

**As Reported by the Senate Judiciary--Civil Justice Committee**

**129th General Assembly**

**Regular Session**

**2011-2012**

**Am. S. B. No. 124**

**Senator Bacon**

**Cosponsors: Senators Wagoner, Brown, Hughes, Kearney**

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**A B I L L**

To amend sections 2101.01, 2101.02, 2101.021,	1
2101.03, 2101.04, 2101.06, 2101.07, 2101.08,	2
2101.09, 2101.10, 2101.11, 2101.13, 2101.15,	3
2101.16, 2101.162, 2101.19, 2101.20, 2101.22,	4
2101.23, 2101.24, 2101.27, 2101.30, 2101.34,	5
2101.37, 2101.38, 2101.41, 2101.43, 2103.01,	6
2105.051, 2105.06, 2105.09, 2105.10, 2105.11,	7
2105.13, 2105.14, 2105.15, 2105.16, 2105.19,	8
2106.01, 2106.08, 2106.11, 2107.01, 2107.02,	9
2107.03, 2107.04, 2107.05, 2107.07, 2107.08,	10
2107.081, 2107.082, 2107.083, 2107.084, 2107.085,	11
2107.09, 2107.10, 2107.11, 2107.15, 2107.17,	12
2107.18, 2107.20, 2107.21, 2107.22, 2107.29,	13
2107.32, 2107.34, 2107.35, 2107.36, 2107.38,	14
2107.46, 2107.47, 2107.49, 2107.50, 2107.501,	15
2107.51, 2107.52, 2107.53, 2107.54, 2107.55,	16
2107.56, 2107.58, 2107.59, 2107.60, 2107.61,	17
2107.65, 2107.71, 2107.73, 2107.75, 2108.51,	18
2109.02, 2109.021, 2109.03, 2109.04, 2109.05,	19
2109.06, 2109.07, 2109.09, 2109.10, 2109.11,	20
2109.12, 2109.14, 2109.17, 2109.19, 2109.20,	21
2109.21, 2109.22, 2109.24, 2109.25, 2109.26,	22
2109.302, 2109.303, 2109.32, 2109.33, 2109.34,	23

2109.35, 2109.36, 2109.361, 2109.37, 2109.371,	24
2109.372, 2109.38, 2109.39, 2109.40, 2109.42,	25
2109.43, 2109.44, 2109.45, 2109.46, 2109.47,	26
2109.48, 2109.49, 2109.50, 2109.51, 2109.52,	27
2109.53, 2109.54, 2109.55, 2109.56, 2109.57,	28
2109.58, 2109.59, 2109.60, 2109.61, 2109.62,	29
2111.02, 2111.021, 2111.031, 2111.04, 2111.041,	30
2111.06, 2111.07, 2111.09, 2111.091, 2111.12,	31
2111.131, 2111.14, 2111.141, 2111.16, 2111.17,	32
2111.181, 2111.19, 2111.20, 2111.21, 2111.22,	33
2111.25, 2111.26, 2111.27, 2111.28, 2111.29,	34
2111.30, 2111.31, 2111.33, 2111.34, 2111.35,	35
2111.36, 2111.37, 2111.38, 2111.39, 2111.40,	36
2111.41, 2111.44, 2111.46, 2111.48, 2111.50,	37
2113.01, 2113.03, 2113.04, 2113.05, 2113.06,	38
2113.07, 2113.12, 2113.13, 2113.14, 2113.15,	39
2113.16, 2113.18, 2113.19, 2113.20, 2113.21,	40
2113.22, 2113.25, 2113.30, 2113.31, 2113.311,	41
2113.33, 2113.34, 2113.35, 2113.36, 2113.39,	42
2113.40, 2113.41, 2113.45, 2113.46, 2113.48,	43
2113.49, 2113.50, 2113.51, 2113.52, 2113.54,	44
2113.58, 2113.61, 2113.62, 2113.67, 2113.68,	45
2113.69, 2113.70, 2113.72, 2113.73, 2113.74,	46
2113.75, 2113.81, 2113.82, 2113.85, 2113.86,	47
2113.87, 2113.88, 2115.02, 2115.03, 2115.06,	48
2115.09, 2115.10, 2115.11, 2115.12, 2115.16,	49
2115.17, 2117.01, 2117.02, 2117.03, 2117.04,	50
2117.08, 2117.09, 2117.10, 2117.13, 2117.15,	51
2117.17, 2117.18, 2117.30, 2117.31, 2117.34,	52
2117.35, 2117.36, 2117.37, 2117.41, 2117.42,	53
2119.01, 2119.02, 2119.03, 2119.04, 2119.05,	54
2121.01, 2121.02, 2121.05, 2121.06, 2121.08,	55
2121.09, 2123.02, 2123.03, 2123.05, 2123.06,	56

2127.011, 2127.02, 2127.04, 2127.05, 2127.06,	57
2127.07, 2127.08, 2127.09, 2127.10, 2127.11,	58
2127.12, 2127.13, 2127.14, 2127.15, 2127.16,	59
2127.17, 2127.18, 2127.19, 2127.21, 2127.22,	60
2127.23, 2127.24, 2127.27, 2127.28, 2127.29,	61
2127.30, 2127.32, 2127.33, 2127.34, 2127.35,	62
2127.36, 2127.37, 2127.38, 2127.39, 2127.40,	63
2127.41, 2127.42, 2127.43, 2129.02, 2129.05,	64
2129.08, 2129.11, 2129.13, 2129.14, 2129.15,	65
2129.17, 2129.18, 2129.19, 2129.23, 2129.25,	66
2129.26, 2129.28, 2129.29, 2129.30, 2131.08,	67
2131.11, 2133.04, 2133.05, 2133.06, 2133.08,	68
2133.09, 2335.34, 3101.02, 3101.03, 3101.10,	69
3101.13, 3101.14, 3313.85, and 5111.113; to enact	70
new sections 2113.17 and 2113.26; and to repeal	71
sections 2101.36, 2113.02, 2113.17, 2113.24,	72
2113.26, 2113.27, 2113.28, 2113.29, 2113.57, and	73
2113.63 of the Revised Code to make changes	74
relative to the Probate Code.	75

