ~~such~~ 6739
the notice shall be given to the surviving spouse and all other 6740
persons having an interest in the estate as devisees, legatees, 6741
heirs, and distributees. 6742

~~(B)(2)~~ (2) If it appears probable that there will not be 6743

sufficient assets to pay all of the valid debts of the estate in 6744
full, then ~~such~~ the notice also shall be given to all creditors 6745
and claimants whose claims have been rejected and whose rights 6746
have not been finally determined by judgment, reference, or lapse 6747
of time. 6748

(B) The notice required by this section shall state that a 6749
hearing concerning the debts has been scheduled, shall set forth 6750
the time and place of the hearing, and shall state that the action 6751
of the executor or administrator in allowing and classifying 6752
claims will be confirmed at ~~such~~ the hearing unless cause to the 6753
contrary is shown. The notice shall be served personally or by 6754
certified mail in the manner specified for service of notice of 6755
the rejection of a claim under section 2117.11 of the Revised 6756
Code. Proof of service of the notice to the satisfaction of the 6757
court, by affidavit or otherwise, and all waivers of service shall 6758
be filed in court at the time of the hearing. At any time before 6759
hearing, any interested person may file exceptions in writing to 6760
the allowance or classification of any specific claim. The court 6761
may cause or permit other interested persons to be served with 6762
notice and witnesses to be subpoenaed as may be required to 6763
present the issues fully. 6764

(C) The court, upon the hearing, shall determine whether the 6765
executor or administrator acted properly in allowing and 6766
classifying each claim and shall make an order confirming or 6767
disapproving ~~such~~ that action. 6768

(D) An order of the court disapproving the allowance of a 6769
claim shall have the same effect as a rejection of the claim on 6770
the date on which the claimant is served with notice of the 6771
court's order. Notice of the court's order shall be served 6772
personally or by certified mail in the manner specified for 6773
service of notice of the rejection of a claim under section 6774
2117.11 of the Revised Code. An order of the court confirming the 6775

allowance or classification of a claim shall constitute a final 6776
order and shall have the same effect as a judgment at law or 6777
decree in equity, and shall be final as to all persons having 6778
notice of the hearing and as to claimants subsequently presenting 6779
their claims, though without notice of ~~such the~~ hearing. In the 6780
absence of fraud, the allowance and classification of a claim and 6781
the subsequent payment of it in good faith shall not be subject to 6782
question upon exceptions to the executor's or administrator's 6783
accounts. The confirmation of a claim by the court shall not 6784
preclude the executor or administrator from thereafter rejecting 6785
the claim on discovery of error in ~~his~~ the executor's or 6786
administrator's previous action or on requisition as provided in 6787
sections 2117.13 and 2117.14 of the Revised Code. 6788

Sec. 2117.18. Taxes, penalties, and interest placed on a 6789
duplicate or added by the county auditor or the tax commissioner 6790
because of a failure to make a return or because of a false or 6791
incomplete return for taxation shall be a debt of a decedent and 6792
have the same priority and be paid as other taxes. ~~Such~~ Those 6793
taxes, penalties, and interest shall be collectible out of the 6794
property of the estate either before or after distribution, by any 6795
means provided for collecting other taxes. No distribution or 6796
payment of inferior debts or claims shall defeat ~~such that~~ 6797
collection~~+~~, but ~~no such the~~ tax, penalty, or interest ~~can~~ shall 6798
not be added before notice to the executor or administrator, and 6799
before an opportunity is given ~~him~~ to the executor or 6800
administrator to be heard. All taxes omitted by the deceased ~~must~~ 6801
shall be charged on the tax lists and duplicate in ~~his the~~ 6802
deceased's name. 6803

In all ~~such~~ additions to the personal tax lists and duplicate 6804
under this section, each succeeding tax year shall be considered 6805
as beginning at the time of the completion of the annual 6806
settlement of the duplicate for the previous year with the county 6807

treasurer. 6808

Sec. 2117.30. (A) No suit shall be brought against an 6809
executor or administrator by a creditor of the decedent or by any 6810
other party interested in the estate until after five months from 6811
the time of the appointment of the executor or administrator, or 6812
the expiration of the further time allowed by the probate court 6813
for the collection of the assets of the estate, except in the 6814
following cases: 6815

~~(A)~~(1) On claims rejected in whole or in part; 6816

~~(B)~~(2) For the enforcement of a lien against or involving 6817
title to specific property; 6818

~~(C)~~(3) For the recovery of a claim that would not be affected 6819
by the insolvency of the estate; 6820

~~(D)~~(4) On account of fraud, conversion, or concealment of 6821
assets; 6822

~~(E)~~(5) Any other action as to which a different rule is 6823
prescribed by statute. 6824

(B) When an executor or administrator dies, resigns, or is 6825
removed without having fully administered the estate of the 6826
deceased, the time between ~~his~~ the executor's or administrator's 6827
death, resignation, or removal and the appointment of a successor 6828
shall be excluded in computing the five months or longer period 6829
provided in division (A) of this section. In any event, ~~his~~ the 6830
executor's or administrator's successor shall not be held to 6831
answer the suit until after the expiration of four months from the 6832
date of the successor's appointment, or a further time allowed ~~him~~ 6833
the executor or administrator by the court for the collection of 6834
the assets of the estate. 6835

Sec. 2117.31. When two or more persons are indebted in a 6836

joint contract, or upon a judgment founded on ~~such~~ the joint 6837
contract, and either of them dies, ~~his~~ the decedent's estate shall 6838
be liable ~~therefor~~ for the debt as if the contract had been joint 6839
and several, or as if the judgment had been against ~~himself~~ the 6840
decedent alone. This section shall not affect the rights of a 6841
surety, when certified as such, in a judgment rendered jointly 6842
against ~~him~~ the surety and ~~his~~ the surety's principal. 6843

Sec. 2117.34. No execution against the assets of an estate 6844
shall issue upon a judgment against an executor or administrator 6845
unless upon the order of the probate court ~~which~~ that appointed 6846
~~him~~ the executor or administrator. If an account has been rendered 6847
by ~~such~~ the executor or administrator and settled by the court, 6848
~~such~~ the execution shall issue only for the sum that appeared, on 6849
settlement of ~~such~~ the account, to be a just proportion of the 6850
assets applicable to the judgment. The order of the court allowing 6851
~~such~~ the execution shall fix the amount for which the ~~same~~ 6852
execution shall issue. 6853

Sec. 2117.35. All executions against executors and 6854
administrators for debts due from the deceased shall run against 6855
the ~~goods and assets of the~~ estate of the deceased in ~~their hands~~ 6856
the possession or under the control of the executors and 6857
administrators. 6858

Sec. 2117.36. No real ~~estate~~ property of a deceased person 6859
~~which~~ that has been aliened or encumbered by the decedent's heirs 6860
prior to the issuing of letters testamentary or of administration 6861
shall be liable while in the ~~hands~~ possession or under the control 6862
of a bona fide purchaser for value or to the prejudice of a bona 6863
fide lessee or encumbrancer for value for debts of the deceased 6864
person unless letters testamentary or of administration are 6865
granted within four years from the date of death of ~~such~~ the 6866

deceased person. No real ~~estate~~ property of a deceased person 6867
~~which that~~ has been aliened or encumbered by the decedent's heirs 6868
or devisees after the ~~issue~~ issuance of letters testamentary or of 6869
administration shall be liable while in the ~~hands~~ possession or 6870
under the control of a bona fide purchaser for value or to the 6871
prejudice of a bona fide lessee or encumbrancer for value for 6872
debts of a deceased person unless suit is brought to subject ~~such~~ 6873
the real estate property to the payment of ~~such~~ those debts prior 6874
to the settlement of the executor's or administrator's final 6875
account or what purports to be ~~his~~ the executor's or 6876
administrator's final account; provided that if ~~such~~ the final 6877
account is not filed and settled within four years after the 6878
granting of letters testamentary or of administration, but 6879
excluding for ~~the~~ these purposes ~~hereof~~ the time that any action 6880
is pending against the executors or administrators for the 6881
establishment or collection of any claim against the deceased, 6882
~~such~~ the real ~~estate~~ property so aliened shall not be liable for 6883
the debts of the deceased unless suit is brought to subject ~~such~~ 6884
the real estate thereto property to those debts within ~~such~~ that 6885
four-year period. The heir or devisee aliening ~~such~~ the real 6886
~~estate~~ property shall be liable for ~~the~~ its value ~~thereof~~, with 6887
legal interest from the time of alienation, to the creditors of 6888
the deceased in the manner and within the limitations provided by 6889
law. This section does not enlarge or extend the right of the 6890
creditors of any deceased person against ~~his~~ the deceased person's 6891
real ~~estate~~ property, ~~or~~ repeal any limitations contained in other 6892
sections of the Revised Code, or apply to mortgages or liens of 6893
record at the time of the death of ~~such~~ the deceased person. 6894

Sec. 2117.37. If a claim is contingent at the time of a 6895
decedent's death and a cause of action subsequently accrues on the 6896
claim, it shall be presented to the executor or administrator, in 6897
the same manner as other claims, before the expiration of ~~one year~~ 6898

six months after the date of death of the decedent, or before the
expiration of two months after the cause of action accrues,
whichever is later, except as provided in section 2117.39 of the
Revised Code. The executor or administrator shall allow or reject
the claim in the same manner as other claims are allowed or
rejected. If the claim is allowed, the executor or administrator
shall proceed to pay it. If the claim is rejected, the claimant
shall commence an action on the claim within two months after the
rejection or be forever barred from maintaining an action on the
claim.

Sec. 2117.41. A claimant whose cause of action accrues as
provided in section 2117.37 of the Revised Code may bring suit to
recover ~~thereon~~ on the claim against the heirs, next of kin,
surviving spouse as next of kin, devisees, and legatees under the
decedent's will, each of whom shall be liable to the claimant in
an amount not exceeding the value of the real and personal ~~estate~~
property that ~~he~~ the person received under the will or on
distribution of the estate. If, by the will of the deceased, any
part of the estate or any one or more of the devisees and legatees
is made exclusively liable for the debt, in exoneration of the
residue of the estate or of the other devisees or legatees, the
terms of the will shall be complied with in that respect and the
persons and estate so exempt by the will shall be liable for only
so much of the debt ~~as that~~ cannot be recovered from those first
chargeable ~~therewith~~ with the debt.

No ~~such~~ suit shall be maintained under this section unless
commenced within six months next after the time when the cause of
action first accrues, except in case the suit is for the balance
due after a payment by the executor or administrator, in which
case suit shall be brought within two months after the final
payment by the executor or administrator. If the person entitled
to bring ~~such~~ the suit is under legal disability, ~~he~~ the person

may bring ~~such~~ the action within one year after ~~his~~ the person's 6931
disability is removed. 6932

If any of ~~such~~ those heirs, next of kin, surviving spouse as 6933
next of kin, devisees, or legatees dies without having paid ~~his~~ 6934
the person's just proportion of ~~such~~ the debt, ~~his~~ the executors 6935
or administrators of that deceased person's estate shall be liable 6936
~~therefor~~ for that proportion to the extent ~~he~~ the deceased person 6937
would have been if living. 6938

Sec. 2117.42. If, in the cases specified in section 2117.41 6939
of the Revised Code, more than one person is liable for the debt, 6940
the creditor shall proceed by one action to recover ~~such~~ the debt 6941
against all so liable, or as many of them ~~as~~ who are within the 6942
reach of process. ~~Thereupon, by~~ By the verdict of a jury if either 6943
party requires it, the court ~~must~~ shall determine what sum is due 6944
to the plaintiff. ~~They~~ The jury also, according to the equities of 6945
the case, shall decide how much each of the defendants is liable 6946
to pay toward the satisfaction of the debt and the court shall 6947
render judgment accordingly. 6948

No suit shall be dismissed or debarred for not making all the 6949
persons defendants who might have been included as ~~such~~ 6950
defendants. In any stage of the cause the court may award process 6951
to bring in other parties and allow amendments necessary to charge 6952
them, as defendants, upon ~~such~~ the terms ~~as~~ that it ~~deems~~ 6953
considers reasonable. 6954

If any of the persons who were originally liable for the debt 6955
is insolvent or unable to pay ~~his~~ the person's proportion, or is 6956
beyond the reach of process, the others nevertheless shall be 6957
liable to the creditor for the whole amount of ~~his~~ the debt; 6958
except that no one shall be compelled to pay more than the amount 6959
received by ~~him~~ the person from the decedent's estate. 6960

If, in consequence of insolvency, absence, or other cause, 6961

any of the persons liable for ~~such the~~ debt fails to pay ~~his the~~ 6962
~~person's~~ just proportion to the creditor, ~~he the person~~ shall be 6963
liable to indemnify all who, by reason of ~~such that person's~~ 6964
failure ~~on his part~~, have paid more than their just proportion of 6965
the debt, such indemnity to be recovered by all of them jointly or 6966
in separate actions, by any one or more ~~of them~~ for ~~his or~~ their 6967
~~respective~~ parts ~~respectively~~, at their election. 6968

Sec. 2119.01. When a person owning property in this state has 6969
disappeared and has not been heard from, after diligent inquiry 6970
and for at least three months, under circumstances that afford 6971
reasonable ground to believe that ~~he the person~~ is dead, cannot 6972
return, or refuses to return to ~~his the person's~~ home, and ~~his the~~ 6973
~~person's~~ estate requires attention, supervision, and care, or is 6974
needed for the maintenance of ~~his the person's~~ dependents, the 6975
probate court ~~may~~, on application of the spouse or of one of the 6976
next of kin, ~~may~~ appoint a trustee to take possession and charge 6977
of the property of ~~such the~~ person, other than the property with 6978
respect to which ~~such the~~ person has made provision by written 6979
instrument designating an agent or attorney in fact. ~~Such The~~ 6980
application shall be filed in the county in which ~~such the~~ person 6981
last resided or if ~~his the person's~~ last known residence was 6982
~~without outside~~ this state, ~~such the~~ application may be filed in 6983
any county in which ~~any such that~~ property is situated. 6984

Sec. 2119.02. The probate court, before appointing a trustee 6985
for an absentee, shall cause notice of the filing of the 6986
application under section 2119.01 of the Revised Code and of the 6987
time and place of hearing ~~thereon on the application~~ to be 6988
published once a week for four consecutive weeks in ~~some a~~ 6989
newspaper of general circulation in the county and shall cause 6990
copies of ~~such the~~ notice to be mailed to the spouse and next of 6991
kin of the absentee residing within the state, ~~excepting except~~ 6992

the applicant, and to the absentee residing at ~~his~~ the absentee's 6993
last known address. The court may order notice to be given to ~~such~~ 6994
any other persons in ~~such the~~ manner ~~as that~~ it ~~deems~~ considers 6995
best. 6996

Sec. 2119.03. (A) The trustee appointed under section 2119.01 6997
of the Revised Code may proceed without order of the probate court 6998
to do the following: 6999

~~(A) To take~~ (1) Take possession of the property of the 7000
absentee wherever situated within the state; 7001

~~(B) To collect~~ (2) Collect all debts due to the absentee; 7002

~~(C) To retain~~ (3) Retain and invest the estate in accordance 7003
with Chapters 2113. to 2125. of the Revised Code. 7004

(B) The trustee may pay ~~such~~ that part or all of the income 7005
or principal of the estate as the court, from time to time, may 7006
direct for the maintenance and support of the absentee's 7007
dependents and, under the order of the court, may bring and defend 7008
suits on behalf of the absentee, compromise claims in favor of and 7009
against the absentee, and pay ~~such~~ any debts of the absentee ~~as~~ 7010
that the court finds necessary for the protection of ~~his~~ the 7011
absentee's dependents, including insurance premiums, orders for an 7012
award of spousal support, and other obligations. The court may 7013
make ~~such~~ any other orders ~~as that~~ it ~~deems~~ considers proper for 7014
the care and custody of the property and its proceeds. 7015

Sec. 2119.04. In order to provide money for the payments 7016
authorized by section 2119.03 of the Revised Code, proceedings may 7017
be had for the mortgaging, leasing, or sale of the real ~~estate~~ 7018
property of an absentee in the same manner as provided by sections 7019
2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code, for sales of 7020
real ~~estate~~ property by executors and administrators. The probate 7021
court, upon notice to the spouse and ~~such~~ any other persons and in 7022