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

<b>Section 1.</b> 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
2101.13, 2101.15, 2101.16, 2101.162, 2101.19, 2101.20, 2101.22,	78
2101.23, 2101.24, 2101.27, 2101.30, 2101.34, 2101.37, 2101.38,	79
2101.41, 2101.43, 2103.01, 2105.051, 2105.06, 2105.09, 2105.10,	80
2105.11, 2105.13, 2105.14, 2105.15, 2105.16, 2105.19, 2106.01,	81
2106.08, 2106.11, 2107.01, 2107.02, 2107.03, 2107.04, 2107.05,	82
2107.07, 2107.08, 2107.081, 2107.082, 2107.083, 2107.084,	83
2107.085, 2107.09, 2107.10, 2107.11, 2107.15, 2107.17, 2107.18,	84
2107.20, 2107.21, 2107.22, 2107.29, 2107.32, 2107.34, 2107.35,	85
2107.36, 2107.38, 2107.46, 2107.47, 2107.49, 2107.50, 2107.501,	86

2107.51, 2107.52, 2107.53, 2107.54, 2107.55, 2107.56, 2107.58,	87
2107.59, 2107.60, 2107.61, 2107.65, 2107.71, 2107.73, 2107.75,	88
2108.51, 2109.02, 2109.021, 2109.03, 2109.04, 2109.05, 2109.06,	89
2109.07, 2109.09, 2109.10, 2109.11, 2109.12, 2109.14, 2109.17,	90
2109.19, 2109.20, 2109.21, 2109.22, 2109.24, 2109.25, 2109.26,	91
2109.302, 2109.303, 2109.32, 2109.33, 2109.34, 2109.35, 2109.36,	92
2109.361, 2109.37, 2109.371, 2109.372, 2109.38, 2109.39, 2109.40,	93
2109.42, 2109.43, 2109.44, 2109.45, 2109.46, 2109.47, 2109.48,	94
2109.49, 2109.50, 2109.51, 2109.52, 2109.53, 2109.54, 2109.55,	95
2109.56, 2109.57, 2109.58, 2109.59, 2109.60, 2109.61, 2109.62,	96
2111.02, 2111.021, 2111.031, 2111.04, 2111.041, 2111.06, 2111.07,	97
2111.09, 2111.091, 2111.12, 2111.131, 2111.14, 2111.141, 2111.16,	98
2111.17, 2111.181, 2111.19, 2111.20, 2111.21, 2111.22, 2111.25,	99
2111.26, 2111.27, 2111.28, 2111.29, 2111.30, 2111.31, 2111.33,	100
2111.34, 2111.35, 2111.36, 2111.37, 2111.38, 2111.39, 2111.40,	101
2111.41, 2111.44, 2111.46, 2111.48, 2111.50, 2113.01, 2113.03,	102
2113.04, 2113.05, 2113.06, 2113.07, 2113.12, 2113.13, 2113.14,	103
2113.15, 2113.16, 2113.18, 2113.19, 2113.20, 2113.21, 2113.22,	104
2113.25, 2113.30, 2113.31, 2113.311, 2113.33, 2113.34, 2113.35,	105
2113.36, 2113.39, 2113.40, 2113.41, 2113.45, 2113.46, 2113.48,	106
2113.49, 2113.50, 2113.51, 2113.52, 2113.54, 2113.58, 2113.61,	107
2113.62, 2113.67, 2113.68, 2113.69, 2113.70, 2113.72, 2113.73,	108
2113.74, 2113.75, 2113.81, 2113.82, 2113.85, 2113.86, 2113.87,	109
2113.88, 2115.02, 2115.03, 2115.06, 2115.09, 2115.10, 2115.11,	110
2115.12, 2115.16, 2115.17, 2117.01, 2117.02, 2117.03, 2117.04,	111
2117.08, 2117.09, 2117.10, 2117.13, 2117.15, 2117.17, 2117.18,	112
2117.30, 2117.31, 2117.34, 2117.35, 2117.36, 2117.37, 2117.41,	113
2117.42, 2119.01, 2119.02, 2119.03, 2119.04, 2119.05, 2121.01,	114
2121.02, 2121.05, 2121.06, 2121.08, 2121.09, 2123.02, 2123.03,	115
2123.05, 2123.06, 2127.011, 2127.02, 2127.04, 2127.05, 2127.06,	116
2127.07, 2127.08, 2127.09, 2127.10, 2127.11, 2127.12, 2127.13,	117
2127.14, 2127.15, 2127.16, 2127.17, 2127.18, 2127.19, 2127.21,	118

2127.22, 2127.23, 2127.24, 2127.27, 2127.28, 2127.29, 2127.30, 119  
2127.32, 2127.33, 2127.34, 2127.35, 2127.36, 2127.37, 2127.38, 120  
2127.39, 2127.40, 2127.41, 2127.42, 2127.43, 2129.02, 2129.05, 121  
2129.08, 2129.11, 2129.13, 2129.14, 2129.15, 2129.17, 2129.18, 122  
2129.19, 2129.23, 2129.25, 2129.26, 2129.28, 2129.29, 2129.30, 123  
2131.08, 2131.11, 2133.04, 2133.05, 2133.06, 2133.08, 2133.09, 124  
2335.34, 3101.02, 3101.03, 3101.10, 3101.13, 3101.14, 3313.85, and 125  
5111.113 be amended and new sections 2113.17 and 2113.26 of the 126  
Revised Code be enacted to read as follows: 127

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

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

(B) As used in the Revised Code: 151

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

(2) With respect to Lorain county: 156

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

determines is appropriate: 301

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

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

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

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

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

services work that is equivalent to the required education. 332

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



.....	\$ 5.00	483
(10) Bond, application for release of surety or reduction of		484
.....	\$ 5.00	485
(11) Bond, receipt for securities deposited in lieu of		486
.....	\$ 5.00	487
(12) Certified copy of journal entry, record, or proceeding, per page, minimum fee one dollar		488
.....	\$ 1.00	489
(13) Citation and issuing citation, application for		490
.....	\$ 5.00	491
(14) Change of name, petition for		492
.....	\$ 20.00	493
(15) Claim, application of administrator or executor for allowance of administrator's or executor's own		494
.....	\$ 10.00	495
(16) Claim, application to compromise or settle		496
.....	\$ 10.00	497
(17) Claim, authority to present		498
.....	\$ 10.00	499
(18) Commissioner, appointment of		500
.....	\$ 5.00	501
(19) Compensation for extraordinary services and attorney's fees for fiduciary, application for		502
.....	\$ 5.00	503
(20) Competency, application to procure adjudication of		504
.....	\$ 20.00	505
(21) Complete contract, application to		506
.....	\$ 10.00	507
(22) Concealment of assets, citation for		508
.....	\$ 10.00	509
(23) Construction of will, <del>petition</del> <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, <del>petition</del> <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, <del>petition</del> <u>complaint</u> to determine		542
.....	\$ 20.00	543
(38) Injunction proceedings		544
.....	\$ 20.00	545
(39) Improve real <del>estate</del> <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 <del>estate</del> <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 <del>estate</del> <u>property</u> , petition to		558
.....	\$ 20.00	559
(46) Marriage license		560
.....	\$ 10.00	561
Certified abstract of each marriage		562
.....	\$ 2.00	563
(47) Minor or incompetent person, etc., disposal of estate under twenty-five thousand dollars of		564
.....	\$ 10.00	565