~~such~~ the manner as that the court directs, may order all or any 7023
part of the personal ~~estate~~ property to be sold. 7024

Sec. 2119.05. If at any time the absentee returns and makes 7025
application to the probate court for the termination of the trust 7026
established under section 2119.01 of the Revised Code, the court 7027
shall, on notice to the trustee and other interested parties, 7028
order the trustee to file ~~his~~ a final account and on settlement 7029
~~thereof of the account~~ shall terminate the trust and order all 7030
remaining property returned. If an executor, administrator, or 7031
guardian is appointed for the estate of ~~such~~ the absentee, the 7032
court shall ~~thereupon~~ order the trustee to file ~~his~~ a final 7033
account and on settlement ~~thereof of the account~~ shall terminate 7034
the trust and order all of the property remaining in the ~~hands~~ 7035
possession or under the control of the trustee to be delivered to 7036
the fiduciary entitled ~~thereto~~ to the property. 7037

Sec. 2121.01. (A) Except as provided in division (B) of this 7038
section, a presumption of the death of a person arises upon either 7039
of the following: 7040

(1) When the person has disappeared and been continuously 7041
absent from ~~his~~ the person's place of last domicile for a 7042
five-year period without being heard from during the period; 7043

(2) When the person has disappeared and been continuously 7044
absent from ~~his~~ the person's place of last domicile without being 7045
heard from and was at the beginning of ~~his~~ the person's absence 7046
exposed to a specific peril of death, even though the absence has 7047
continued for less than a five-year period. 7048

(B) When a person who is on active duty in the armed services 7049
of the United States has been officially determined to be absent 7050
in a status of "missing" or "missing in action," a presumption of 7051
death arises when the head of the federal department concerned has 7052

made a finding of death pursuant to the "Federal Missing Persons 7053
Act," 80 Stat. 625 (1966), 37 U.S.C.A. 551, as amended and 7054
hereafter amended. 7055

Sec. 2121.02. (A) When ~~such~~ a presumption of death arises 7056
under section 2121.01 of the Revised Code with respect to a person 7057
who at the time of disappearance was domiciled in this state, the 7058
attorney general of this state or any person entitled under the 7059
~~last~~ will of ~~such~~ the presumed decedent or under Chapter 2105. of 7060
the Revised Code to any share in the presumed decedent's property 7061
within this state, or any person or entity who, under the terms of 7062
any contract, beneficiary designation, trust, or otherwise, may be 7063
entitled to any property, right, or interest by reason of the 7064
death of the presumed decedent, may file a complaint setting forth 7065
the facts ~~which~~ that raise the presumption of death in the probate 7066
court of the county of the presumed decedent's last residence. 7067

(B) When a presumption of death arises pursuant to section 7068
2121.01 of the Revised Code with respect to a person who at the 7069
time of the person's disappearance was domiciled at a place other 7070
than within the state, and the presumed decedent owns real 7071
property within this state, the complaint may be filed in the 7072
county where any part of the real property of the presumed 7073
decedent is located by any of the persons or entities referred to 7074
in division (A) of this section, or by any domiciliary executor or 7075
administrator of the decedent. A foreign fiduciary shall include 7076
with the complaint an exemplified copy of the domiciliary 7077
proceedings pursuant to which the foreign fiduciary was appointed. 7078

(C) In the case of a presumed decedent who was domiciled in 7079
this state, the complainant shall name as parties defendant the 7080
presumed decedent and each of the following that do not join in 7081
the complaint: 7082

(1) The presumed decedent's surviving spouse, if any; 7083

(2) All persons known to the complainant who are entitled 7084
under the presumed decedent's ~~last~~ will and all persons who are 7085
entitled under Chapter 2105. of the Revised Code to any share of 7086
the presumed decedent's property; 7087

(3) All persons or entities known to the complainant who have 7088
or would have by reason of the presumed decedent's death any right 7089
or interest under any contract, beneficiary designation, trust, or 7090
otherwise; 7091

(4) All contract obligors known to the complainant whose 7092
rights or obligations would be affected by a determination that 7093
the presumed decedent is in fact dead. 7094

(D) In the case of a presumed decedent who was not domiciled 7095
in this state but who owned real ~~estate~~ property in this state, 7096
the complainant shall name as parties defendant each of the 7097
following that do not join in the complaint: 7098

(1) The presumed decedent's surviving spouse, if any; 7099

(2) All persons known to the complainant who are entitled 7100
under the presumed decedent's ~~last~~ will and all persons who are 7101
entitled under Chapter 2105. of the Revised Code to any share of 7102
the presumed decedent's real property within this state. 7103

(E) All parties defendant, other than the presumed decedent, 7104
shall be served with summons in the same manner as provided by the 7105
Rules of Civil Procedure. 7106

(F) The complainant shall cause to be advertised once a week 7107
for four consecutive weeks in a newspaper published in the county, 7108
the fact that the complaint has been filed together with a notice 7109
that on a day certain, ~~which~~ that shall be at least four weeks 7110
after the last appearance of the advertisement, or after the final 7111
publication where any defendant is being served by publication, 7112
whichever is later, the probate court will hear evidence relevant 7113
to the allegations of the complaint. 7114

(G) No guardian ad litem, trustee for the suit, or other 7115
representative shall be required to be appointed to represent the 7116
presumed decedent in the proceeding. 7117

Sec. 2121.05. (A) Except as provided otherwise in ~~Chapter~~ 7118
~~2121. of the Revised Code~~ this chapter, all of the proceedings for 7119
the probate of the decedent's ~~last~~ will, if any, and all the 7120
proceedings, domiciliary or ancillary, for the administration of 7121
the decedent's estate that are set forth in the Revised Code for 7122
use upon the death of a decedent, shall upon the signing of the 7123
decree of presumed death be instituted and carried on in the same 7124
manner as if the presumed decedent were in fact dead. All acts 7125
pursuant to these proceedings shall be as valid as if the presumed 7126
decedent were in fact dead. 7127

(B) Following the decree the court may make ~~such~~ any 7128
supplementary orders ~~as~~ that in its discretion are necessary to 7129
consummate any right or interest arising by reason of the death of 7130
the presumed decedent under any contract, trust, or other 7131
nonprobate property interest of any person or entity who was a 7132
party to the proceedings. The court may condition the granting of 7133
~~any such~~ that order by requiring any person or entity who would 7134
benefit ~~thereby~~ by the order to furnish bond for a three-year 7135
period after the decree in the form and amount, with or without 7136
sureties, as the court shall order. If any supplementary order is 7137
directed to the holder of assets of the presumed decedent ~~which~~ 7138
that were created by the decree of presumed death, the court, at 7139
the request of the party defendant to whom the order is directed, 7140
shall condition the granting of ~~any such~~ that order by requiring 7141
any person or entity who would benefit ~~thereby~~ by the order to 7142
furnish a suretyship bond for a three-year period after the decree 7143
in the amount of the assets so created by the decree with interest 7144
for the period of the bond at the rate specified in the order. 7145

(C) The term "assets of the presumed decedent ~~which~~ that were 7146
created by the decree of presumed death" as used in division (B) 7147
of this section and division (D) of section 2121.08 of the Revised 7148
Code, means those potential assets of the presumed decedent in 7149
which the presumed decedent had a contractual or other right, 7150
contingent upon the presumed decedent's death, to have ~~such~~ those 7151
assets paid to ~~his~~ the presumed decedent's designee and the decree 7152
of presumed death would fulfill the contingency. Only that portion 7153
of the proceeds of life insurance policies on the life of the 7154
presumed decedent that exceeds any net cash surrender value of 7155
~~such~~ the policies on the date of the decree is within the 7156
definition of the term "assets of the presumed decedent ~~which~~ that 7157
were created by the decree of presumed death." 7158

(D) The bond shall provide that, if within the three-year 7159
period after the decree is entered by the court it is established 7160
that the presumed decedent is alive, ~~such~~ the person or entity 7161
shall on the subsequent order of the court refund or return any 7162
sums, with interest as provided in the court order, or property 7163
received by virtue of ~~such~~ the order, to the presumed decedent or 7164
to the person or entity who, by reason of the erroneous finding of 7165
death of the presumed decedent, made ~~such~~ the payment or delivered 7166
~~such~~ the property. The bond shall be further conditioned on 7167
returning the fair value of the property if the same shall have 7168
been sold or otherwise disposed of in the interim. 7169

(E) If the person or entity who would benefit by an order, as 7170
provided in division (B) of this section, fails to provide a bond 7171
for the amount of the assets of the presumed decedent ~~which~~ that 7172
were created by the decree, with interest as specified in the 7173
order, the holder shall hold those assets for the three-year 7174
period they would have been bonded. In that event, the holder 7175
shall pay interest at the same rate specified in the order as a 7176
condition of the bond and the interest shall accumulate and be 7177

held throughout that period. 7178

(F) Nothing in this section shall preclude ~~such~~ the person or 7179
entity from selling, encumbering, or otherwise disposing of any 7180
property so received and any purchaser, transferee, or mortgagee 7181
acquires good title to ~~such~~ the property free and clear of any 7182
claim of the presumed decedent. 7183

Sec. 2121.06. Upon the signing of the decree establishing the 7184
death of the presumed decedent, the real ~~estate~~ property of the 7185
presumed decedent passes and ~~devolves~~ devolves as in the case of 7186
actual death, and the persons entitled by will, or under Chapter 7187
2105. of the Revised Code, may enter and take possession. Persons 7188
taking the real ~~estate~~ property may sell or mortgage it and the 7189
purchaser or mortgagee takes a good title, free and discharged of 7190
any interest or claim of the presumed decedent. The persons taking 7191
~~such~~ the real ~~estate~~ property shall not sell, convey, or mortgage 7192
any part ~~thereof~~ of the property within the three-year period 7193
specified in section 2121.08 of the Revised Code without first 7194
giving bond in an amount to be fixed by the probate court and with 7195
sureties to be approved by the court. In the discretion of the 7196
court the bond may be taken without sureties. ~~Such~~ The bond shall 7197
be conditioned to account for and pay over to the presumed 7198
decedent, in case within the three-year period after the decree is 7199
entered by the court it is established that the presumed decedent 7200
is still alive, the value of the real ~~estate~~ property sold or 7201
conveyed, or in the case of the making of a mortgage, to pay the 7202
amount of the mortgage and interest ~~thereon~~ on the mortgage, or in 7203
case of a foreclosure of ~~such~~ that mortgage, to account for and 7204
pay over the value of the real ~~estate~~ property mortgaged. 7205
7206

Sec. 2121.08. (A) The probate court may at any time within a 7207
three-year period from the date of the decree establishing the 7208

death of a presumed decedent, upon proof satisfactory to the court 7209
that the presumed decedent is in fact alive, vacate the decree 7210
establishing the presumption of ~~his~~ death. After the decree has 7211
been vacated all the powers of the executor or administrator of 7212
the presumed decedent cease, but all proceedings had and steps 7213
taken with respect to the administration of the estate of the 7214
presumed decedent prior to the vacating of ~~such the~~ decree remain 7215
valid. The executor or administrator of the estate of ~~such the~~ 7216
presumed decedent who is found to be alive shall settle ~~his the~~ 7217
account of ~~his the executor's or administrator's~~ administration 7218
down to the time of the vacating of the decree and shall transfer 7219
all assets remaining in ~~his hands the possession or under the~~ 7220
~~control of the executor or administrator~~ to the person ~~as whose~~ 7221
~~for whom the~~ executor or administrator ~~he has acted~~ is acting, or 7222
to ~~such that~~ person's authorized agent or attorney. 7223

(B) The title of any person to any money, property, right, or 7224
interest as surviving spouse, next of kin, heir, legatee, devisee, 7225
co-owner with right of survivorship, beneficiary or other 7226
contractual payee, successor to a trust interest, or otherwise of 7227
the presumed decedent shall be subject to this section, and upon 7228
vacating of ~~such the~~ decree as provided in this section any 7229
property, money, right, or interest, or ~~the its~~ fair value ~~thereof~~ 7230
if the same shall have been sold or otherwise disposed of, may be 7231
recovered from the person who had received ~~any such that~~ property, 7232
money, right, or interest. 7233

(C) Except as provided in division (D) of this section, in 7234
any action against a beneficiary for the recovery of property or 7235
the value ~~thereof~~ of the property, or upon the bond given as 7236
condition for delivery of money, other personal property, or sale 7237
or encumbrance of real property, the beneficiary may set off as 7238
against ~~such that~~ claim, an allowance for services rendered in 7239
maintaining or preserving the property, and for any moneys or 7240

other considerations made or given by the beneficiary for the 7241
preservation, care, or maintenance of the property during the 7242
period of absence of the person erroneously presumed to be dead, 7243
and the reasonable value of any part of the property used for 7244
support by those whom the person erroneously presumed to be dead 7245
had a legal obligation to support during ~~his~~ the person's absence. 7246

(D) There shall be no set off as against those assets defined 7247
in division (C) of section 2121.05 of the Revised Code to be 7248
assets of the presumed decedent ~~which~~ that were created by the 7249
decree of presumed death. Those assets created by the erroneous 7250
decree of presumed death shall be returned with interest to the 7251
person entitled ~~thereto~~ to them. 7252

(E) Any net cash surrender value on any policies of life 7253
insurance on the life of a person erroneously presumed to be dead 7254
are subject to the set off provision in division (C) of this 7255
section. The person erroneously presumed to be dead, or persons 7256
claiming under ~~him~~ the person erroneously presumed to be dead, may 7257
recover whatever remains of cash values from the person to whom 7258
paid. ~~Such~~ The claimants have no recourse against the insurance 7259
company ~~which~~ that made ~~such~~ the payments, and it is discharged 7260
from liability on the policies affected. 7261

Sec. 2121.09. After vacation of the decree of the presumption 7262
of death has been established, as provided by section 2121.08 of 7263
the Revised Code, the person erroneously presumed to be dead ~~may~~, 7264
on motion filed of record stating the facts, may be substituted as 7265
plaintiff or petitioner in all actions or proceedings brought by 7266
the executor or administrator, whether prosecuted to judgment or 7267
decree or otherwise. ~~Such~~ That person ~~may~~, in all actions or 7268
proceedings previously brought against the executor or 7269
administrator, may be substituted as defendant or respondent, on 7270
motion filed by ~~him~~ the person or on ~~his~~ the person's behalf, but 7271

shall not be compelled to go to trial in less than three months 7272
from the time of filing of ~~such~~ the motion. Judgments or decrees 7273
recovered against the executor or administrator, before the 7274
vacation of the decree, may be opened on application made by the 7275
person erroneously presumed to be dead within three months after 7276
the vacating of the decree, provided it is supported by an 7277
affidavit alleging the existence of facts ~~which~~ that would be a 7278
valid defense. If the application is not made within the three 7279
months or is made but the supporting alleged facts are adjudged an 7280
insufficient defense, the judgment or decree is conclusive to all 7281
intents, saving the defendant's right to review as in other cases 7282
on appeal. 7283

Sec. 2123.02. In a situation described in section 2123.01 of 7284
the Revised Code, the executor or administrator may file in the 7285
probate court of the county where the estate is being administered 7286
a ~~petition~~ complaint signed by ~~such~~ the executor or administrator 7287
or ~~his~~ the executor's or administrator's attorney, which ~~petition~~ 7288
complaint shall be verified. The surviving spouse and the legatees 7289
and devisees, or the heirs and distributees of the decedent, 7290
including those whose names are unknown, shall be made parties 7291
defendant. The ~~petition~~ complaint shall contain a concise 7292
statement of the pertinent facts and shall conclude with a prayer, 7293
for the determination of the heirs and distributees of ~~such~~ the 7294
decedent or of the devisees or legatees not named in the will and 7295
their respective interests in the estate. 7296

Sec. 2123.03. Upon the filing of the ~~petition~~ complaint 7297
mentioned in section 2123.02 of the Revised Code, the same 7298
proceedings, pleadings, and rule days as in civil actions in the 7299
court of common pleas shall apply. All parties defendant who are 7300
known to be residents of the state and whose ~~place~~ places of 7301
residence ~~is~~ are known shall be served with summons, as provided 7302

for the service of summons in civil actions in ~~such~~ that court. 7303

Sec. 2123.05. At the time assigned for the hearing of a 7304
proceeding set forth under section 2123.01 of the Revised Code, or 7305
at any time to which ~~said~~ the hearing may be adjourned, the 7306
probate court may hear proof taken by commission, or by witnesses 7307
produced in open court, of the facts set forth in the ~~petition~~ 7308
complaint, and shall, if satisfied from the evidence, find and 7309
adjudge who are or were the heirs or next of kin of the decedent, 7310
and entitled by the laws of this state to inherit the estate of 7311
the deceased, or the devisees or legatees named or unnamed in the 7312
will, ~~which~~. The finding and adjudication shall be entered on the 7313
journal of the court, which entry, or a certified copy ~~thereof~~ of 7314
the entry, shall be prima facie evidence of the facts ~~therein~~ 7315
found. 7316