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

except that specifically provided by law. 746

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

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

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

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

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

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

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

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

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

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

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

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

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

Code, in accordance with that division; 867

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

pleas, and proceed as upon indictment. 1051

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

insurance on the property; 2127

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

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

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

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

Code. 2157

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Other interested parties. 2343

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

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

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

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

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

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

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



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

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

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

(C) When letters are granted without bond, at any later 2458  
period on its own motion or upon the application of any party 2459  
interested, the court may require bond to be given in ~~such an~~ 2460  
amount ~~as may be~~ that is fixed by the court. On failure to give 2461  
~~such that~~ 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 2495  
sureties in the prior bond shall nevertheless be liable for all 2496  
breaches of the conditions set forth in ~~such~~ the bond ~~which~~ that 2497  
are committed before the new bond is approved by the court. 2498

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

(C)(1) A guardian 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 2800  
fiduciary not less than ten days' notice, for habitual 2801  
drunkenness, neglect of duty, incompetency, or fraudulent conduct, 2802  
because the interest of the property, testamentary trust, or 2803  
estate that the fiduciary is responsible for administering demands 2804  
it, or for any other cause authorized by law. 2805

The court may remove a testamentary trustee upon the written 2806  
application of more than one-half of the persons having an 2807  
interest in the estate controlled by the testamentary trustee, but 2808  
the testamentary trustee is not to be considered as a person 2809  
having an interest in the estate under the proceedings; except 2810  
that no testamentary trustee appointed under a will shall be 2811  
removed upon ~~such~~ the written application unless for a good cause. 2812

Upon the resignation or removal of the fiduciary, the court 2813  
shall revoke all letters of authority for the fiduciary. 2814

**Sec. 2109.25. (A)** Whenever it appears to the satisfaction of 2815  
the probate court that a fiduciary is unable to perform ~~his~~ the 2816  
fiduciary's duties because ~~he~~ the fiduciary is engaged or is about 2817  
to engage in military service as defined by this section, the 2818  
court may remove ~~such~~ the fiduciary and appoint a substitute or 2819  
authorize the remaining fiduciaries to execute the trust. ~~Such~~ 2820  
That action may be taken on the court's own motion or on the 2821  
application of any party in interest, including the fiduciary or 2822  
cofiduciary, either without notice or upon notice to ~~such~~ those 2823  
persons and in ~~such~~ the manner ~~as~~ that the court shall direct. 2824

If any of the duties of ~~such~~ that office remain unexecuted 2825  
when a fiduciary who has resigned or been removed on account of 2826  
~~his~~ the fiduciary's military service ceases to be in ~~such~~ that 2827  
military service, ~~he~~ the fiduciary shall be reappointed as 2828  
fiduciary upon ~~his~~ the fiduciary's application to the court and 2829  
upon ~~such~~ any notice ~~as~~ that the court may direct, provided ~~he~~ the 2830

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 designates. 3113  
3114

The notice shall be made by mail in addition to service by publication, shall set forth the time and place of the hearing, 3115  
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 time ~~as~~ that the 3258  
court shall designate. The fiduciary may serve notice of the 3259  
hearing upon ~~such~~ the application, or cause ~~such~~ 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 notice to be served upon ~~any~~ ~~such~~ 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 order ~~as~~ 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 <del>such</del> <u>that</u>	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 <del>such</del> <u>the</u> 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 by depositing the funds in the bank, and ~~such~~ the 3467  
national or state bank when itself acting in a fiduciary capacity 3468  
may deposit the funds in savings accounts in, or certificates or 3469  
other evidences of deposits issued by, its own savings department 3470  
or any bank subsidiary corporation owned or controlled by the bank 3471  
holding company that owns or controls ~~such~~ the national or state 3472  
bank; provided that no deposit shall be made by any fiduciary, 3473  
individual, or corporate, unless the deposits of the depository 3474  
bank are insured by the federal deposit insurance corporation 3475  
created under the "Federal Deposit Insurance Corporation Act of 3476  
1933," 48 Stat. 162, 12 U.S.C. 264, as amended, and provided that 3477  
the deposit of the funds of any one trust in ~~any such~~ those 3478  
savings accounts in, or certificates or other evidences of 3479  
deposits issued by, any one bank shall not exceed the sum insured 3480  
under that act, as amended; 3481

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

that the obligor corporation is one ~~which~~ that is incorporated 3490  
under the laws of the United States, any state, ~~or~~ the District of 3491  
Columbia, or foreign government, and the obligations are rated at 3492  
the time of purchase in the highest or next highest classification 3493  
established by at least two standard rating services selected from 3494  
a list of the standard rating services ~~which~~ that shall be 3495  
prescribed by the superintendent of financial institutions; 3496  
provided that every such list shall be certified by the 3497  
superintendent to the clerk of each probate court in the state, 3498  
and shall continue in effect until a different list is prescribed 3499  
and certified as provided in this division; 3500

(16) Obligations issued, assumed, or guaranteed by the 3501  
international finance corporation or by the international bank for 3502  
reconstruction and development, the Asian development bank, the 3503  
inter-American development bank, the African development bank, or 3504  
other similar development bank in which the president, as 3505  
authorized by congress and on behalf of the United States, has 3506  
accepted membership, provided that the obligations are rated at 3507  
the time of purchase in the highest or next highest classification 3508  
established by at least one standard rating service selected from 3509  
a list of standard rating services ~~which~~ that shall be prescribed 3510  
by the superintendent of financial institutions; 3511

(17) Securities of any investment company, as defined in and 3512  
registered under sections 3 and 8 of the "Investment Company Act 3513  
of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8, that are 3514  
invested exclusively in forms of investment or in instruments that 3515  
are fully collateralized by forms of investment in which the 3516  
fiduciary is permitted to invest pursuant to divisions (A)(1) to 3517  
(16) of this section, provided that, in addition to ~~such~~ those 3518  
forms of investment, the investment company may, for the purpose 3519  
of reducing risk of loss or of stabilizing investment returns, 3520  
engage in hedging transactions. 3521

(B) No administrator or executor may invest funds belonging 3522  
to an estate in any asset other than a direct obligation of the 3523  
United States that has a maturity date not exceeding one year from 3524  
the date of investment, or other than in a short-term investment 3525  
fund that is invested exclusively in obligations of the United 3526  
States or of its agencies, or primarily in ~~such~~ those obligations 3527  
and otherwise only in variable demand notes, corporate money 3528  
market instruments including, but not limited to, commercial 3529  
paper, or fully collateralized repurchase agreements or other 3530  
evidences of indebtedness that are payable on demand or generally 3531  
have a maturity date not exceeding ninety-one days from the date 3532  
of investment, except with the approval of the probate court or 3533  
with the permission of the instruments creating the trust. 3534

(C)(1) In addition to the investments allowed by this 3535  
section, a guardian or trustee, with the approval of the court, 3536  
may invest funds belonging to the trust in productive real ~~estate~~ 3537  
property located within the state, provided that neither the 3538  
guardian nor the trustee nor any member of the family of either 3539  
has any interest in ~~such~~ the real ~~estate~~ property or in the 3540  
proceeds of the purchase price. The title to any real ~~estate~~ 3541  
property so purchased by a guardian ~~must~~ shall be taken in the 3542  
name of the ward. 3543

(2) Notwithstanding the provisions of division (C)(1) of this 3544  
section, the court may permit the funds to be used to purchase or 3545  
acquire a home for the ward or an interest in a home for the ward 3546  
in which a member of the ward's family may have an interest. After 3547  
the filing of the petition by a guardian or a conservator for 3548  
authority to purchase or acquire a home for the ward or an 3549  
interest in a home for the ward in which a member of the ward's 3550  
family may have an interest, the matter shall be set for a hearing 3551  
before the probate court. 3552

(D) If the fiduciary is a trustee appointed by and 3553

accountable to the probate court, the fiduciary shall invest the 3554  
trust's assets pursuant to the requirements and standards set 3555  
forth in the Ohio Uniform Prudent Investor Act. 3556

**Sec. 2109.371.** (A) In addition to those investments made 3557  
eligible by section 2109.37 or 2109.372 of the Revised Code, 3558  
investments may be made by a fiduciary other than a guardian under 3559  
sections 5905.01 to 5905.19 of the Revised Code, and subject to 3560  
the restriction placed on an administrator or executor by division 3561  
(B) of section 2109.37 of the Revised Code, in any of the 3562  
following kinds and classes of securities, provided that it may be 3563  
lawfully sold in Ohio and investment is made only in ~~such~~ those 3564  
securities ~~as~~ that would be acquired by prudent persons of 3565  
discretion and intelligence in ~~such~~ those matters who are seeking 3566  
a reasonable income and the preservation of their capital: 3567

(1) Securities of corporations organized and existing under 3568  
the laws of the United States, the District of Columbia, ~~or~~ any 3569  
state of the United States, or any foreign government or state, 3570  
including, but not limited to, bonds, debentures, notes, equipment 3571  
trust obligations, or other evidences of indebtedness, and shares 3572  
of common and preferred stocks of ~~such~~ those corporations; 3573

(2) Subject to division (C) of this section, collective 3574  
investment funds established in accordance with section 1111.14 of 3575  
the Revised Code or securities of any investment company, 3576  
including any affiliated investment company, whether or not the 3577  
fiduciary has invested other funds held by it in an agency or 3578  
other nonfiduciary capacity in the securities of the same 3579  
investment company or affiliated investment company. ~~Such~~ Those 3580  
investments may be made regardless of the eligibility of the 3581  
underlying assets held by the fund portfolios of the investment 3582  
company. 3583

(3) Bonds or other interest-bearing obligations of any state 3584

or territory of the United States, or of any county, city, 3585  
village, school district, or other legally constituted political 3586  
taxing subdivision of any state or territory of the United States, 3587  
not otherwise eligible under division (A)(2) or (3) of section 3588  
2109.37 of the Revised Code, or of any foreign government; 3589

(4) Debt or equity securities of foreign corporations that 3590  
trade on recognized United States domiciled exchanges. 3591

(B) No investment shall be made pursuant to this section 3592  
~~which that~~, at the time ~~such the~~ investment is made, causes the 3593  
aggregate market value of the investments, not made eligible by 3594  
section 2109.37 or 2109.372 of the Revised Code, to exceed sixty 3595  
per cent of the aggregate market value at that time of all the 3596  
property of the fund held by the fiduciary. No sale or other 3597  
liquidation of any investment shall be required solely because of 3598  
any change in the relative market value of those investments made 3599  
eligible by this section and those made eligible by section 3600  
2109.37 or 2109.372 of the Revised Code; provided that, in the 3601  
event of a sale of investments authorized by this section, the 3602  
proceeds from the sale may be reinvested in the kinds and classes 3603  
of securities authorized by this section without regard to the 3604  
percentage limitation provided in this division. In determining 3605  
the aggregate market value of the property of a fund and the 3606  
percentage of a fund to be invested under this section, a 3607  
fiduciary may rely upon published market quotations as to those 3608  
investments for which ~~such those~~ quotations are available and upon 3609  
~~such the~~ valuations of other investments ~~as that~~, in the 3610  
fiduciary's best judgment, seem fair and reasonable according to 3611  
available information. 3612

(C)(1)(a) A fiduciary making an investment of trust funds in 3613  
securities of an affiliated investment company, or a bank 3614  
subsidiary corporation or other corporation owned or controlled by 3615  
the bank holding company that owns or controls the fiduciary, may 3616

charge a reasonable fee for investment advisory, brokerage, 3617  
transfer agency, registrar, management, or other similar services 3618  
provided to an affiliated investment company. The fee may be in 3619  
addition to the compensation to which the fiduciary is otherwise 3620  
entitled to receive from the trust, provided that the fee is 3621  
charged as a percentage of either asset value or income earned or 3622  
actual amount charged and is disclosed at least annually by 3623  
prospectus, account statement, or any other written means to all 3624  
persons entitled to receive statements of account activity. The 3625  
fiduciary shall disclose the relationship between the fiduciary 3626  
and the affiliated investment company, at least annually by 3627  
account statement, whether or not the fee is charged. 3628