Sec. 2123.06. Whenever it is necessary for any person other 7317
than an executor or administrator to determine who are or were the 7318
heirs at law of a deceased person, on the ~~petition~~ complaint of 7319
any interested party and proceedings ~~like~~ similar to those set 7320
forth in sections 2123.01 to 2123.05, ~~inclusive~~, of the Revised 7321
Code, the probate court may make a determination ~~thereof~~ of who 7322
are or were the heirs at law of the deceased person. 7323

Sec. 2127.011. (A) In addition to the other methods provided 7324
by law or in the will and unless expressly prohibited by the will, 7325
an executor or administrator may sell at public or private sale, 7326
grant options to sell, exchange, re-exchange, or otherwise dispose 7327
of any parcel of real ~~estate~~ property belonging to the estate at 7328
any time at prices and upon terms ~~as~~ that are consistent with this 7329
section and may execute and deliver deeds and other instruments of 7330
conveyance if all of the following conditions are met: 7331

(1) The surviving spouse, all of the legatees and devisees in 7332

the case of testacy, and all of the heirs in the case of 7333
intestacy, give written consent to a power of sale for a 7334
particular parcel of real ~~estate~~ property or to a power of sale 7335
for all the real ~~estate~~ property belonging to the estate. Each 7336
consent to a power of sale provided for in this section shall be 7337
filed in the probate court. 7338

(2) Any sale under a power of sale authorized pursuant to 7339
this section shall be made at a price of at least eighty per cent 7340
of the appraised value, as set forth in an approved inventory. 7341

(3) No power of sale provided for in this section is 7342
effective if the surviving spouse, ~~or~~ or any legatee, devisee, or 7343
heir is a minor. No person may give the consent of the minor that 7344
is required by this section. 7345

(B) A surviving spouse who is the executor or administrator 7346
may sell real ~~estate~~ property to ~~himself~~ self pursuant to this 7347
section. 7348

Sec. 2127.02. As soon as an executor or administrator 7349
ascertains that the personal property in ~~his hands~~ the possession 7350
or under the control of the executor or administrator is 7351
insufficient to pay all the debts of the decedent, together with 7352
the allowance for support to the surviving spouse, minor children, 7353
or surviving spouse and minor children of the decedent as provided 7354
in section 2106.13 of the Revised Code, and the costs of 7355
administering the estate, ~~he~~ the executor or administrator shall 7356
commence a civil action in the probate court for authority to sell 7357
the decedent's real property. 7358

Sec. 2127.04. (A) With the consent of all persons entitled to 7359
share in an estate upon distribution, the executor, administrator, 7360
or administrator with the will annexed may, and upon the request 7361
of these persons shall, commence an action in the probate court 7362

for authority to sell any part or all of the decedent's real 7363
estate property, even though the real estate property is not 7364
required to be sold to pay debts or legacies. A guardian may make 7365
a request under this division, or give consent, on behalf of the 7366
guardian's ward. 7367

(B) An executor, administrator, or administrator with the 7368
will annexed may commence an action in the probate court, on the 7369
executor or administrator's own motion, to sell any part or all of 7370
the decedent's real estate property, even though the real estate 7371
property is not required to be sold to pay debts or legacies. The 7372
court shall not issue an order of sale in the action unless one of 7373
the categories specified in divisions (B)(1)(a), (b), and (c), 7374
(B)(2)(a), (b), and (c), and (B)(3) of this section applies: 7375

(1)(a) At least fifty per cent of all the persons interested 7376
in the real estate property proposed to be sold have consented to 7377
the sale. 7378

(b) Prior to the issuance of the order, no written objection 7379
is filed with the court by any person or persons who hold 7380
aggregate interests in the interest of the decedent in the real 7381
estate property proposed to be sold, that total in excess of 7382
twenty-five per cent. 7383

(c) The court determines that the sale is in the best 7384
interest of the decedent's estate. 7385

(2)(a) No person's interest in the interest of the decedent 7386
in the real estate property proposed to be sold exceeds ten per 7387
cent. 7388

(b) Prior to the issuance of the order, no written objection 7389
is filed with the court by any person or persons who hold 7390
aggregate interests in the interest of the decedent in the real 7391
estate property proposed to be sold, that total in excess of 7392

twenty-five per cent. 7393

(c) The court determines that the sale is in the best 7394
interest of the decedent's estate. 7395

(3) The real ~~estate~~ property proposed to be sold escheats to 7396
the state under division (K) of section 2105.06 of the Revised 7397
Code. 7398

(C) Notwithstanding any provision of the Revised Code, an 7399
executor, administrator, or administrator with the will annexed 7400
shall commence an action in the probate court to sell any part or 7401
all of the decedent's real ~~estate~~ property if any person who is 7402
entitled to inherit all or part of the real ~~estate~~ property cannot 7403
be found after a due and diligent search. The court shall not 7404
issue an order of sale in the action unless the sale is in the 7405
best interest of the person who cannot be found and in the best 7406
interest of the decedent's estate. 7407

If a sale is ordered under this division, the costs of its 7408
administration shall be taken from the proceeds of the sale. 7409

(D) A surviving spouse who is an executor or administrator of 7410
the decedent spouse's estate is not disqualified, by reason of 7411
being executor or administrator, as a person to whom a parcel of 7412
real ~~estate~~ property may be sold pursuant to this section. 7413

Sec. 2127.05. Whenever necessary for the education, support, 7414
or the payment of the just debts of the ward, or for the discharge 7415
of liens on the real ~~estate~~ property of the ward, ~~or wherever~~ 7416
whenever the real ~~estate~~ property of the ward is suffering 7417
unavoidable waste, or a better investment of its value can be 7418
made, or whenever it appears that a sale of the real ~~estate~~ 7419
property will be for the benefit of the ward or ~~his~~ the ward's 7420
children, the guardian of the person and estate or of the estate 7421
only of a minor, person unable to manage ~~his~~ the person's property 7422

because of mental illness or deficiency, habitual drunkard, 7423
confined person, or other person under disability may commence a 7424
civil action in the probate court for authority to sell all or any 7425
part of the real estate property of the ward. If it appears to the 7426
advantage of the ward to lay out all or any part of the ~~land~~ real 7427
property in town lots, application for ~~such~~ that authority may 7428
also be made in the action. 7429

When the same person is guardian for two or more wards whose 7430
real estate property is owned by them jointly or in common, the 7431
actions may be joined, and in one complaint the guardian may ask 7432
for the sale of the interest of all or any number of ~~his~~ the 7433
guardian's wards in the real estate property. If different persons 7434
are guardians of wards interested jointly or in common in the same 7435
real estate property, they may join as parties plaintiff in the 7436
same action. On the hearing, in either case, the court may 7437
authorize the sale of the interest of one or more of the wards. 7438

Sec. 2127.06. If the fiduciary who brings an action under 7439
section 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code, dies, 7440
resigns, or is removed, or ~~his~~ the fiduciary's powers cease at any 7441
time before the real estate property sold is conveyed, a successor 7442
fiduciary may be substituted as a party to the action and may 7443
convey ~~land~~ real property, whether sold before or after ~~his~~ the 7444
successor fiduciary's appointment. ~~He~~ The successor fiduciary may 7445
also be required to give an additional bond. 7446

Sec. 2127.07. Any interest in real estate property, whether 7447
legal or equitable, ~~which~~ that the deceased had a right to sell or 7448
dispose of at the time of ~~his~~ the deceased's death, or of 7449
which the ward was seized at the time the action was brought, 7450
including coal, iron ore, limestone, fireclay, or other mineral 7451
upon or under ~~such~~ the real estate property, or the right to mine 7452
them, may be sold by an executor, administrator, or guardian under 7453

sections 2127.01 to 2127.43, ~~inclusive~~, of the Revised Code. This 7454
section does not give an executor or administrator with the will 7455
annexed authority to sell real ~~estate~~ property for the payment of 7456
legacies, other than as charged by the testator or by operation of 7457
law. This section does not give a guardian authority to sell an 7458
equitable estate in real ~~estate~~ property placed by deed of trust, 7459
beyond the power of the ward to sell, convey, or assign. 7460

Sec. 2127.08. When the interest of a decedent or ward in real 7461
~~estate~~ property is fractional and undivided, the action for 7462
authority to sell ~~such the~~ real ~~estate~~ property shall include only 7463
~~such the~~ undivided fractional interest, except that the executor, 7464
administrator, or guardian, ~~or~~ the owner of any other fractional 7465
interest, or any lien holder may, by pleading filed in the cause 7466
setting forth all interests in the property and liens ~~thereon on~~ 7467
the property, require that the action include the entire interest 7468
in the property, and the owner of ~~said the~~ interests and liens 7469
shall receive ~~his~~ the owner's respective share of the proceeds of 7470
sale after payment has been made of the expenses of sale including 7471
reasonable attorney fees for services in the case, ~~which. Those~~ 7472
fees ~~must~~ shall be paid to the plaintiff's attorney unless the 7473
court awards some part ~~thereof~~ of the fees to other counsel for 7474
services in the case for the common benefit of all the parties, 7475
having regard to the interest of the parties, the benefit each may 7476
derive from the sale, and the equities of the case. The fees of 7477
the executor, administrator, or guardian shall be a charge only 7478
against ~~such the~~ portion of the proceeds of sale ~~as that~~ 7479
represents the interests of the decedent or ward. 7480

Sec. 2127.09. An action by an executor, administrator, or 7481
guardian to obtain authority to sell real ~~estate~~ property shall be 7482
brought in the county in which ~~he the~~ the executor, administrator, or 7483
guardian was appointed or in which the real ~~estate~~ property 7484

subject to sale or any part ~~thereof~~ of the property is situated. 7485
If the action is brought in a county other than that in which the 7486
real ~~estate~~ property or a part ~~thereof~~ of the property is 7487
situated, a certified transcript of the record of all proceedings 7488
had ~~therein~~ in that county shall be filed with and recorded by the 7489
probate court of each county in which ~~such~~ the real ~~estate~~ 7490
property or any part ~~thereof~~ of the property is situated. 7491

Sec. 2127.10. An action to obtain authority to sell real 7492
~~estate~~ property shall be commenced by the executor, administrator, 7493
or guardian by filing a complaint with the probate court. 7494

The complaint shall contain a description of the real ~~estate~~ 7495
property proposed to be sold and its value, as near as can be 7496
ascertained, a statement of the nature of the interest of the 7497
decedent or ward in the real ~~estate~~ property, a recital of all 7498
mortgages and liens upon and adverse interests in the real ~~estate~~ 7499
property, the facts showing the reason or necessity for the sale, 7500
and any additional facts necessary to constitute the cause of 7501
action under the section of the Revised Code on which the action 7502
is predicated. 7503

Sec. 2127.11. When the actual market value of a decedent's or 7504
ward's real ~~estate~~ property to be sold is less than three thousand 7505
dollars, and the court so finds, it may by summary order authorize 7506
the sale and conveyance of the ~~land~~ real property at private sale, 7507
on ~~such~~ the terms as ~~that~~ it ~~deems~~ considers proper, and in ~~such a~~ 7508
~~that~~ proceeding, all requirements of sections 2127.01 to 2127.43 7509
of the Revised Code, as to service of summons, appraisal, and 7510
additional bond, shall be waived. 7511

Sec. 2127.12. In an action by an executor or administrator to 7512
obtain authority to sell real ~~estate~~ property, the following 7513
persons shall be made parties defendant: 7514

(A) The surviving spouse;	7515
(B) The heirs, devisees, or persons entitled to the next estate of inheritance from the decedent in the real estate <u>property</u> and having an interest in it, but their spouses need not be made parties defendant;	7516 7517 7518 7519
(C) All mortgagees and other lienholders whose claims affect the real estate <u>property</u> or any part of it;	7520 7521
(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;	7522 7523 7524 7525
(E) If a fraudulent transfer is sought to be set aside, all persons holding or claiming under the transfer;	7526 7527
(F) All other persons having an interest in the real estate <u>property</u> .	7528 7529
Sec. 2127.13. In an action by a guardian to obtain authority to sell the real estate <u>property</u> of his <u>the guardian's</u> ward the following persons shall be made parties defendant:	7530 7531 7532
(A) The ward;	7533
(B) The spouse of the ward;	7534
(C) All persons entitled to the next estate of inheritance from the ward in such the real estate <u>property</u> who are known to reside in Ohio, but their spouses need not be made parties defendant;	7535 7536 7537 7538
(D) All lienholders whose claims affect such the real estate <u>property</u> or any part thereof <u>of the property</u> ;	7539 7540
(E) If the interest subject to such the sale is equitable, all persons holding legal title thereto <u>to the real property</u> or any part thereof <u>of the property</u> ;	7541 7542 7543

(F) All other persons having an interest in ~~such~~ the real 7544
estate property, other than creditors. 7545

Sec. 2127.14. Service of summons, actual or constructive, in 7546
an action to sell the real ~~estate~~ property of a decedent or a ward 7547
shall be had as in other civil actions, but if any competent 7548
person in interest enters appearance or consents in writing to the 7549
sale, service on ~~such~~ that person shall not be necessary. If all 7550
parties consent in writing to the sale, an order ~~therefor~~ for the 7551
sale may issue forthwith. 7552

Sec. 2127.15. All pleadings and proceedings in an action to 7553
obtain authority to sell the real ~~estate~~ property of a decedent or 7554
a ward in the probate court shall be the same as in other civil 7555
actions, except as otherwise provided in sections 2127.01 to 7556
2127.43 of the Revised Code. 7557

Sec. 2127.16. In a sale of real ~~estate~~ property by an 7558
executor, administrator, or guardian, ~~such~~ the real estate 7559
property shall be sold free of all right and expectancy of dower 7560
~~therein in the property~~, but out of the proceeds of the sale, in 7561
lieu of dower, the court shall allow to the person having any 7562
dower interest in the property ~~such a~~ sum in money ~~as~~ that is the 7563
just and reasonable value of ~~such~~ the dower, unless the answer of 7564
~~such~~ the person waives ~~such~~ that allowance. 7565

Sec. 2127.17. In an action to obtain authority to sell real 7566
~~estate~~ property, if a party in ~~his~~ the party's answer objects to 7567
an order for the sale of real ~~estate~~ property by an executor, 7568
administrator, or guardian, and on hearing it appears to the court 7569
that either the complaint or the objection is unreasonable, it may 7570
award costs to the party prevailing on that issue. 7571

Sec. 2127.18. Upon the hearing of an action to obtain 7572
authority to sell real ~~estate~~ property by an executor, 7573
administrator, or guardian, if satisfied that all necessary 7574
parties defendant are properly before the court, and that the 7575
demand for relief ought to be granted, the court may determine the 7576
equities among the parties and the priorities of lien of the 7577
several lien holders on the real ~~estate~~ property, and order a 7578
distribution of the money arising from the sale in accordance with 7579
its determination. The court may in the same cause order 7580
contributions among all parties in interest. 7581

Sec. 2127.19. When an action to obtain authority to sell real 7582
~~estate~~ property is determined by the probate court, the probate 7583
judge shall make the necessary order for an entry of release and 7584
satisfaction of all mortgages and other liens upon the real ~~estate~~ 7585
property except ~~such the~~ mortgage ~~as that~~ is assumed by the 7586
purchaser. The executor, administrator, or guardian shall 7587
~~thereupon~~ enter ~~such the~~ release and satisfaction, together with a 7588
memorandum of the title of the case, the character of the 7589
proceedings, and the volume and page of record where recorded, 7590
upon the record of ~~such the~~ mortgage, judgment, or other lien in 7591
the office where it appears as matter of record. If the executor, 7592
administrator, or guardian fails to enter ~~such the~~ release and 7593
satisfaction, the court ~~may~~, on the application of an interested 7594
party, may enter ~~such the~~ release and satisfaction and tax in ~~his~~ 7595
the executor's, administrator's, or guardian's cost bill the fee 7596
provided by law for entering ~~such the~~ release and satisfaction, 7597
and a fee of twenty-five cents to the court. 7598