(b) A fiduciary making an investment of trust funds in 3629  
securities of an affiliated investment company pursuant to 3630  
division (A)(2) of this section shall, when providing any periodic 3631  
account statements to the trust fund, report the net asset value 3632  
of the shares comprising the investment of the trust funds in the 3633  
affiliated investment company. 3634

(c) If a fiduciary making an investment of trust funds in 3635  
securities of an affiliated investment company pursuant to 3636  
division (A)(2) of this section invests ~~such~~ those funds in any 3637  
mutual fund, the fiduciary shall disclose, in at least ten-point 3638  
boldface type, by prospectus, account statement, or any other 3639  
written means to all persons entitled to receive statements of 3640  
account activity, that the mutual fund is not insured or 3641  
guaranteed by the federal deposit insurance corporation or by any 3642  
other government-sponsored agency of the federal government or of 3643  
this state. 3644

(2) Unless the investment of trust funds in securities of an 3645  
affiliated investment company can be made under the terms of the 3646  
instrument creating the trust, an exception to the investment of 3647  
trust funds in securities of an affiliated investment company may 3648

be filed with the probate court. Any exception filed pursuant to 3649  
this division ~~must~~ shall be signed by all persons who would, at 3650  
the time the exception is filed, be permitted to file an exception 3651  
to an account pursuant to section 2109.33 of the Revised Code and 3652  
~~must~~ shall state that all ~~such~~ of those persons request that the 3653  
current investment of trust funds in securities of an affiliated 3654  
investment company be terminated within a reasonable time. If the 3655  
probate court determines that the exception complies with the 3656  
requirements of this division, the probate court shall establish a 3657  
schedule for disposing of any current investments in securities of 3658  
an affiliated investment company, and the fiduciary shall cause 3659  
the trust to dispose of the investments in accordance with the 3660  
schedule. The fiduciary shall not be liable for any loss incurred 3661  
by the trust as a result of complying with division (C)(2) of this 3662  
section. 3663

(D) As used in this section, "affiliated investment company" 3664  
and "reasonable fee" have the same meanings as in division (E) of 3665  
section 1111.13 of the Revised Code. 3666

**Sec. 2109.372.** (A) As used in this section: 3667

(1) "Short term trust-quality investment fund" means a short 3668  
term investment fund that meets both of the following conditions: 3669

(a) The fund may be either a collective investment fund 3670  
established in accordance with section 1111.14 of the Revised Code 3671  
or a registered investment company, including any affiliated 3672  
investment company whether or not the fiduciary has invested other 3673  
funds held by it in an agency or other nonfiduciary capacity in 3674  
the securities of the same registered investment company or 3675  
affiliated investment company. 3676

(b) The fund is invested in any one or more of the following 3677  
manners: 3678



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

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

fiduciary itself or any bank subsidiary corporation owned or 3739  
controlled by the bank holding company that owns or controls the 3740  
fiduciary, whose deposits are insured by the federal deposit 3741  
insurance corporation, if the rate of interest paid on that 3742  
deposit is at least equal to the rate of interest generally paid 3743  
by that bank, savings bank, savings and loan association, or 3744  
credit union on deposits of similar terms or amounts. 3745

(2) A fiduciary that makes a temporary investment of cash or 3746  
funds pursuant to division (D)(1) of this section may charge a 3747  
reasonable fee for the services associated with that investment. 3748  
The fee shall be in addition to the compensation to which the 3749  
fiduciary is entitled for ordinary fiduciary services. 3750

(3) Fiduciaries that make one or more temporary investments 3751  
of cash or funds pursuant to division (D)(1) of this section shall 3752  
provide to the beneficiaries of the trusts involved, that are 3753  
currently receiving income or have a right to receive income, a 3754  
written disclosure of their temporary investment practices and, if 3755  
applicable, the method of computing reasonable fees for their 3756  
temporary investment services pursuant to division (D)(2) of this 3757  
section. Fiduciaries may comply with this requirement in any 3758  
appropriate written document, including, but not limited to, any 3759  
periodic statement or account. 3760

(4) A fiduciary that makes a temporary investment of cash or 3761  
funds in an affiliated investment company pursuant to division 3762  
(D)(1)(a) of this section shall, when providing any periodic 3763  
account statements of its temporary investment practices, report 3764  
the net asset value of the shares comprising the investment in the 3765  
affiliated investment company. 3766

(5) If a fiduciary that makes a temporary investment of cash 3767  
or funds in an affiliated investment company pursuant to division 3768  
(D)(1)(a) of this section invests in any mutual fund, the 3769  
fiduciary shall provide to the beneficiaries of the trust 3770

involved, that are currently receiving income or have a right to 3771  
receive income, a written disclosure, in at least ten-point 3772  
boldface type, that the mutual fund is not insured or guaranteed 3773  
by the federal deposit insurance corporation or by any other 3774  
government agency or government-sponsored agency of the federal 3775  
government or of this state. 3776

**Sec. 2109.38.** Sections 2109.37, 2109.371, and 2109.372 of the 3777  
Revised Code do not prohibit a fiduciary from retaining any part 3778  
of a trust estate as received by ~~him~~ the fiduciary even though 3779  
~~such~~ that part is not of the class or percentage permitted to 3780  
fiduciaries, or from retaining any investment made by ~~him~~ the 3781  
fiduciary after ~~such~~ the investment ceases to be of a class or 3782  
exceeds the percentage permitted by law, provided the 3783  
circumstances are not such as to require the fiduciary to dispose 3784  
of ~~such~~ the investment in the performance of ~~his~~ the fiduciary's 3785  
duties. 3786

**Sec. 2109.39.** A fiduciary entitled to a distributive share of 3787  
the assets of an estate or trust has the same right as other 3788  
beneficiaries to accept or demand distribution in kind and may 3789  
retain any security or investment so distributed to ~~him~~ the 3790  
fiduciary as though it were a part of the original estate received 3791  
by ~~him~~ the fiduciary. 3792