Sec. 2127.21. If a guardian's complaint in an action to 7599
obtain authority to sell real ~~estate~~ property seeks to have ~~land~~ 7600
real property laid out in town lots, and the court finds it to the 7601

advantage of the ward, it shall authorize the survey and platting 7602
of the ~~land~~ real property as provided by law. Upon subsequent 7603
return of the survey and plat, the court, if it approves it, shall 7604
authorize the guardian on behalf of ~~his~~ the guardian's ward to 7605
sign, seal, and acknowledge the plat in that behalf for record. 7606

Sec. 2127.22. If an appraisalment of the real ~~estate~~ property 7607
is contained in the inventory required of an executor or 7608
administrator by section 2115.02 of the Revised Code, and of a 7609
guardian by section 2111.14 of the Revised Code, the probate court 7610
may order a sale in accordance with the appraisalment, or order a 7611
new appraisalment. If a new appraisalment is not ordered, the value 7612
set forth in the inventory shall be the appraised value of the 7613
real ~~estate~~ property. If the court orders a new appraisalment, the 7614
value returned shall be the appraised value of the real ~~estate~~ 7615
property. 7616

If the interest of the deceased or ward in the real ~~estate~~ 7617
property is fractional and undivided, and if a party requests and 7618
the court orders the entire interest in the real ~~estate~~ property 7619
to be sold, a new appraisalment of the entire interest in the real 7620
~~estate~~ property shall be ordered. 7621

If the relief requested is granted and new appraisalment is 7622
ordered, the court shall appoint one, or on request of the 7623
executor, administrator, or guardian, not exceeding three 7624
judicious and disinterested persons of the vicinity, not next of 7625
kin of the complainant, to appraise the real ~~estate~~ property in 7626
whole and in parcels at its true value in money. ~~Where~~ If the real 7627
~~estate~~ property lies in two or more counties the court may appoint 7628
appraisers in any or all of the counties in which the real ~~estate~~ 7629
property or a part of it is situated. 7630

Sec. 2127.23. The appraisers appointed under section 2127.22 7631

of the Revised Code shall agree to truly and impartially appraise 7632
the real ~~estate~~ property at its fair cash value upon actual view 7633
and to perform the duties required of them by the order of the 7634
court. The appraisement shall be signed by the appraisers, and the 7635
officer to whom it is issued shall make return of it to the court 7636
for confirmation. 7637

Sec. 2127.24. ~~When~~ If a person appointed by the court under 7638
section 2127.22 of the Revised Code as an appraiser fails to 7639
discharge ~~his~~ the person's duties, the probate judge on ~~his~~ the 7640
judge's own motion or on the motion of the executor, 7641
administrator, or guardian may appoint another appraiser. 7642

Sec. 2127.27. Upon the return and approval of the 7643
appraisement provided for by section 2127.22 of the Revised Code, 7644
the court shall require the executor, administrator, or guardian 7645
to execute a bond with two or more personal sureties, or one or 7646
more corporate sureties, whose qualifications shall be those 7647
provided by section 2109.17 of the Revised Code. ~~Such~~ The bond 7648
shall be payable to the state in an amount ~~which~~ that the court 7649
~~deems~~ considers sufficient, having regard to the amount of real 7650
~~estate~~ property to be sold, its appraised value, the amount of the 7651
original bond given by the executor, administrator, or guardian, 7652
and the distribution to be made of the proceeds arising from the 7653
sale, ~~and such.~~ The bond shall be conditioned for the faithful 7654
discharge of ~~his~~ the executor's, administrator's, or guardian's 7655
duties and the payment of, and accounting for, all moneys arising 7656
from ~~such~~ the sale according to law. ~~Such~~ The bond shall be 7657
additional to that given by the executor, administrator, or 7658
guardian at the time of ~~his~~ appointment. If the court finds the 7659
amount of the original bond given by the executor, administrator, 7660
or guardian is sufficient, having regard for the amount of real 7661
~~estate~~ property to be sold, its appraised value, and the 7662

distribution to be made of the proceeds arising from the sale, the 7663
giving of additional bond may be dispensed with by order of the 7664
court. ~~Such~~ The bond shall be given in the court from which the 7665
executor, administrator, or guardian ~~received his appointment~~ was 7666
appointed. 7667

If the action to obtain authority to sell real ~~estate~~ 7668
property is pending in another court, the latter shall proceed no 7669
further until there is filed ~~therein~~ in that court a certificate 7670
from the court ~~wherein in which~~ the executor, administrator, or 7671
guardian ~~received his appointment~~ was appointed, under its seal, 7672
that ~~such~~ the bond has been given or that the original bond is 7673
sufficient. This section does not prevent the court in an action 7674
to sell real ~~estate~~ property from ordering the sale of ~~such that~~ 7675
real ~~estate~~ property without bond in cases where the testator had 7676
provided by ~~his~~ the testator's will that the executor need not 7677
give bond. 7678

Sec. 2127.28. The probate court may, after notice to all 7679
parties in interest, allow a real estate commission in an action 7680
to sell real ~~estate~~ property by an executor, administrator, or 7681
guardian, but an allowance shall be passed upon by the court prior 7682
to the sale. 7683

The court may allow payment for certificate or abstract of 7684
title or policy of title insurance in connection with the sale of 7685
any ~~land~~ real property by an executor, administrator, or guardian. 7686

Sec. 2127.29. When the bond required by section 2127.27 of 7687
the Revised Code is filed and approved by the court, it shall 7688
order the sale of the real ~~estate~~ property included in the 7689
complaint set forth in section 2127.10 of the Revised Code, or the 7690
part of the real ~~estate~~ property it ~~deems~~ considers necessary for 7691
the interest of all parties concerned. If the complaint alleges 7692

that it is necessary to sell part of the real estate property, and 7693
that by the partial sale the residue of the estate real property, 7694
or a specific part of it, would be greatly injured, the court, if 7695
it so finds, may order a sale of the whole estate real property. 7696

Sec. 2127.30. If the order of sale set forth in section 7697
2127.29 of the Revised Code includes real estate property in which 7698
the ward or the estate has an equitable interest only, the court 7699
may make an order for the appraisement and sale of ~~such~~ that 7700
equitable estate free from dower, for the indemnity of the estate 7701
against any claim for purchase money, and for payment of the value 7702
of ~~such~~ the dower in money, as the court ~~deems~~ considers 7703
equitable, having regard for the rights of all parties in 7704
interest. 7705

Sec. 2127.32. The real estate property included in the 7706
court's order of sale, as provided in section 2127.29 of the 7707
Revised Code, shall be sold either in whole or in parcels at 7708
public auction at the door of the courthouse in the county in 7709
which the order of sale was granted, or at another place, as the 7710
court directs, and the order shall fix the place, day, and hour of 7711
sale. If it appears to be more for the interest of the ward or the 7712
estate to sell the real estate property at private sale, the court 7713
may authorize the complainant to sell it either in whole or in 7714
parcels. If an order for private sale is issued, it shall be 7715
returned by the complainant. Upon motion and showing of a person 7716
interested in the proceeds of the sale, filed after thirty days 7717
from the date of the order, the court may require the complainant 7718
to return the order, if the premises have not been sold. ~~Thereupon~~ 7719
Upon return of the order, the court may order the real estate 7720
property to be sold at public sale. 7721

If upon showing of any person interested, the court finds 7722
that it will be to the interest of the ward or the estate, it may 7723

order a reappraisement and sale in parcels. 7724

If the sale is to be public, the executor, administrator, or 7725
guardian ~~must~~ shall give notice of the time and place of the sale 7726
by advertisement at least three weeks successively in a newspaper 7727
published in the county where the ~~lands are~~ real property is 7728
situated. 7729

Sec. 2127.33. ~~Where~~ If the sale authorized by a court as 7730
provided in section 2127.32 of the Revised Code is private, the 7731
real ~~estate~~ property shall not be sold for less than the appraised 7732
value. ~~When~~ If the sale is at public auction, the real ~~estate~~ 7733
property if improved shall not be sold for less than two thirds of 7734
the appraised value, or if not improved, for less than one half of 7735
the appraised value. In private sales if no sale has been effected 7736
after one bona fide effort to sell under this section, or if in 7737
public sales the ~~land~~ real property remains unsold for want of 7738
bidders when offered pursuant to advertisement, the court may fix 7739
the price for which ~~such~~ the real ~~estate~~ property may be sold or 7740
may set aside the appraisal and order a new appraisal. If 7741
~~such~~ the new appraisal does not exceed five hundred dollars, 7742
and upon the first offer ~~thereunder~~ under the new appraisal at 7743
public sale there are no bids, then upon the motion of any party 7744
interested the court may order the real ~~estate~~ property to be 7745
readvertised and sold at public auction to the highest bidder. 7746

Sec. 2127.34. The order for the sale of real ~~estate~~ property, 7747
granted by the probate court in an action by an executor, 7748
administrator, or guardian, shall prescribe the terms of the sale, 7749
and payment of the purchase money, either in whole or in part, for 7750
cash, or on deferred payments. In the sales by executors or 7751
administrators, deferred payments shall not exceed two years with 7752
interest. 7753

Sec. 2127.35. An executor, administrator, or guardian shall 7754
make return of ~~his~~ the executor's, administrator's, or guardian's 7755
proceedings under the order for the sale of real ~~estate~~ property 7756
granted by the probate court. The court, after careful 7757
examination, if satisfied that the sale has in all respects been 7758
legally made, shall confirm the sale, and order the executor, 7759
administrator, or guardian to make a deed to the purchaser. 7760

The deed shall be received in all courts as prima-facie 7761
evidence that the executor, administrator, or guardian in all 7762
respects observed the direction of the court, and complied with 7763
the requirements of the law, ~~and~~ shall convey the interest in the 7764
real ~~estate~~ property directed to be sold by the court, and shall 7765
vest title to the interest in the purchaser as if conveyed by the 7766
deceased in ~~his~~ the deceased's lifetime, or by the ward free from 7767
disability, and by the owners of the remaining interests in the 7768
real ~~estate~~ property. 7769

Sec. 2127.36. The order for the sale of real ~~estate~~ property 7770
granted in an action by an executor, administrator, or guardian 7771
shall require that before the delivery of the deed the deferred 7772
installments of the purchase money be secured by mortgage on the 7773
real ~~estate~~ property sold, and mortgage notes bearing interest at 7774
a rate approved by the probate court. If after the sale is made, 7775
and before delivery of the deed, the purchaser offers to pay the 7776
full amount of the purchase money in cash, the court may order 7777
that it be accepted, if for the best interest of the estate or the 7778
ward, and direct its distribution. 7779

The court in ~~such an~~ that order may also direct the sale, 7780
without recourse, of any or all of the notes taken for deferred 7781
payments, if for the best interest of the estate or the ward, at 7782
not less than their face value with accrued interest, and direct 7783
the distribution of the proceeds. 7784

Sec. 2127.37. ~~When~~ If an action to sell real ~~estate~~ property 7785
is prosecuted by an executor or administrator ~~he, the executor or~~ 7786
administrator shall be allowed the compensation provided by law, 7787
by the probate court from which ~~his~~ the executor's or 7788
administrator's letters issued. ~~When such~~ If that action is by a 7789
guardian, ~~his~~ the guardian's duties and obligations ~~therein~~ in the 7790
action shall be considered by the court appointing ~~him~~ the 7791
guardian in awarding ~~such~~ the compensation ~~as that~~ the court ~~deems~~ 7792
considers reasonable. 7793

Sec. 2127.38. The sale price of real ~~estate~~ property sold 7794
following an action by an executor, administrator, or guardian 7795
shall be applied and distributed as follows: 7796

(A) To discharge the costs and expenses of the sale, 7797
including reasonable fees to be fixed by the probate court for 7798
services performed by attorneys for the fiduciary in connection 7799
with the sale, and compensation, if any, to the fiduciary for ~~his~~ 7800
services in connection with the sale as the court may fix, which 7801
costs, expenses, fees, and compensation shall be paid prior to any 7802
liens upon the real ~~estate~~ property sold and notwithstanding the 7803
purchase of the real ~~estate~~ property by a lien holder; 7804

(B) To the payment of taxes, interest, penalties, and 7805
assessments then due against the real ~~estate~~ property, and to the 7806
payment of mortgages and judgments against the ward or deceased 7807
person, according to their respective priorities of lien, so far 7808
as they operated as a lien on the real ~~estate~~ property of the 7809
deceased at the time of the sale, or on the estate of the ward at 7810
the time of the sale, ~~which that~~ shall be apportioned and 7811
determined by the court, or on reference to a master, or 7812
otherwise; 7813

(C) (1) In the case of an executor or administrator, the 7814

remaining proceeds of sale shall be applied as follows: 7815

(1)(a) To the payment of legacies with which the real estate 7816
property of the deceased was charged, if the action is to sell 7817
real estate property to pay legacies; 7818

(2)(b) To discharge the claims and debts of the estate in the 7819
order provided by law. 7820

(2) Whether the executor or administrator was appointed in 7821
this state or elsewhere, the surplus of the proceeds of sale ~~must~~ 7822
shall be considered for all purposes as real estate property, and 7823
be disposed of accordingly. 7824

Sec. 2127.39. ~~When~~ If an action to sell real estate property 7825
is brought by an executor or administrator with the will annexed, 7826
if in the ~~last~~ will of the deceased there is a disposition of ~~his~~ 7827
the decedent's estate for the payment of debts, or a provision 7828
that may require or induce the probate court to marshal the assets 7829
differently from the way the law otherwise would prescribe, ~~such~~ 7830
those devises, or parts of the will, shall be set forth in the 7831
complaint, and a copy of the will exhibited to the court, 7832
whereupon the court shall marshal the proceeds of the sale 7833
accordingly, so far as it can be done consistently with the rights 7834
of creditors. 7835

Sec. 2127.40. When an action is brought by an executor or 7836
administrator to sell real estate property to pay debts, the real 7837
estate property subject to sale shall include all rights and 7838
interests in ~~lands, tenements, and hereditaments~~ real property 7839
transferred by the decedent in ~~his~~ the decedent's lifetime with 7840
intent to defraud ~~his~~ the decedent's creditors, except that ~~lands~~ 7841
real property fraudulently transferred cannot be taken from any 7842
person who purchased them for a valuable consideration, in good 7843
faith, and without knowledge of the fraud. No claim to ~~such lands~~ 7844

that real property shall be made unless within four years next 7845
after the decease of the grantor. 7846

If real ~~estate~~ property fraudulently transferred is to be 7847
included in ~~such an~~ that action, the executor or administrator, 7848
either before or at the same time, may commence a civil action in 7849
the court of common pleas in the county in which the real ~~estate~~ 7850
property is situated to recover possession of it, or, in ~~his~~ the 7851
action for its sale, ~~he~~ the executor or administrator may allege 7852
the fraud and have the fraudulent transfer avoided. But when the 7853
real ~~estate~~ property is included in the complaint before the 7854
recovery of possession by the executor or administrator, the 7855
action shall be brought in the court of common pleas in the county 7856
in which the real ~~estate~~ property is situated. 7857

Sec. 2127.41. If, after the institution of proceedings for 7858
the partition of the real property of a decedent, it is found that 7859
the assets in the ~~hands~~ possession or under the control of the 7860
executor or administrator probably are insufficient to pay the 7861
debts of the estate, together with the allowance for support of 7862
the surviving spouse, minor children, or surviving spouse and 7863
minor children as provided in section 2106.13 of the Revised Code, 7864
the expenses of administration, and the legacies that are a charge 7865
upon the real property, the executor or administrator shall make a 7866
written statement to the probate court of the assets, 7867
indebtedness, expenses, and legacies, and the court ~~forthwith~~ 7868
shall ascertain the amount necessary to pay the debts, expenses, 7869
and legacies and give a certificate of the amount to the executor 7870
or administrator. 7871

The executor or administrator then shall present the 7872
certificate to the court in which the proceedings for partition 7873
are or have been pending, and, on ~~his~~ the motion of the executor 7874
or administrator, the court shall order the amount named in the 7875

certificate to be paid over to the executor or administrator out 7876
of the proceeds of the sale of the premises, if thereafter they 7877
are sold or already have been sold. This section does not prohibit 7878
an executor or administrator from proceeding to sell real property 7879
belonging to the estate for the payment of debts or legacies, 7880
although it has been sold on partition or otherwise, or the 7881
proceeds of the sale have been fully distributed. 7882

Sec. 2127.42. Wards living out of this state and owning ~~lands~~ 7883
real property within it are entitled to the benefit of sections 7884
2127.01 to 2127.43 of the Revised Code. Complaints for the sale of 7885
real ~~estate~~ property by guardians of ~~such~~ those wards shall be 7886
filed in the county in which the ~~land~~ real property is situated, 7887
or if situated in two or more counties, then in one of the 7888
counties in which a part of it is situated. Additional security 7889
shall be required from ~~such~~ the guardians, ~~when deemed if~~ 7890
considered necessary by the probate court of the county in which 7891
the complaints are filed. 7892

Sec. 2127.43. ~~Chapter 2127. of the Revised Code~~ This chapter 7893
extends to an action brought by the trustee of a nonresident minor 7894
or mentally ill or deficient person to sell the real ~~estate~~ 7895
property of the ward. 7896

Sec. 2129.02. ~~When~~ If letters of administration or letters 7897
testamentary have been granted in any state other than this state, 7898
in any territory or possession of the United States, or in any 7899
foreign country, as to the estate of a deceased resident of that 7900
state, territory, possession, or country, and ~~when~~ if no ancillary 7901
administration proceedings have been commenced in this state, the 7902
person to whom the letters of appointment were granted may file an 7903
authenticated copy of them in the probate court of any county of 7904
this state in which is located real ~~estate~~ property of the 7905

decedent. 7906

The claim of any creditor of ~~such a~~ that decedent shall be 7907
subject to section 2117.06 of the Revised Code. The person filing 7908
~~such~~ those letters in the probate court may accelerate the bar 7909
against claims against the estate established by that section, by 7910
giving written notice to a potential claimant that identifies the 7911
decedent by name, states the date of the death of the decedent, 7912
identifies the court, states its mailing address, and informs the 7913
potential claimant that any claims ~~he~~ the potential claimant may 7914
have against the estate are required to be presented to the court 7915
within the earlier of thirty days after receipt of the notice by 7916
the potential claimant or ~~one year~~ six months after the date of 7917
the death of the decedent. A claim of that potential claimant that 7918
is not presented to the court within the earlier of thirty days 7919
after receipt of the notice by the potential claimant or ~~one year~~ 7920
six months after the date of the death of the decedent is forever 7921
barred as a possible lien upon the real ~~estate~~ property of the 7922
decedent in this state. If, at the expiration of that period, any 7923
such claim has been filed and remains unpaid after reasonable 7924
notice of the claim to the nonresident executor or administrator, 7925
ancillary administration proceedings as to the estate may be had 7926
forthwith. 7927

Sec. 2129.05. Authenticated copies of wills, executed and 7928
proved according to the laws of any state or territory of the 7929
United States, relative to property in this state, may be admitted 7930
to record in the probate court of a county where a part of ~~such~~ 7931
that property is situated. ~~Such~~ The authenticated copies, so 7932
recorded, shall be as valid as wills made in this state. 7933

When such a will, or authenticated copy, is admitted to 7934
record, a copy ~~thereof~~ of the will or of the authenticated copy, 7935
with the copy of the order to record it annexed ~~thereto~~ to that 7936

copy, certified by the probate judge under the seal of ~~his~~ the 7937
probate court, may be filed and recorded in the office of the 7938
probate judge of any other county where a part of ~~such~~ the 7939
property is situated, and it shall be as effectual as the 7940
authenticated copy of ~~such~~ the will would be if approved and 7941
admitted to record by the court. 7942

Sec. 2129.08. (A) After an authenticated copy of the will of 7943
a nonresident decedent has been allowed and admitted to record as 7944
provided in this chapter, and after there has been filed in the 7945
probate court a complete exemplification of the record of the 7946
grant of the domiciliary letters of appointment and of any other 7947
records of the court of domiciliary administration that the court 7948
requires, the court shall appoint as the ancillary administrator 7949
the person named in the will, or nominated in accordance with any 7950
power of nomination conferred in the will, as general executor of 7951
the decedent's estate or as executor of the portion of the 7952
decedent's estate located in this state, provided that the person 7953
makes application and qualifies under division (B)(2) of section 7954
2109.21 of the Revised Code and in all other respects as required 7955
by law. If the testator in the will naming or providing for the 7956
nomination of that executor orders or requests that bond not be 7957
given by ~~him~~ that executor, bond shall not be required unless, for 7958
sufficient reason, the court requires it. 7959

(B) If a nonresident decedent died intestate, or failed to 7960
designate in ~~his~~ the nonresident decedent's will any person 7961
qualified to act as ancillary administrator or to confer in the 7962
will a power to nominate a person as an executor as described in 7963
division (A) of this section, or if the will of a nonresident 7964
decedent conferred ~~such a~~ that power but no person qualified to 7965
act as ancillary administrator was nominated, the court shall 7966
appoint in ~~such~~ that capacity ~~some~~ a suitable person who is a 7967
resident of the county including, but not limited to, a creditor 7968

of the estate. 7969

(C) An ancillary administrator, acting as to the estate of a 7970
testate decedent that is located in this state, may sell and 7971
convey the real and personal property by virtue of the will as 7972
executors or administrators with the will annexed may do. 7973

(D) No person shall be appointed as an ancillary 7974
administrator of the estate of a nonresident presumed decedent 7975
that is located in this state, except after Chapter 2121. of the 7976
Revised Code, relative to the appointment of an ancillary 7977
administrator, has been complied with. 7978

Sec. 2129.11. If no domiciliary administration has been 7979
commenced, the ancillary administrator shall proceed with the 7980
administration in ~~Ohio~~ this state as though the decedent had been 7981
a resident of ~~Ohio~~ this state at the time of ~~his~~ the decedent's 7982
death. 7983

Sec. 2129.13. If an ancillary administrator finds that the 7984
personal property of the nonresident decedent in ~~Ohio~~ this state 7985
is not sufficient to pay the expenses of administration, public 7986
rates and taxes, and other valid claims ~~which~~ that have been 7987
presented, ~~he~~ the ancillary administrator shall proceed to sell as 7988
much of the real ~~estate~~ property of the decedent located in this 7989
state ~~as~~ that is necessary to pay ~~such~~ those debts. The procedure 7990
shall be the same as in sales of real ~~estate~~ property in 7991
administration proceedings relating to the estates of resident 7992
decedents under sections 2127.01 to 2127.43, ~~inclusive~~, of the 7993
Revised Code. 7994

Sec. 2129.14. A domiciliary executor or administrator of a 7995
nonresident decedent may file in the probate court by which the 7996
ancillary administrator was appointed information showing that it 7997
will be necessary to sell ~~Ohio~~ real estate property of the 7998

decedent located in this state to pay debts and legacies, and the 7999
court may thereupon authorize the ancillary administrator to sell 8000
~~such~~ any part or all of ~~such the~~ real estate ~~as~~ property that is 8001
necessary. The ancillary administrator shall proceed to sell ~~such~~ 8002
the real estate property in the manner provided by section 2129.13 8003
of the Revised Code. 8004

Sec. 2129.15. Within five months after ~~his~~ appointment, the 8005
ancillary administrator of a nonresident decedent shall forward to 8006
the domiciliary administrator, if any, of ~~such the~~ decedent, if 8007
the name and address of ~~such the~~ domiciliary administrator are 8008
known, a certificate showing all assets of the estate in this 8009
state and all debts and liabilities including estimated expenses 8010
of administration. If the name and address of ~~such the~~ domiciliary 8011
administrator are not known, ~~such the~~ certificate shall be 8012
forwarded to the next of kin of the deceased whose names and 8013
addresses are known and to the court having jurisdiction in estate 8014
matters in the county in which the decedent resided at the time of 8015
~~his~~ death. 8016

Sec. 2129.17. An ancillary administrator shall file in the 8017
probate court of every county in ~~Ohio~~ this state in which real 8018
~~estate~~ property of the nonresident decedent is located a certified 8019
copy of the records in the court of ~~his~~ the ancillary 8020
administrator's appointment ~~which that~~ affect the title to ~~such~~ 8021
that real estate property. 8022

Sec. 2129.18. Whenever property of a nonresident decedent as 8023
to whose estate ancillary administration proceedings are being had 8024
in ~~Ohio~~ this state passes by the laws of intestate succession or 8025
under a will to a beneficiary not named ~~therein~~ in the will, 8026
proceedings may be had to determine the persons entitled to ~~such~~ 8027
that property in the same manner as in the estates of resident 8028

decedents under sections 2123.01 to 2123.07, ~~inclusive~~, of the 8029
Revised Code. The ancillary administrator shall file a certified 8030
copy of ~~such~~ the finding in the probate court in every county in 8031
~~Ohio~~ this state in which real ~~estate~~ property of the decedent is 8032
located. ~~Such~~ The administrator shall procure and file in the 8033
court for the information of the court a certified copy of any 8034
determination of heirship relative to ~~such~~ the decedent's estate 8035
made in the state of the domiciliary administration. 8036

Sec. 2129.19. Prior to filing ~~his~~ the ancillary 8037
administrator's final account, an ancillary administrator shall 8038
file in the probate court an application for a certificate of 8039
transfer as to the real ~~estate~~ property of the nonresident 8040
decedent situated in ~~Ohio~~ this state, in the same manner as in the 8041
administration of the estates of resident decedents under section 8042
2113.61 of the Revised Code. 8043

Sec. 2129.23. When the expense of the ancillary 8044
administration of a nonresident decedent's estate, including ~~such~~ 8045
any attorney's fee ~~as that~~ is allowed by the probate court, all 8046
public charges and taxes, and all claims of creditors presented as 8047
provided in section 2129.12 of the Revised Code, have been paid, 8048
any residue of the personal ~~estate~~ property and the proceeds of 8049
any real ~~estate~~ property sold for the payment of debts shall be 8050
distributed by the ancillary administrator as follows: 8051

(A) With the approval of the court ~~such~~, the residue may be 8052
delivered to the domiciliary administrator or executor. 8053

(B) If the court so orders, ~~such~~ the residue shall be 8054
delivered to the persons entitled ~~thereto~~ to it. 8055

Sec. 2129.25. When an executor or administrator is appointed 8056
in any other state, territory, or foreign country for the estate 8057
of a person dying out of this state, and no executor or 8058

administrator ~~thereon~~ for the estate is appointed in this state, 8059
the foreign executor or administrator may file an authenticated 8060
copy of ~~his~~ the foreign executor's or administrator's appointment 8061
in the probate court of any county in which there is real ~~estate~~ 8062
property of the deceased, together with an authenticated copy of 8063
the will. After filing ~~such~~ those copies, ~~he~~ the foreign executor 8064
or administrator may be authorized, under an order of the court, 8065
to sell real ~~estate~~ property for the payment of debts or legacies 8066
and charges of administration, in the manner prescribed in 8067
sections 2127.01 to 2127.43, ~~inclusive~~, of the Revised Code. 8068

Sec. 2129.26. ~~When~~ If it appears to the probate court 8069
granting the order of sale set forth in section 2129.25 of the 8070
Revised Code that the foreign executor or administrator is bound 8071
with sufficient surety in the state or country in which ~~he~~ the 8072
foreign executor or administrator was appointed to account for the 8073
proceeds of ~~such~~ the sale, for the payment of debts or legacies, 8074
and for charges of administration, and an authenticated copy of 8075
~~such~~ the bond is filed in court, no further bond for that purpose 8076
shall be required of ~~him~~ the foreign executor or administrator. 8077
~~When~~ If the court finds that ~~such~~ the bond is insufficient, before 8078
making ~~such~~ the sale, ~~such~~ the foreign executor or administrator 8079
~~must~~ shall give bond to this state with two or more sufficient 8080
sureties, conditioned to account for and dispose of ~~such~~ the 8081
proceeds of the sale for the payment of the debts or legacies of 8082
the deceased and the charges of administration according to the 8083
laws of the state or country in which ~~he~~ the foreign executor or 8084
administrator was appointed. 8085

~~When such~~ If the foreign executor or administrator is 8086
authorized by order of the court to sell more than is necessary 8087
for the payment of debts, legacies, and charges of administration, 8088
before making the sale, ~~he~~ the foreign executor or administrator 8089
shall give bond with two or more sufficient sureties to this 8090

state, conditioned to account before the court for all the 8091
proceeds of the sale that remain and to dispose of ~~such the~~ 8092
proceeds after payment of ~~such the~~ debts, legacies, and charges. 8093

Sec. 2129.28. If a trustee is named in a foreign will ~~which~~ 8094
~~that~~ creates a trust relating to ~~lands~~ real property situated in 8095
this state, ~~such the~~ trustee may execute the trust upon giving 8096
bond to the state in ~~such the~~ sum and with ~~such the~~ sureties ~~as~~ 8097
~~that~~ the probate court of the county in which ~~such lands the real~~ 8098
property or a part ~~thereof are~~ of the real property is situated 8099
approves, conditioned to discharge with fidelity the trust reposed 8100
in ~~him the trustee~~. If the testator in the will naming the trustee 8101
orders or requests that bond ~~be not be~~ given by ~~him the trustee~~, 8102
bond shall not be required, unless for sufficient cause the court 8103
requires it. 8104

Sec. 2129.29. If a trustee has been appointed under a foreign 8105
will ~~which that~~ creates a trust relating to ~~lands~~ real property 8106
situated in this state by a foreign court according to the laws of 8107
the foreign jurisdiction, ~~he the trustee~~ may execute the trust 8108
upon giving bond as provided in section 2129.28 of the Revised 8109
Code, and after satisfying the probate court of the county in 8110
which ~~such lands the real property~~ or a part of ~~them are~~ it is 8111
situated, by an authenticated record of ~~his~~ appointment, that ~~he~~ 8112
the person or entity has been appointed trustee to execute the 8113
trust. 8114

Sec. 2129.30. ~~When~~ If necessary, the probate court of the 8115
county where the property affected by the trust is situated, on 8116
application by petition of the parties interested, may appoint a 8117
trustee to carry into effect a trust created by a foreign will. 8118
~~Such The~~ trustee, before entering upon ~~his the~~ trust, ~~must shall~~ 8119
give bond with ~~such the~~ security and in ~~such the~~ amount ~~as that~~ 8120

the court directs. 8121

Sec. 2131.08. (A) Subject to sections 1746.14, 1747.09, and 8122
2131.09 of the Revised Code, no interest in real or personal 8123
property shall be good unless it must vest, if at all, not later 8124
than twenty-one years after a life or lives in being at the 8125
creation of the interest. All estates given in tail, by deed or 8126
will, in ~~lands or tenements~~ real property lying within this state 8127
shall be and remain an absolute estate in fee simple to the issue 8128
of the first donee in tail. It is the intention by the adoption of 8129
this section to make effective in this state what is generally 8130
known as the common law rule against perpetuities, except as set 8131
forth in divisions (B) and (C) of this section. 8132

(B) For the purposes of this section and subject to sections 8133
1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the 8134
creation of an interest in real or personal property subject to a 8135
power reserved by the grantor to revoke or terminate the interest 8136
shall be the time at which the reserved power expires by reason of 8137
the death of the grantor, by release of the power, or otherwise. 8138

(C) Any interest in real or personal property that would 8139
violate the rule against perpetuities, under division (A) of this 8140
section, shall be reformed, within the limits of the rule, to 8141
approximate most closely the intention of the creator of the 8142
interest. In determining whether an interest would violate the 8143
rule and in reforming an interest, the period of perpetuities 8144
shall be measured by actual rather than possible events. 8145

(D) Divisions (B) and (C) of this section shall be effective 8146
with respect to interests in real or personal property created by 8147
wills of decedents dying after December 31, 1967, with respect to 8148
interests in real or personal property created by inter vivos 8149
instruments executed after December 31, 1967, and with respect to 8150
interests in real or personal property created by inter vivos 8151

instruments executed on or before December 31, 1967, that by 8152
reason of division (B) of this section will be treated as 8153
interests created after December 31, 1967. Divisions (B) and (C) 8154
of this section shall be effective with respect to interests in 8155
real or personal property created by the exercise of a power of 8156
appointment if divisions (B) and (C) of this section apply to the 8157
instrument that exercises the power, whether or not divisions (B) 8158
and (C) of this section apply to the instrument that creates the 8159
power. 8160