**Sec. 2109.40.** Unless the instrument creating a trust forbids, 3793  
a fiduciary may do all of the things ~~which~~ that an individual 3794  
holder might do with respect to securities held by ~~him~~ the 3795  
fiduciary, including the exercise or sale of subscription rights, 3796  
the acceptance of new stock in the same corporation in place of 3797  
the stock held, or in the event of reorganization, sale, or merger 3798  
in a different corporation, and with the approval of the probate 3799  
court, the investment of additional funds ~~where~~ if required of all 3800

shareholders participating in a reorganization. 3801

**Sec. 2109.42.** Subject to section 2109.372 of the Revised 3802  
Code, a fiduciary who has funds belonging to a trust ~~which~~ that 3803  
are not required for payment of current obligations of ~~his~~ the 3804  
fiduciary's trust or distribution shall, unless otherwise ordered 3805  
by the probate court, invest ~~such~~ those funds within a reasonable 3806  
time according to section 2109.37 or 2109.371 of the Revised Code. 3807  
On failure to do so, ~~such~~ the fiduciary shall account to the trust 3808  
for ~~such~~ any loss of interest ~~as~~ that is found by the court to be 3809  
due to ~~his~~ the fiduciary's negligence. 3810

**Sec. 2109.43.** No fiduciary shall make any personal use of the 3811  
funds or property belonging to a trust. For a violation of this 3812  
section, ~~such~~ the fiduciary and ~~his~~ the fiduciary's bond shall be 3813  
liable in an action for any loss occasioned by ~~such~~ that use and 3814  
for ~~such~~ any additional amount by way of forfeiture, not exceeding 3815  
the amount of the loss occasioned by ~~such~~ the use, ~~as~~ that may be 3816  
fixed by the probate court hearing ~~such~~ the case. ~~Such~~ Those 3817  
amounts shall be payable for the benefit of the beneficiary, if 3818  
living, and to ~~his~~ the beneficiary's estate if ~~he~~ the beneficiary 3819  
is deceased. In addition to the penalties under this section, the 3820  
court may remove the fiduciary pursuant to section 2109.24 of the 3821  
Revised Code for fraudulent conduct or dereliction of duty related 3822  
to the fiduciary's personal use or misuse of funds or property 3823  
belonging to a trust. However, if all interested persons consent 3824  
to the fiduciary's use of the property in a signed writing filed 3825  
with the probate court, the fiduciary may make personal use of 3826  
property belonging to the trust. 3827

An action under this section shall be brought not later than 3828  
one year after the termination of the trust or the discovery of 3829  
~~such~~ that loss. 3830

It is within the court's discretion, upon application, notice 3831  
to interested persons, and a hearing, to allow the personal use of 3832  
trust property by the fiduciary. 3833

**Sec. 2109.44.** (A) Fiduciaries shall not buy from or sell to 3834  
themselves and shall not have in their individual capacities any 3835  
dealings with the estate, except as expressly authorized by the 3836  
instrument creating the trust and then only ~~1111.13~~ ~~1111.14~~ with 3837  
the approval of the probate court in each instance. No corporate 3838  
fiduciary,  $\tau$  as defined in section 1101.01 of the Revised Code, 3839  
that is not subject to examination or regulatory oversight by the 3840  
superintendent of financial institutions, the comptroller of the 3841  
currency, or the office of thrift supervision shall be permitted 3842  
to deal with the estate, any power in the instrument creating the 3843  
trust to the contrary notwithstanding. This section does not 3844  
prohibit a fiduciary from making an advancement ~~when~~ if the 3845  
advancement has been expressly authorized by the instrument 3846  
creating the trust or ~~when~~ if the probate court approves or from 3847  
engaging in any act authorized by this chapter. 3848

(B) The fiduciary may petition the court for authority to 3849  
purchase property of the estate if all of the following 3850  
requirements are met: 3851

(1) Written consent to the purchase is signed by the 3852  
following: 3853

(a) Each known heir whose interest in the estate would be 3854  
affected by the proposed purchase; 3855

(b) Each known devisee whose interest in the estate would be 3856  
affected by the proposed purchase. 3857

(2) The written consents are filed with the court. 3858

(3) The purchase is shown to be to the advantage of the 3859  
estate. 3860

(C) The court shall deliver notice of the hearing on the 3861  
petition to the heirs, devisees, or legatees of the estate or any 3862  
interested person. 3863

**Sec. 2109.45.** Before the probate court confirms a sale by an 3864  
executor, administrator, guardian, assignee, or trustee made under 3865  
an order allowing that officer to make a private sale, the court 3866  
shall require that officer to file a statement indicating that the 3867  
private sale was made after diligent endeavor to obtain the best 3868  
price for the property and that the private sale was at the 3869  
highest price ~~he~~ the executor, administrator, guardian, assignee, 3870  
or trustee could get obtain for the property. 3871

**Sec. 2109.46.** When it appears to be for the best interests of 3872  
the ~~trust~~ entrusted estate, a fiduciary other than an executor or 3873  
administrator may, with the approval of the probate court, borrow 3874  
money and mortgage real ~~estate~~ property belonging to the ~~trust~~ 3875  
entrusted estate, whether ~~such the~~ real estate property was 3876  
acquired by purchase or by descent and distribution. 3877

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

~~extinguished~~, all of whom ~~must~~ shall be made defendants and be 3892  
notified of the pendency and prayer of the ~~petition~~ complaint in 3893  
~~such~~ the manner ~~as~~ that the court directs. In addition ~~such~~ 3894  
~~petition~~, the complaint shall contain a statement of the nature of 3895  
the ~~imbecility~~ incompetency or ~~insanity~~ incapacity, if any, of 3896  
~~such~~ the ward, whether temporary or confirmed and its duration. 3897  
Except as provided in this section, the defendants and notice 3898  
~~thereto~~ to the defendants shall be the same as though the real 3899  
estate property proposed to be mortgaged were being sold by the 3900  
fiduciary. The ~~petition~~ complaint shall set forth the purpose of 3901  
the loan, the amount required ~~therefor~~ for the loan, and ~~such~~ any 3902  
other facts ~~as~~ that may be pertinent to the question whether ~~such~~ 3903  
the money should be borrowed and shall contain a prayer that the 3904  
fiduciary be authorized to mortgage so much of the ward's lands as 3905  
may be necessary to secure ~~such~~ the loan. 3906

Upon the filing of ~~such~~ petition the complaint, the 3907  
proceedings as to pleadings and proof shall be the same as on 3908  
~~petition~~ a complaint to sell real estate property belonging to the 3909  
trust. 3910

**Sec. 2109.47.** Before the probate court makes an order 3911  
authorizing a guardian to mortgage real estate property for the 3912  
purpose of borrowing money to make repairs or improvements, the 3913  
court shall appoint ~~three~~ disinterested persons whose duty it 3914  
shall be to investigate fully the necessity for and the 3915  
advisability of making the repairs or improvements and their 3916  
probable cost and to report their conclusions to the court. 3917