Sec. 2131.11. ~~When~~ If an investment share certificate, share 8161
account, deposit, or stock deposit is made, in any bank, building 8162
and loan or savings and loan association, credit union, or society 8163
for savings, payable to the owner during ~~his~~ the owner's lifetime, 8164
and to another on ~~his~~ the owner's death, ~~such~~ the investment share 8165
certificate, share account, deposit, or stock deposit ~~or, any part~~ 8166
~~thereof of that certificate, account, or deposit,~~ or any interest 8167
or dividend ~~thereon~~ on the certificate, account, or deposit, may 8168
be paid to the owner during ~~his~~ the owner's lifetime, and on ~~his~~ 8169
the owner's death ~~such~~ the investment share certificate, share 8170
account, deposit, or stock deposit ~~or, any part thereof of that~~ 8171
certificate, account, or deposit, or any interest or dividend 8172
~~thereon~~ on the certificate, account, or deposit, may be paid to 8173
the designated beneficiary, and the receipt of acquittance of the 8174
person paid is a sufficient release and discharge of the bank, 8175
building and loan or savings and loan association, credit union, 8176
or society for savings for any payment so made. 8177

Sec. 2133.04. (A) A declarant may revoke a declaration at any 8178
time and in any manner. The revocation shall be effective when the 8179
declarant expresses ~~his~~ an intention to revoke the declaration, 8180
except that, if the declarant made ~~his~~ the declarant's attending 8181
physician aware of the declaration, the revocation shall be 8182

effective upon its communication to the attending physician of the 8183
declarant by the declarant ~~himself~~, a witness to the revocation, 8184
or other health care personnel to whom the revocation is 8185
communicated by ~~such a~~ that witness. Absent actual knowledge to 8186
the contrary, the attending physician of a declarant and other 8187
health care personnel who are informed of the revocation of a 8188
declaration by an alleged witness may rely on the information and 8189
act in accordance with the revocation. 8190

(B) Upon the communication as described in division (A) of 8191
this section to the attending physician of a declarant of the fact 8192
that ~~his~~ the declaration has been revoked, the attending physician 8193
or other health care personnel acting under the direction of the 8194
attending physician shall make the fact a part of the declarant's 8195
medical record. 8196

Sec. 2133.05. (A) If the attending physician of a declarant 8197
and one other physician who examines the declarant determine that 8198
~~he~~ the declarant is in a terminal condition or in a permanently 8199
unconscious state, whichever is addressed in the declaration, if 8200
the attending physician additionally determines that the declarant 8201
no longer is able to make informed decisions regarding the 8202
administration of life-sustaining treatment for ~~himself~~ the 8203
declarant and that there is no reasonable possibility that the 8204
declarant will regain the capacity to make those informed 8205
decisions for ~~himself~~ the declarant, and if the attending 8206
physician is aware of the existence of the declarant's 8207
declaration, then the attending physician shall do all of the 8208
following: 8209

(1) Record the determinations, together with the terms of the 8210
declaration or any copy of the declaration acquired as described 8211
in division (C) of section 2133.02 of the Revised Code, in the 8212
declarant's medical record; 8213

(2)(a) Make a good faith effort, and use reasonable 8214
diligence, to notify either of the following of the 8215
determinations: 8216

(i) If the declarant designated in ~~his~~ the declarant's 8217
declaration one or more persons to be notified at any time that 8218
life-sustaining treatment would be withheld or withdrawn pursuant 8219
to the declaration, that person or those persons; 8220

(ii) If division (A)(2)(a)(i) of this section is not 8221
applicable, the appropriate individual or individuals, in 8222
accordance with the following descending order of priority: if 8223
any, the guardian of the declarant, but this division does not 8224
permit or require, and shall not be construed as permitting or 8225
requiring, the appointment of a guardian for the declarant; the 8226
declarant's spouse; the declarant's adult children who are 8227
available within a reasonable period of time for consultation with 8228
the declarant's attending physician; the declarant's parents; or 8229
an adult sibling of the declarant or, if there is more than one 8230
adult sibling, a majority of the declarant's adult siblings who 8231
are available within a reasonable period of time for ~~such~~ the 8232
consultation. 8233

(b) The attending physician shall record in the declarant's 8234
medical record the names of the individual or individuals notified 8235
pursuant to division (A)(2)(a) of this section and the manner of 8236
notification. 8237

(c) If, despite making a good faith effort, and despite using 8238
reasonable diligence, to notify the appropriate individual or 8239
individuals described in division (A)(2)(a) of this section, the 8240
attending physician cannot notify the individual or individuals of 8241
the determinations because the individual or individuals are 8242
deceased, cannot be located, or cannot be notified for some other 8243
reason, then the requirements of divisions (A)(2)(a) and (b) and 8244
(3) of this section and, except as provided in division (B)(1)(b) 8245

of this section, the provisions of division (B) of this section 8246
shall not apply in connection with the declarant and ~~his~~ the 8247
declarant's declaration. However, the attending physician shall 8248
record in the declarant's medical record information pertaining to 8249
the reason for the failure to provide the requisite notices and 8250
information pertaining to the nature of the good faith effort and 8251
reasonable diligence used. 8252

(3) Afford time for the individual or individuals notified in 8253
accordance with division (A)(2) of this section to object in the 8254
manner described in division (B)(1)(a) of this section. 8255

(B)(1)(a) Within forty-eight hours after receipt of a notice 8256
pursuant to division (A)(2) of this section, any individual so 8257
notified shall advise the attending physician of the declarant 8258
whether ~~he~~ the individual objects on a basis specified in division 8259
(B)(2)(c) of this section. If an objection as described in that 8260
division is communicated to the attending physician, then, within 8261
two business days after the communication, the individual shall 8262
file a complaint as described in division (B)(2) of this section 8263
in the probate court of the county in which the declarant is 8264
located. If the individual fails to so file a complaint, ~~his~~ the 8265
individual's objections as described in division (B)(2)(c) of this 8266
section shall be considered to be void. 8267

(b) Within forty-eight hours after a person described in 8268
division (A)(2)(a)(i) of this section or a priority individual or 8269
any member of a priority class of individuals described in 8270
division (A)(2)(a)(ii) of this section receives a notice pursuant 8271
to division (A)(2) of this section or within forty-eight hours 8272
after information pertaining to an unnotified person described in 8273
division (A)(2)(a)(i) of this section or an unnotified priority 8274
individual or unnotified priority class of individuals described 8275
in division (A)(2)(a)(ii) of this section is recorded in a 8276
declarant's medical record pursuant to division (A)(2)(c) of this 8277

section, either of the following shall advise the attending 8278
physician of the declarant whether ~~he or they object~~ there is an 8279
objection on a basis specified in division (B)(2)(c) of this 8280
section: 8281

(i) If a person described in division (A)(2)(a)(i) of this 8282
section was notified pursuant to division (A)(2) of this section 8283
or was the subject of a recordation under division (A)(2)(c) of 8284
this section, then the objection shall be communicated by the 8285
individual or a majority of the individuals in either of the first 8286
two classes of individuals that pertain to the declarant in the 8287
descending order of priority set forth in division (A)(2)(a)(ii) 8288
of this section. 8289

(ii) If an individual or individuals in the descending order 8290
of priority set forth in division (A)(2)(a)(ii) of this section 8291
were notified pursuant to division (A)(2) of this section or were 8292
the subject of a recordation under division (A)(2)(c) of this 8293
section, then the objection shall be communicated by the 8294
individual or a majority of the individuals in the next class of 8295
individuals that pertains to the declarant in the descending order 8296
of priority set forth in division (A)(2)(a)(ii) of this section. 8297

If an objection as described in division (B)(2)(c) of this 8298
section is communicated to the attending physician in accordance 8299
with division (B)(1)(b)(i) or (ii) of this section, then, within 8300
two business days after the communication, the objecting 8301
individual or majority shall file a complaint as described in 8302
division (B)(2) of this section in the probate court of the county 8303
in which the declarant is located. If the objecting individual or 8304
majority fails to file a complaint, ~~his or their~~ the objections as 8305
described in division (B)(2)(c) of this section shall be 8306
considered to be void. 8307

(2) A complaint of an individual that is filed in accordance 8308
with division (B)(1)(a) of this section or of an individual or 8309

majority of individuals that is filed in accordance with division 8310
(B)(1)(b) of this section shall satisfy all of the following: 8311

(a) Name any health care facility in which the declarant is 8312
confined; 8313

(b) Name the declarant, ~~his~~ the declarant's attending 8314
physician, and the consulting physician associated with the 8315
determination that the declarant is in a terminal condition or in 8316
a permanently unconscious state, whichever is addressed in the 8317
declaration; 8318

(c) Indicate whether the plaintiff or plaintiffs object on 8319
one or more of the following bases: 8320

(i) To the attending physician's and consulting physician's 8321
determinations that the declarant is in a terminal condition or in 8322
a permanently unconscious state, whichever is addressed in the 8323
declaration; 8324

(ii) To the attending physician's determination that the 8325
declarant no longer is able to make informed decisions regarding 8326
the administration of life-sustaining treatment; 8327

(iii) To the attending physician's determination that there 8328
is no reasonable possibility that the declarant will regain the 8329
capacity to make informed decisions regarding the administration 8330
of life-sustaining treatment; 8331

(iv) That the course of action proposed to be undertaken by 8332
the attending physician is not authorized by the declarant's 8333
declaration; 8334

(v) That the declaration was executed when the declarant was 8335
not of sound mind or was under or subject to duress, fraud, or 8336
undue influence; 8337

(vi) That the declaration otherwise does not substantially 8338
comply with this chapter. 8339

(d) Request the probate court to issue one of the following 8340
types of orders: 8341

(i) An order to the attending physician to reevaluate, in 8342
light of the court proceedings, the determination that the 8343
declarant is in a terminal condition or in a permanently 8344
unconscious state, whichever is addressed in the declaration, the 8345
determination that the declarant no longer is able to make 8346
informed decisions regarding the administration of life-sustaining 8347
treatment, the determination that there is no reasonable 8348
possibility that the declarant will regain the capacity to make 8349
those informed decisions, or the course of action proposed to be 8350
undertaken; 8351

(ii) An order invalidating the declaration because it was 8352
executed when the declarant was not of sound mind or was under or 8353
subject to duress, fraud, or undue influence, or because it 8354
otherwise does not substantially comply with this chapter; 8355

(e) Be accompanied by an affidavit of the plaintiff or 8356
plaintiffs that includes averments relative to whether ~~he~~ the 8357
plaintiff is an individual or ~~they~~ the plaintiffs are individuals 8358
as described in division (A)(2)(a)(i) or (ii) of this section and 8359
to the factual basis for ~~his~~ the plaintiff's or ~~their~~ the 8360
plaintiffs' objections; 8361

(f) Name any individuals who were notified by the attending 8362
physician in accordance with division (A)(2)(a) of this section 8363
and who are not joining in the complaint as plaintiffs; 8364

(g) Name, in the caption of the complaint, as defendants the 8365
attending physician of the declarant, the consulting physician 8366
associated with the determination that the declarant is in a 8367
terminal condition or in a permanently unconscious state, 8368
whichever is addressed in the declaration, any health care 8369
facility in which the declarant is confined, and any individuals 8370

who were notified by the attending physician in accordance with 8371
division (A)(2)(a) of this section and who are not joining in the 8372
complaint as plaintiffs. 8373

(3) Notwithstanding any contrary provision of the Revised 8374
Code or of the Rules of Civil Procedure, the state and persons 8375
other than an objecting individual as described in division 8376
(B)(1)(a) of this section, other than an objecting individual or 8377
majority of individuals as described in division (B)(2)(b)(i) or 8378
(ii) of this section, and other than persons described in division 8379
(B)(2)(g) of this section are prohibited from commencing a civil 8380
action under this section and from joining or being joined as 8381
parties to an action commenced under this section, including 8382
joining by way of intervention. 8383

(4)(a) A probate court in which a complaint as described in 8384
division (B)(2) of this section is filed within the period 8385
specified in division (B)(1)(a) or (b) of this section shall 8386
conduct a hearing on the complaint after a copy of the complaint 8387
and a notice of the hearing have been served upon the defendants. 8388
The clerk of the probate court in which the complaint is filed 8389
shall cause the complaint and the notice of the hearing to be so 8390
served in accordance with the Rules of Civil Procedure, which 8391
service shall be made, if possible, within three days after the 8392
filing of the complaint. The hearing shall be conducted at the 8393
earliest possible time, but no later than the third business day 8394
after ~~such~~ the service has been completed. Immediately following 8395
the hearing, the court shall enter on its journal its 8396
determination whether a requested order will be issued. 8397

(b) If the declarant's declaration authorized the use or 8398
continuation of life-sustaining treatment should ~~he~~ the declarant 8399
be in a terminal condition or in a permanently unconscious state 8400
and if the plaintiff or plaintiffs requested a reevaluation order 8401
to the attending physician of the declarant as described in 8402

division (B)(2)(d)(i) of this section, the court shall issue the 8403
reevaluation order only if it finds that the plaintiff or 8404
plaintiffs have established a factual basis for the objection or 8405
objections involved by clear and convincing evidence, to a 8406
reasonable degree of medical certainty, and in accordance with 8407
reasonable medical standards. 8408

(c) If the declarant's declaration authorized the withholding 8409
or withdrawal of life-sustaining treatment should ~~he~~ the declarant 8410
be in a terminal condition or in a permanently unconscious state 8411
and if the plaintiff or plaintiffs requested a reevaluation order 8412
to the attending physician of the declarant as described in 8413
division (B)(2)(d)(i) of this section, the court shall issue the 8414
reevaluation order only if it finds that the plaintiff or 8415
plaintiffs have established a factual basis for the objection or 8416
objections involved by a preponderance of the evidence, to a 8417
reasonable degree of medical certainty, and in accordance with 8418
reasonable medical standards. 8419

(d) If the plaintiff or plaintiffs requested an invalidation 8420
order as described in division (B)(2)(d)(ii) of this section, the 8421
court shall issue the order only if it finds that the plaintiff or 8422
plaintiffs have established a factual basis for the objection or 8423
objections involved by clear and convincing evidence. 8424

(e) If the court issues a reevaluation order to the 8425
declarant's attending physician pursuant to division (B)(4)(b) or 8426
(c) of this section, then the attending physician shall make the 8427
requisite reevaluation. If, after doing so, the attending 8428
physician again determines that the declarant is in a terminal 8429
condition or in a permanently unconscious state, that the 8430
declarant no longer is able to make informed decisions regarding 8431
the administration of life-sustaining treatment, that there is no 8432
reasonable possibility that the declarant will regain the capacity 8433
to make those informed decisions, or that ~~he~~ the attending 8434

physician would undertake the same proposed course of action, then 8435
~~he~~ the attending physician shall notify the court in writing of 8436
the determination and comply with the provisions of section 8437
2133.10 of the Revised Code. 8438

Sec. 2133.06. (A) As long as a qualified patient is able to 8439
make informed decisions regarding the administration of 8440
life-sustaining treatment, ~~he~~ the qualified patient may continue 8441
to do so. 8442

(B) Life-sustaining treatment shall not be withheld or 8443
withdrawn from a declarant pursuant to a declaration if ~~she~~ the 8444
declarant is pregnant and if the withholding or withdrawal of the 8445
treatment would terminate the pregnancy, unless the declarant's 8446
attending physician and one other physician who has examined the 8447
declarant determine, to a reasonable degree of medical certainty 8448
and in accordance with reasonable medical standards, that the 8449
fetus would not be born alive. 8450

Sec. 2133.08. (A)(1) If written consent to the withholding or 8451
withdrawal of life-sustaining treatment, witnessed by two 8452
individuals who satisfy the witness eligibility criteria set forth 8453
in division (B)(1) of section 2133.02 of the Revised Code, is 8454
given by the appropriate individual or individuals as specified in 8455
division (B) of this section to the attending physician of a 8456
patient who is an adult, and if all of the following apply in 8457
connection with the patient, then, subject to section 2133.09 of 8458
the Revised Code, ~~his~~ the patient's attending physician may 8459
withhold or withdraw the life-sustaining treatment: 8460

(a) The attending physician and one other physician who 8461
examines the patient determine, in good faith, to a reasonable 8462
degree of medical certainty, and in accordance with reasonable 8463
medical standards, that the patient is in a terminal condition or 8464

the patient currently is and for at least the immediately 8465
preceding twelve months has been in a permanently unconscious 8466
state, and the attending physician additionally determines, in 8467
good faith, to a reasonable degree of medical certainty, and in 8468
accordance with reasonable medical standards, that the patient no 8469
longer is able to make informed decisions regarding the 8470
administration of life-sustaining treatment and that there is no 8471
reasonable possibility that the patient will regain the capacity 8472
to make those informed decisions. 8473

(b) The patient does not have a declaration that addresses 8474
~~his~~ the patient's intent should ~~he~~ the patient be determined to be 8475
in a terminal condition or in a permanently unconscious state, 8476
whichever applies, or a durable power of attorney for health care, 8477
or has a document that purports to be such a declaration or 8478
durable power of attorney for health care but that document is not 8479
legally effective. 8480

(c) The consent of the appropriate individual or individuals 8481
is given after consultation with the patient's attending physician 8482
and after receipt of information from the patient's attending 8483
physician or a consulting physician that is sufficient to satisfy 8484
the requirements of informed consent. 8485

(d) The appropriate individual or individuals who give a 8486
consent are of sound mind and voluntarily give the consent. 8487

(e) If a consent would be given under division (B)(3) of this 8488
section, the attending physician made a good faith effort, and 8489
used reasonable diligence, to notify the patient's adult children 8490
who are available within a reasonable period of time for 8491
consultation as described in division (A)(1)(c) of this section. 8492

(2) The consulting physician under division (A)(1)(a) of this 8493
section associated with a patient allegedly in a permanently 8494
unconscious state shall be a physician who, by virtue of advanced 8495

education or training, of a practice limited to particular 8496
diseases, illnesses, injuries, therapies, or branches of medicine 8497
or surgery or osteopathic medicine and surgery, of certification 8498
as a specialist in a particular branch of medicine or surgery or 8499
osteopathic medicine and surgery, or of experience acquired in the 8500
practice of medicine or surgery or osteopathic medicine and 8501
surgery, is qualified to determine whether the patient currently 8502
is and for at least the immediately preceding twelve months has 8503
been in a permanently unconscious state. 8504

(B) For purposes of division (A) of this section, a consent 8505
to withhold or withdraw life-sustaining treatment may be given by 8506
the appropriate individual or individuals, in accordance with the 8507
following descending order of priority: 8508

(1) If any, the guardian of the patient. This division does 8509
not permit or require, and shall not be construed as permitting or 8510
requiring, the appointment of a guardian for the patient. 8511

(2) The patient's spouse; 8512

(3) An adult child of the patient or, if there is more than 8513
one adult child, a majority of the patient's adult children who 8514
are available within a reasonable period of time for consultation 8515
with the patient's attending physician; 8516

(4) The patient's parents; 8517

(5) An adult sibling of the patient or, if there is more than 8518
one adult sibling, a majority of the patient's adult siblings who 8519
are available within a reasonable period of time for ~~such~~ that 8520
consultation; 8521

(6) The nearest adult who is not described in divisions 8522
(B)(1) to (5) of this section, who is related to the patient by 8523
blood or adoption, and who is available within a reasonable period 8524
of time for ~~such~~ that consultation. 8525

(C) If an appropriate individual or class of individuals 8526
entitled to decide under division (B) of this section whether or 8527
not to consent to the withholding or withdrawal of life-sustaining 8528
treatment for a patient is not available within a reasonable 8529
period of time for ~~such~~ the consultation and competent to so 8530
decide, or declines to so decide, then the next priority 8531
individual or class of individuals specified in that division is 8532
authorized to make the decision. However, an equal division in a 8533
priority class of individuals under that division does not 8534
authorize the next class of individuals specified in that division 8535
to make the decision. If an equal division in a priority class of 8536
individuals under that division occurs, no written consent to the 8537
withholding or withdrawal of life-sustaining treatment from the 8538
patient can be given pursuant to this section. 8539

(D)(1) A decision to consent pursuant to this section to the 8540
use or continuation, or the withholding or withdrawal, of 8541
life-sustaining treatment for a patient shall be made in good 8542
faith. 8543

(2) Except as provided in division (D)(4) of this section, if 8544
the patient previously expressed ~~his~~ an intention with respect to 8545
the use or continuation, or the withholding or withdrawal, of 8546
life-sustaining treatment should ~~he~~ the patient subsequently be in 8547
a terminal condition or in a permanently unconscious state, 8548
whichever applies, and no longer able to make informed decisions 8549
regarding the administration of life-sustaining treatment, a 8550
consent given pursuant to this section shall be valid only if it 8551
is consistent with that previously expressed intention. 8552

(3) Except as provided in division (D)(4) of this section, if 8553
the patient did not previously express ~~his~~ an intention with 8554
respect to the use or continuation, or the withholding or 8555
withdrawal, of life-sustaining treatment should ~~he~~ the patient 8556
subsequently be in a terminal condition or in a permanently 8557

unconscious state, whichever applies, and no longer able to make 8558
informed decisions regarding the administration of life-sustaining 8559
treatment, a consent given pursuant to this section shall be valid 8560
only if it is consistent with the type of informed consent 8561
decision that the patient would have made if ~~he~~ the patient 8562
previously had expressed ~~his~~ an intention with respect to the use 8563
or continuation, or the withholding or withdrawal, of 8564
life-sustaining treatment should ~~he~~ the patient subsequently be in 8565
a terminal condition or in a permanently unconscious state, 8566
whichever applies, and no longer able to make informed decisions 8567
regarding the administration of life-sustaining treatment, as 8568
inferred from the lifestyle and character of the patient, and from 8569
any other evidence of the desires of the patient, prior to ~~his~~ the 8570
patient's becoming no longer able to make informed decisions 8571
regarding the administration of life-sustaining treatment. The 8572
Rules of Evidence shall not be binding for purposes of this 8573
division. 8574

(4)(a) The attending physician of the patient, and other 8575
health care personnel acting under the direction of the attending 8576
physician, who do not have actual knowledge of a previously 8577
expressed intention as described in division (D)(2) of this 8578
section or who do not have actual knowledge that the patient would 8579
have made a different type of informed consent decision under the 8580
circumstances described in division (D)(3) of this section, may 8581
rely on a consent given in accordance with this section unless a 8582
probate court decides differently under division (E) of this 8583
section. 8584

(b) The immunity conferred by division (C)(1) of section 8585
2133.11 of the Revised Code is not forfeited by an individual who 8586
gives a consent to the use or continuation, or the withholding or 8587
withdrawal, of life-sustaining treatment for a patient under 8588
division (B) of this section if the individual gives the consent 8589

in good faith and without actual knowledge, at the time of giving 8590
the consent, of either a contrary previously expressed intention 8591
of the patient, or a previously expressed intention of the 8592
patient, as described in division (D)(2) of this section, that is 8593
revealed to the individual subsequent to the time of giving the 8594
consent. 8595

(E)(1) Within forty-eight hours after a priority individual 8596
or class of individuals gives a consent pursuant to this section 8597
to the use or continuation, or the withholding or withdrawal, of 8598
life-sustaining treatment and communicates the consent to the 8599
patient's attending physician, any individual described in 8600
divisions (B)(1) to (5) of this section who objects to the 8601
application of this section to the patient shall advise the 8602
attending physician of the grounds for the objection. If an 8603
objection is so communicated to the attending physician, then, 8604
within two business days after that communication, the objecting 8605
individual shall file a complaint against the priority individual 8606
or class of individuals, the patient's attending physician, and 8607
the consulting physician associated with the determination that 8608
the patient is in a terminal condition or that the patient 8609
currently is and for at least the immediately preceding twelve 8610
months has been in a permanently unconscious state, in the probate 8611
court of the county in which the patient is located for the 8612
issuance of an order reversing the consent of the priority 8613
individual or class of individuals. If the objecting individual 8614
fails to so file a complaint, ~~his~~ the individual's objections 8615
shall be considered to be void. 8616

A probate court in which a complaint is filed in accordance 8617
with this division shall conduct a hearing on the complaint after 8618
a copy of the complaint and a notice of the hearing have been 8619
served upon the defendants. The clerk of the probate court in 8620
which the complaint is filed shall cause the complaint and the 8621

notice of the hearing to be so served in accordance with the Rules 8622
of Civil Procedure, which service shall be made, if possible, 8623
within three days after the filing of the complaint. The hearing 8624
shall be conducted at the earliest possible time, but no later 8625
than the third business day after ~~such~~ the service has been 8626
completed. Immediately following the hearing, the court shall 8627
enter on its journal its determination whether the decision of the 8628
priority individual or class of individuals to consent to the use 8629
or continuation, or the withholding or withdrawal, of 8630
life-sustaining treatment in connection with the patient will be 8631
confirmed or reversed. 8632

(2) If the decision of the priority individual or class of 8633
individuals was to consent to the use or continuation of 8634
life-sustaining treatment in connection with the patient, the 8635
court only may reverse that consent if the objecting individual 8636
establishes, by clear and convincing evidence and, if applicable, 8637
to a reasonable degree of medical certainty and in accordance with 8638
reasonable medical standards, one or more of the following: 8639

(a) The patient is able to make informed decisions regarding 8640
the administration of life-sustaining treatment. 8641

(b) The patient has a legally effective declaration that 8642
addresses ~~his~~ the patient's intent should ~~he~~ the patient be 8643
determined to be in a terminal condition or in a permanently 8644
unconscious state, whichever applies, or a legally effective 8645
durable power of attorney for health care. 8646

(c) The decision to use or continue life-sustaining treatment 8647
is not consistent with the previously expressed intention of the 8648
patient as described in division (D)(2) of this section. 8649

(d) The decision to use or continue life-sustaining treatment 8650
is not consistent with the type of informed consent decision that 8651
the patient would have made if ~~he~~ the patient previously had 8652

expressed ~~his~~ an intention with respect to the use or 8653
continuation, or the withholding or withdrawal, of life-sustaining 8654
treatment should ~~he~~ the patient subsequently be in a terminal 8655
condition or in a permanently unconscious state, whichever 8656
applies, and no longer able to make informed decisions regarding 8657
the administration of life-sustaining treatment as described in 8658
division (D)(3) of this section. 8659

(e) The decision of the priority individual or class of 8660
individuals was not made after consultation with the patient's 8661
attending physician and after receipt of information from the 8662
patient's attending physician or a consulting physician that is 8663
sufficient to satisfy the requirements of informed consent. 8664

(f) The priority individual, or any member of the priority 8665
class of individuals, who made the decision to use or continue 8666
life-sustaining treatment was not of sound mind or did not 8667
voluntarily make the decision. 8668

(g) If the decision of a priority class of individuals under 8669
division (B)(3) of this section is involved, the patient's 8670
attending physician did not make a good faith effort, and use 8671
reasonable diligence, to notify the patient's adult children who 8672
were available within a reasonable period of time for consultation 8673
as described in division (A)(1)(c) of this section. 8674

(h) The decision of the priority individual or class of 8675
individuals otherwise was made in a manner that does not comply 8676
with this section. 8677

(3) If the decision of the priority individual or class of 8678
individuals was to consent to the withholding or withdrawal of 8679
life-sustaining treatment in connection with the patient, the 8680
court only may reverse that consent if the objecting individual 8681
establishes, by a preponderance of the evidence and, if 8682
applicable, to a reasonable degree of medical certainty and in 8683

accordance with reasonable medical standards, one or more of the 8684
following: 8685

(a) The patient is not in a terminal condition, the patient 8686
is not in a permanently unconscious state, or the patient has not 8687
been in a permanently unconscious state for at least the 8688
immediately preceding twelve months. 8689

(b) The patient is able to make informed decisions regarding 8690
the administration of life-sustaining treatment. 8691

(c) There is a reasonable possibility that the patient will 8692
regain the capacity to make informed decisions regarding the 8693
administration of life-sustaining treatment. 8694

(d) The patient has a legally effective declaration that 8695
addresses ~~his~~ the patient's intent should ~~he~~ the patient be 8696
determined to be in a terminal condition or in a permanently 8697
unconscious state, whichever applies, or a legally effective 8698
durable power of attorney for health care. 8699

(e) The decision to withhold or withdraw life-sustaining 8700
treatment is not consistent with the previously expressed 8701
intention of the patient as described in division (D)(2) of this 8702
section. 8703

(f) The decision to withhold or withdraw life-sustaining 8704
treatment is not consistent with the type of informed consent 8705
decision that the patient would have made if ~~he~~ the patient 8706
previously had expressed ~~his~~ an intention with respect to the use 8707
or continuation, or the withholding or withdrawal, of 8708
life-sustaining treatment should ~~he~~ the patient subsequently be in 8709
a terminal condition or in a permanently unconscious state, 8710
whichever applies, and no longer able to make informed decisions 8711
regarding the administration of life-sustaining treatment as 8712
described in division (D)(3) of this section. 8713

(g) The decision of the priority individual or class of 8714

individuals was not made after consultation with the patient's 8715
attending physician and after receipt of information from the 8716
patient's attending physician or a consulting physician that is 8717
sufficient to satisfy the requirements of informed consent. 8718

(h) The priority individual, or any member of the priority 8719
class of individuals, who made the decision to withhold or 8720
withdraw life-sustaining treatment was not of sound mind or did 8721
not voluntarily make the decision. 8722

(i) If the decision of a priority class of individuals under 8723
division (B)(3) of this section is involved, the patient's 8724
attending physician did not make a good faith effort, and use 8725
reasonable diligence, to notify the patient's adult children who 8726
were available within a reasonable period of time for consultation 8727
as described in division (A)(1)(c) of this section. 8728

(j) The decision of the priority individual or class of 8729
individuals otherwise was made in a manner that does not comply 8730
with this section. 8731

(4) Notwithstanding any contrary provision of the Revised 8732
Code or of the Rules of Civil Procedure, the state and persons 8733
other than individuals described in divisions (B)(1) to (5) of 8734
this section are prohibited from filing a complaint under division 8735
(E) of this section and from joining or being joined as parties to 8736
a hearing conducted under division (E) of this section, including 8737
joining by way of intervention. 8738

(F) A valid consent given in accordance with this section 8739
supersedes any general consent to treatment form signed by or on 8740
behalf of the patient prior to, upon, or after ~~his~~ the patient's 8741
admission to a health care facility to the extent there is a 8742
conflict between the consent and the form. 8743

(G) Life-sustaining treatment shall not be withheld or 8744
withdrawn from a patient pursuant to a consent given in accordance 8745

with this section if ~~she~~ the patient is pregnant and if the 8746
withholding or withdrawal of the treatment would terminate the 8747
pregnancy, unless the patient's attending physician and one other 8748
physician who has examined the patient determine, to a reasonable 8749
degree of medical certainty and in accordance with reasonable 8750
medical standards, that the fetus would not be born alive. 8751

Sec. 2133.09. (A) The attending physician of a patient who is 8752
an adult and who currently is and for at least the immediately 8753
preceding twelve months has been in a permanently unconscious 8754
state may withhold or withdraw nutrition and hydration in 8755
connection with the patient only if all of the following apply: 8756

(1) Written consent to the withholding or withdrawal of 8757
life-sustaining treatment in connection with the patient has been 8758
given by an appropriate individual or individuals in accordance 8759
with section 2133.08 of the Revised Code, and divisions (A)(1)(a) 8760
to (e) and (2) of that section have been satisfied. 8761

(2) A probate court has not reversed the consent to the 8762
withholding or withdrawal of life-sustaining treatment in 8763
connection with the patient pursuant to division (E) of section 8764
2133.08 of the Revised Code. 8765

(3) The attending physician of the patient and one other 8766
physician as described in division (A)(2) of section 2133.08 of 8767
the Revised Code who examines the patient determine, in good 8768
faith, to a reasonable degree of medical certainty, and in 8769
accordance with reasonable medical standards, that nutrition and 8770
hydration will not or no longer will provide comfort or alleviate 8771
pain in connection with the patient. 8772

(4) Written consent to the withholding or withdrawal of 8773
nutrition and hydration in connection with the patient, witnessed 8774
by two individuals who satisfy the witness eligibility criteria 8775
set forth in division (B)(1) of section 2133.02 of the Revised 8776