**Sec. 2109.48.** If on the final hearing of a fiduciary's 3918  
~~petition~~ complaint to borrow money and mortgage real estate 3919  
property belonging to the trust it appears to be for the best 3920  
interests of the trust that the prayer of the ~~petition~~ complaint 3921  
be granted, the probate court shall fix the amount necessary to be 3922



borrowed, direct what ~~lands~~ real property shall be encumbered by 3923  
mortgage to secure ~~such that~~ amount, and issue an order to ~~such~~ 3924  
the fiduciary directing ~~him~~ the fiduciary to ascertain and report 3925  
to the court the rate of interest and the length of time for which 3926  
~~he~~ the fiduciary can borrow ~~such that~~ amount. 3927

If ~~such the~~ report of the fiduciary and the terms proposed 3928  
are satisfactory to the court, they may be accepted and confirmed 3929  
and the fiduciary ordered, as fiduciary, to execute a note for 3930  
~~such the~~ amount to be borrowed and a mortgage on the ~~lands real~~ 3931  
property so designated, which shall be a valid lien ~~thereon~~ on the 3932  
property. The fiduciary in no way shall be personally liable for 3933  
the payment of any part of the sum borrowed, but ~~such the~~ 3934  
mortgaged ~~lands real property~~ alone shall be bound ~~therefor~~ for 3935  
its payment. ~~Such The~~ court shall direct the distribution of the 3936  
fund and the fiduciary shall report to the court, for its 3937  
approval, the execution of ~~such the~~ notes and mortgage and ~~his the~~ 3938  
fiduciary's distribution of the fund. 3939

**Sec. 2109.49.** The probate judge, ~~when~~ if the probate judge 3940  
~~deems~~ considers it necessary or upon the written application of 3941  
any party interested in the trust estate, may appoint a suitable 3942  
~~persons~~ person to investigate the administration of the trust or 3943  
estate and report to the court. The expense ~~thereof~~ of the 3944  
investigation shall be taxed as costs against the party asking for 3945  
~~such the~~ examination or the trust fund, as the court may decree. 3946  
This section shall not apply to a corporate trustee ~~which that~~ is 3947  
subject to section 1111.28 of the Revised Code. 3948

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

trust, or guardianship or by the creditor of a person interested 3954  
in ~~such trust~~ the estate, testamentary trust, or guardianship 3955  
against any person suspected of having concealed, embezzled, or 3956  
conveyed away or of being or having been in the possession of any 3957  
moneys, ~~chattels~~ personal property, or choses in action of ~~such~~ 3958  
the estate, testamentary trust, or guardianship, ~~said the~~ the court 3959  
shall by citation, ~~attachment or warrant, or, if circumstances~~ 3960  
~~require it, by warrant or attachment in the first instance, or~~ 3961  
other judicial order compel the person or persons ~~so~~ suspected to 3962  
~~forthwith~~ appear before it to be examined, on oath, touching the 3963  
matter of the complaint. ~~Where~~ If necessary ~~such, the~~ citation, 3964  
~~attachment or warrant~~ or other judicial order may be issued into 3965  
any county in the state and shall be served and returned by the 3966  
officer to whom it is delivered. The officer to whom ~~such the~~ 3967  
process is delivered shall be liable for negligence in its service 3968  
or return in ~~like a similar~~ manner as sheriffs are liable for 3969  
negligence in not serving or returning a capias issued upon an 3970  
indictment. Before issuing an extra-county citation, ~~attachment or~~ 3971  
~~warrant~~ or other judicial order, the probate judge may require the 3972  
complainant to post security with the probate court in ~~such an~~ 3973  
amount and in ~~such a form as that~~ the probate judge ~~shall find~~ 3974  
finds acceptable in order to cover the costs of the proceeding 3975  
under this section, including in ~~such those~~ costs a reasonable 3976  
allowance for the ~~travelling~~ travel expenses of the person or 3977  
persons against whom an extra-county citation, ~~attachment or~~ 3978  
~~warrant~~ or other judicial order is to be issued. ~~Such~~ The security 3979  
may be in the form of a bond, the amount, terms, conditions, and 3980  
sureties of which shall be subject to the approval of the probate 3981  
judge. 3982

The probate court may initiate proceedings on its own motion. 3983

The probate court shall ~~forthwith~~ promptly proceed to hear 3984  
and determine the matter. 3985

The examinations, including questions and answers, shall be 3986  
reduced to writing, signed by the party examined, and filed in the 3987  
probate court. 3988

If required by either party, the probate court shall swear 3989  
~~such~~ the witnesses ~~as may be~~ who are offered by either party 3990  
touching the matter of ~~such~~ the complaint and cause the 3991  
examination of every ~~such~~ witness, including questions and 3992  
answers, to be reduced to writing, signed by the witness, and 3993  
filed in the probate court. 3994

All costs of ~~such~~ the proceedings, including the reasonable 3995  
~~travelling travel~~ expenses of a person against whom an 3996  
extra-county citation, ~~attachment or warrant~~ or judicial order is 3997  
issued, shall be assessed against and paid by the party making the 3998  
complaint, except as provided by section 2109.52 of the Revised 3999  
Code. 4000

**Sec. 2109.51.** If a person compelled under section 2109.50 of 4001  
the Revised Code to appear for examination refuses to answer 4002  
interrogatories propounded, the probate court shall commit ~~such~~ 4003  
the person to the county jail, and ~~such~~ the person shall remain in 4004  
close custody until ~~he~~ the person submits to the court's order. 4005

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

in kind. The probate court may issue a citation or other judicial 4016  
order into any county in this state, ~~which citation that~~ shall be 4017  
served and returned as provided in section 2109.50, ~~requiring of~~ 4018  
the Revised Code. The citation or other judicial order shall 4019  
require any person ~~to appear before it~~ who claims any interest in 4020  
the assets alleged to have been concealed, embezzled, conveyed, or 4021  
held in possession ~~and at such~~ to appear before the court. At the 4022  
hearing, the court may hear and determine questions of title 4023  
relating to ~~such those~~ assets. In all cases, except when the 4024  
person found guilty is the fiduciary, the probate court shall 4025  
~~forthwith~~ render judgment in favor of the fiduciary or if there is 4026  
no fiduciary in this state, the probate court shall render 4027  
judgment in favor of the state, against the person found guilty, 4028  
for the amount of the moneys or the value of the ~~chattels~~ personal 4029  
property or choses in action concealed, embezzled, conveyed away, 4030  
or held in possession, together with ten per cent penalty and all 4031  
costs of ~~such the~~ proceedings or complaint; except that ~~such the~~ 4032  
judgment shall be reduced to the extent of the value of any thing 4033  
specifically restored or returned in kind as provided in this 4034  
section. 4035