Code, is given to the attending physician of the patient by an 8777
appropriate individual or individuals as specified in division (B) 8778
of section 2133.08 of the Revised Code. 8779

(5) The written consent to the withholding or withdrawal of 8780
the nutrition and hydration in connection with the patient is 8781
given in accordance with division (B) of this section. 8782

(6) The probate court of the county in which the patient is 8783
located issues an order to withhold or withdraw the nutrition and 8784
hydration in connection with the patient pursuant to division (C) 8785
of this section. 8786

(B)(1) A decision to consent pursuant to this section to the 8787
withholding or withdrawal of nutrition and hydration in connection 8788
with a patient shall be made in good faith. 8789

(2) Except as provided in division (B)(4) of this section, if 8790
the patient previously expressed ~~his~~ an intention with respect to 8791
the use or continuation, or the withholding or withdrawal, of 8792
nutrition and hydration should ~~he~~ the patient subsequently be in a 8793
permanently unconscious state and no longer able to make informed 8794
decisions regarding the administration of nutrition and hydration, 8795
a consent given pursuant to this section shall be valid only if it 8796
is consistent with that previously expressed intention. 8797

(3) Except as provided in division (B)(4) of this section, if 8798
the patient did not previously express ~~his~~ an intention with 8799
respect to the use or continuation, or the withholding or 8800
withdrawal, of nutrition and ~~hydration~~ hydration should ~~he~~ the 8801
patient subsequently be in a permanently unconscious state and no 8802
longer able to make informed decisions regarding the 8803
administration of nutrition and hydration, a consent given 8804
pursuant to this section shall be valid only if it is consistent 8805
with the type of informed consent decision that the patient would 8806
have made if ~~he~~ the patient previously had expressed ~~his~~ an 8807

intention with respect to the use or continuation, or the 8808
withholding or withdrawal, of nutrition and hydration should ~~he~~ 8809
the patient subsequently be in a permanently unconscious state and 8810
no longer able to make informed decisions regarding the 8811
administration of nutrition and hydration, as inferred from the 8812
lifestyle and character of the patient, and from any other 8813
evidence of the desires of the patient, prior to ~~his~~ the patient's 8814
becoming no longer able to make informed decisions regarding the 8815
administration of nutrition and hydration. The Rules of Evidence 8816
shall not be binding for purposes of this division. 8817

(4)(a) The attending physician of the patient, and other 8818
health care personnel acting under the direction of the attending 8819
physician, who do not have actual knowledge of a previously 8820
expressed intention as described in division (B)(2) of this 8821
section or who do not have actual knowledge that the patient would 8822
have made a different type of informed consent decision under the 8823
circumstances described in division (B)(3) of this section, may 8824
rely on a consent given in accordance with this section unless a 8825
probate court decides differently under division (C) of this 8826
section. 8827

(b) The immunity conferred by division (C)(2) of section 8828
2133.11 of the Revised Code is not forfeited by an individual who 8829
gives a consent to the withholding or withdrawal of nutrition and 8830
hydration in connection with a patient under division (A)(4) of 8831
this section if the individual gives the consent in good faith and 8832
without actual knowledge, at the time of giving the consent, of 8833
either a contrary previously expressed intention of the patient, 8834
or a previously expressed intention of the patient, as described 8835
in ~~division~~ division (B)(2) of this section, that is revealed to 8836
the individual subsequent to the time of giving the consent. 8837

(C)(1) Prior to the withholding or withdrawal of nutrition 8838
and hydration in connection with a patient pursuant to this 8839

section, the priority individual or class of individuals that 8840
consented to the withholding or withdrawal of the nutrition and 8841
hydration shall apply to the probate court of the county in which 8842
the patient is located for the issuance of an order that 8843
authorizes the attending physician of the patient to commence the 8844
withholding or withdrawal of the nutrition and hydration in 8845
connection with the patient. Upon the filing of the application, 8846
the clerk of the probate court shall schedule a hearing on it and 8847
cause a copy of it and a notice of the hearing to be served in 8848
accordance with the Rules of Civil Procedure upon the applicant, 8849
the attending physician, the consulting physician associated with 8850
the determination that nutrition and hydration will not or no 8851
longer will provide comfort or alleviate pain in connection with 8852
the patient, and the individuals described in divisions (B)(1) to 8853
(5) of section 2133.08 of the Revised Code who are not applicants, 8854
which service shall be made, if possible, within three days after 8855
the filing of the application. The hearing shall be conducted at 8856
the earliest possible time, but no sooner than the thirtieth 8857
business day, and no later than the sixtieth business day, after 8858
~~such~~ the service has been completed. 8859

At the hearing, any individual described in divisions (B)(1) 8860
to (5) of section 2133.08 of the Revised Code who is not an 8861
applicant and who disagrees with the decision of the priority 8862
individual or class of individuals to consent to the withholding 8863
or withdrawal of nutrition and hydration in connection with the 8864
patient shall be permitted to testify and present evidence 8865
relative to the use or continuation of nutrition and hydration in 8866
connection with the patient. Immediately following the hearing, 8867
the court shall enter on its journal its determination whether the 8868
requested order will be issued. 8869

(2) The court shall issue an order that authorizes the 8870
patient's attending physician to commence the withholding or 8871

withdrawal of nutrition and hydration in connection with the 8872
patient only if the applicants establish, by clear and convincing 8873
evidence, to a reasonable degree of medical certainty, and in 8874
accordance with reasonable medical standards, all of the 8875
following: 8876

(a) The patient currently is and for at least the immediately 8877
preceding twelve months has been in a permanently unconscious 8878
state. 8879

(b) The patient no longer is able to make informed decisions 8880
regarding the administration of life-sustaining treatment. 8881

(c) There is no reasonable possibility that the patient will 8882
regain the capacity to make informed decisions regarding the 8883
administration of life-sustaining treatment. 8884

(d) The conditions specified in divisions (A)(1) to (4) of 8885
this section have been satisfied. 8886

(e) The decision to withhold or withdraw nutrition and 8887
hydration in connection with the patient is consistent with the 8888
previously expressed intention of the patient as described in 8889
division (B)(2) of this section or is consistent with the type of 8890
informed consent decision that the patient would have made if ~~he~~ 8891
the patient previously had expressed ~~his~~ an intention with respect 8892
to the use or continuation, or the withholding or withdrawal, of 8893
nutrition and hydration should ~~he~~ the patient subsequently be in a 8894
permanently unconscious state and no longer able to make informed 8895
decisions regarding the administration of nutrition and hydration 8896
as described in division (B)(3) of this section. 8897

(3) Notwithstanding any contrary provision of the Revised 8898
Code or of the Rules of Civil Procedure, the state and persons 8899
other than individuals described in division (A)(4) of this 8900
section or in divisions (B)(1) to (5) of section 2133.08 of the 8901
Revised Code and other than the attending physician and consulting 8902

physician associated with the determination that nutrition and 8903
hydration will not or no longer will provide comfort or alleviate 8904
pain in connection with the patient are prohibited from filing an 8905
application under this division and from joining or being joined 8906
as parties to a hearing conducted under this division, including 8907
joining by way of intervention. 8908

(D) A valid consent given in accordance with this section 8909
supersedes any general consent to treatment form signed by or on 8910
behalf of the patient prior to, upon, or after ~~his~~ the patient's 8911
admission to a health care facility to the extent there is a 8912
conflict between the consent and the form. 8913

Sec. 2335.34. On the first Monday of January, each year, the 8914
clerk of each court of common pleas and court of appeals, each 8915
probate judge, and each sheriff shall make two certified lists of 8916
causes in which money has been paid and has remained in the hands 8917
of ~~such that~~ person or in the hands of a former clerk, probate 8918
judge, or sheriff, for one year next preceding ~~such that~~ first 8919
Monday of January. ~~Such~~ The lists shall designate the amount of 8920
money and in whose hands it remains. One list shall be set up in a 8921
conspicuous place by ~~such the~~ officer, in ~~his the~~ officer's 8922
office, for the period of thirty days, and the other list shall be 8923
posted at ~~or on the door~~ a public area of the courthouse or 8924
published on the web site of the court or officer, on the second 8925
Monday of January, for the same period of time. 8926

Sec. 3101.02. Any consent required under section 3101.01 of 8927
the Revised Code shall be personally given before the probate 8928
judge or a deputy clerk of the probate court, or certified under 8929
the hand of the person consenting, by two witnesses, one of whom 8930
~~must~~ shall appear before the judge and make oath that ~~he the~~ 8931
witness saw the person whose name is annexed to the certificate 8932
subscribe it, or heard ~~him~~ the person consenting acknowledge it. 8933

Sec. 3101.03. If the parent or guardian of a minor is a 8934
nonresident of, or is absent from, the county in which the 8935
marriage license is applied for, ~~he~~ the parent or guardian 8936
personally may appear before the official upon whose authority 8937
marriage licenses are issued, in the county in which ~~he~~ the parent 8938
or guardian is at the time domiciled, and give ~~his~~ consent in 8939
writing to ~~such~~ that marriage. The consent ~~must~~ shall be attested 8940
to by two witnesses, certified to by ~~such~~ that official, and 8941
forwarded to the probate judge of the county in which the license 8942
is applied for. The probate judge may administer any oath 8943
required, issue and sign ~~such~~ the license, and affix the seal of 8944
the probate court. 8945

Sec. 3101.10. A minister upon producing to the secretary of 8946
state, credentials of ~~his~~ the minister's being a regularly 8947
ordained or licensed minister of any religious society or 8948
congregation, shall be entitled to receive from the secretary of 8949
state a license authorizing ~~him~~ the minister to solemnize 8950
marriages in this state so long as ~~he~~ the minister continues as a 8951
regular minister in ~~such~~ that society or congregation. A minister 8952
shall produce for inspection ~~his~~ the minister's license to 8953
solemnize marriages upon demand of any party to a marriage at 8954
which ~~he~~ the minister officiates or proposes to officiate or upon 8955
demand of any probate judge. 8956

Sec. 3101.13. Except as otherwise provided in this section, a 8957
certificate of every marriage solemnized shall be transmitted by 8958
the authorized person solemnizing the marriage, within thirty days 8959
after the solemnization, to the probate judge of the county in 8960
which the marriage license was issued. If, in accordance with 8961
section 2101.27 of the Revised Code, a probate judge solemnizes a 8962
marriage and if the probate judge issued the marriage license to 8963

the husband and wife, ~~he~~ the probate judge shall file a 8964
certificate of that solemnized marriage in ~~his~~ the probate judge's 8965
office within thirty days after the solemnization. All ~~such of the~~ 8966
transmitted and filed certificates shall be consecutively numbered 8967
and recorded in the order in which they are received. 8968

Sec. 3101.14. Every marriage license shall have printed upon 8969
it in prominent type the notice that, unless the person 8970
solemnizing the marriage returns a certificate of the solemnized 8971
marriage to the probate court that issued the marriage license 8972
within thirty days after performing the ceremony, or, if the 8973
person solemnizing the marriage is a probate judge who is acting 8974
in accordance with section 2101.27 of the Revised Code and who 8975
issued the marriage license to the husband and wife, unless ~~such a~~ 8976
~~that~~ probate judge files a certificate of the solemnized marriage 8977
in ~~his~~ the probate judge's office within thirty days after the 8978
solemnization, ~~he~~ the person or probate judge is guilty of a minor 8979
misdemeanor and, upon conviction, may be punished by a fine of 8980
fifty dollars. An envelope suitable for returning the certificate 8981
of marriage, and addressed to the proper probate court, shall be 8982
given with each license, except that this requirement does not 8983
apply if a marriage is to be solemnized by a probate judge who is 8984
acting in accordance with section 2101.27 of the Revised Code and 8985
who issued the marriage license to the husband and wife. 8986

Sec. 3313.85. If the board of education of any city, exempted 8987
village, or local school district or the governing board of any 8988
educational service center ~~fails to perform the duties imposed~~ 8989
~~upon it or~~ fails to fill a vacancy in ~~such that~~ board within a 8990
period of thirty days after ~~such the~~ vacancy occurs, the probate 8991
court of the county in which ~~such the~~ district or service center 8992
is located, upon being advised and satisfied of ~~such that~~ failure, 8993
shall act as ~~such that~~ board ~~and perform all duties imposed upon~~ 8994

~~such board~~ to fill any vacancy as promptly as possible. 8995
8996

Sec. 5111.113. (A) As used in this section: 8997

(1) "Adult care facility" has the same meaning as in section 8998
3722.01 of the Revised Code. 8999

(2) "Commissioner" means a person appointed by a probate 9000
court under division ~~(B)~~(E) of section 2113.03 of the Revised Code 9001
to act as a commissioner. 9002

(3) "Home" has the same meaning as in section 3721.10 of the 9003
Revised Code. 9004

(4) "Personal needs allowance account" means an account or 9005
petty cash fund that holds the money of a resident of an adult 9006
care facility or home and that the facility or home manages for 9007
the resident. 9008

(B) Except as provided in divisions (C) and (D) of this 9009
section, the owner or operator of an adult care facility or home 9010
shall transfer to the department of job and family services the 9011
money in the personal needs allowance account of a resident of the 9012
facility or home who was a recipient of the medical assistance 9013
program no earlier than sixty days but not later than ninety days 9014
after the resident dies. The adult care facility or home shall 9015
transfer the money even though the owner or operator of the 9016
facility or home has not been issued letters testamentary or 9017
letters of administration concerning the resident's estate. 9018

(C) If funeral or burial expenses for a resident of an adult 9019
care facility or home who has died have not been paid and the only 9020
resource the resident had that could be used to pay for the 9021
expenses is the money in the resident's personal needs allowance 9022
account, or all other resources of the resident are inadequate to 9023
pay the full cost of the expenses, the money in the resident's 9024

personal needs allowance account shall be used to pay for the 9025
expenses rather than being transferred to the department of job 9026
and family services pursuant to division (B) of this section. 9027

(D) If, not later than sixty days after a resident of an 9028
adult care facility or home dies, letters testamentary or letters 9029
of administration are issued, or an application for release from 9030
administration is filed under section 2113.03 of the Revised Code, 9031
concerning the resident's estate, the owner or operator of the 9032
facility or home shall transfer the money in the resident's 9033
personal needs allowance account to the administrator, executor, 9034
commissioner, or person who filed the application for release from 9035
administration. 9036

(E) The transfer or use of money in a resident's personal 9037
needs allowance account in accordance with division (B), (C), or 9038
(D) of this section discharges and releases the adult care 9039
facility or home, and the owner or operator of the facility or 9040
home, from any claim for the money from any source. 9041

(F) If, sixty-one or more days after a resident of an adult 9042
care facility or home dies, letters testamentary or letters of 9043
administration are issued, or an application for release from 9044
administration under section 2113.03 of the Revised Code is filed, 9045
concerning the resident's estate, the department of job and family 9046
services shall transfer the funds to the administrator, executor, 9047
commissioner, or person who filed the application, unless the 9048
department is entitled to recover the money under the medicaid 9049
estate recovery program instituted under section 5111.11 of the 9050
Revised Code. 9051

Section 2. That existing sections 2101.01, 2101.02, 2101.021, 9052
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2335.34, 3101.02, 3101.03, 3101.10, 3101.13, 3101.14, 3313.85, and 9101
5111.113 and sections 2101.36, 2113.02, 2113.17, 2113.24, 2113.26, 9102
2113.27, 2113.28, 2113.29, 2113.57, and 2113.63 of the Revised 9103
Code are hereby repealed. 9104

Section 3. The provisions of this act that relate to the 9105
estates of decedents apply to the estates of decedents who die on 9106
or after the effective date of this act. 9107

Section 4. The General Assembly, applying the principle 9108
stated in division (B) of section 1.52 of the Revised Code that 9109
amendments are to be harmonized if reasonably capable of 9110
simultaneous operation, finds that the following sections, 9111
presented in this act as composites of the sections as amended by 9112
the acts indicated, are the resulting versions of the sections in 9113
effect prior to the effective date of the sections as presented in 9114
this act: 9115

Section 2101.24 of the Revised Code as amended by both Sub. 9116
H.B. 416 and Sub. H.B. 426 of the 126th General Assembly. 9117

Section 2109.44 of the Revised Code as amended by both Am. 9118
Sub. H.B. 538 and Sub. S.B. 129 of the 121st General Assembly. 9119