If the person found guilty is the fiduciary, the probate 4036  
court shall ~~forthwith~~ render judgment in favor of the state 4037  
against ~~him~~ the fiduciary for ~~such the~~ amount of the moneys or the 4038  
value of the personal property or choses in action concealed, 4039  
embezzled, conveyed away, or held in possession, together with 4040  
penalty and costs as provided in this section. 4041

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

the time of the removal of the fiduciary, the court shall appoint 4048  
a new fiduciary to continue the administrative process. A 4049  
fiduciary ~~so~~ that is removed shall not receive compensation for 4050  
acting as fiduciary and ~~must~~ shall be charged ~~in his account with~~ 4051  
for the amount of ~~such~~ the judgment. ~~Such~~ The fiduciary's property 4052  
also shall be liable for the satisfaction of the judgment on 4053  
execution issued ~~thereon~~ on the judgment by ~~his~~ the fiduciary's 4054  
successor. 4055

**Sec. 2109.54.** The fiduciary in whose favor a judgment has 4056  
been rendered by the probate court under section 2109.52 of the 4057  
Revised Code shall ~~forthwith~~ deliver to the clerk of the court of 4058  
common pleas a certificate of ~~such~~ that judgment in accordance 4059  
with section 2329.04 of the Revised Code, ~~which certificate the~~ 4060  
The probate ~~judge~~ court shall ~~make out~~ complete and deliver the 4061  
certificate to ~~such~~ the fiduciary on demand. The clerk shall 4062  
~~forthwith~~ issue an execution of the court of common pleas for the 4063  
amount of the judgment and the costs that have accrued or that may 4064  
accrue ~~thereon~~ on the judgment. Thenceforth proceedings on 4065  
execution shall be the same as if the judgment had been rendered 4066  
in ~~such~~ that court of common pleas. 4067

**Sec. 2109.55.** If a judgment is rendered in the name of the 4068  
state under section 2109.52 of the Revised Code and there is no 4069  
fiduciary within this state, the prosecuting attorney shall cause 4070  
the certificate provided for in section 2109.54 of the Revised 4071  
Code to be filed in the clerk's office and proceed ~~thereon~~ to 4072  
execution on the judgment as provided in ~~such~~ that section. ~~Such~~ 4073  
The prosecuting attorney shall pay the money realized upon ~~such~~ 4074  
the execution to the county treasurer for the use of ~~such trust~~ 4075  
the estate, testamentary trust, or guardianship, reserving ~~such~~ 4076  
the compensation to ~~himself as~~ the prosecuting attorney that the 4077  
probate court allows. 4078

Sec. 2109.56. All gifts, grants, or conveyances of ~~land,~~ 4079  
~~tenements, hereditaments~~ real property, rents, or ~~chattels~~ 4080  
personal property and all bonds, judgments, or executions made or 4081  
obtained with intent to avoid the purpose of the proceedings set 4082  
forth in sections 2109.50 to 2109.55, ~~inclusive,~~ of the Revised 4083  
Code, or in contemplation of any examination or complaint provided 4084  
for by ~~such~~ those sections, shall be void. 4085

Sec. 2109.57. In any action or proceeding pending in a court 4086  
of record, if it is made to appear to the court that any person 4087  
entitled to all or a part of the proceeds of property sold in ~~such~~ 4088  
that action or proceeding is unknown or is a nonresident and not 4089  
represented in ~~such~~ the action or proceeding or that the person 4090  
entitled cannot, at the time, definitely be ascertained, the 4091  
probate court may appoint a trustee to whom the notes and 4092  
mortgages for the unpaid part shall be made, delivered, and paid 4093  
and to receive, hold, and manage ~~such~~ the proceeds or part thereof 4094  
of the proceeds. ~~Such~~ The trustee shall collect the unpaid part of 4095  
the proceeds of the property sold, by action or otherwise, and 4096  
shall pay over ~~such~~ that fund only on the order of the probate 4097  
court appointing ~~him~~ the trustee. 4098

Payment to ~~such~~ the trustee shall be a bar to any claim 4099  
thereafter made by any person and the persons or corporations 4100  
paying ~~such~~ the money in no case shall be required to see to the 4101  
application of the money paid. 4102

If a person entitled to any portion of the money held by ~~such~~ 4103  
the trustee fails for seven or more years after ~~such~~ the trustee's 4104  
appointment to make claim to the money and to present the proof 4105  
necessary to entitle ~~such~~ the person to ~~such~~ the money, the 4106  
prosecuting attorney of the county in which ~~such~~ the trustee was 4107  
appointed shall collect it, with the interest accrued ~~thereon~~ on 4108  
the money, from ~~such~~ the trustee and pay it into ~~such~~ the county's 4109

treasury, to be placed to the credit of the general fund. 4110

~~When~~ Upon application to the probate court which that 4111  
appointed such the trustee is satisfied that a and presentment of 4112  
the proof necessary to entitle the person who appears and claims 4113  
to the moneys paid into the county treasury has a right to receive 4114  
them, money, the court shall order the payment of the money to the 4115  
person in whole or part, less the costs of collection by the 4116  
prosecuting attorney, ~~such court shall order the payment thereof~~ 4117  
~~to the person shown to be entitled to such moneys. Such. The~~ 4118  
person, on the judge's certificate, shall be given a warrant 4119  
~~therefor~~ for the money by the county auditor. 4120

**Sec. 2109.58.** Each fiduciary as to whom definite provision is 4121  
not made in sections 2111.14 and 2115.02 of the Revised Code shall 4122  
make and file within three months after ~~his~~ the fiduciary's 4123  
appointment a full inventory of the real and personal property 4124  
~~belonging to the trust~~ be entrusted with the fiduciary, its value, 4125  
and the value of the yearly rent of the real property. 4126

Except as provided by section 2115.16 of the Revised Code, 4127  
exceptions to the inventory of a fiduciary may be filed at any 4128  
time within six months after the return of the inventory by any 4129  
person interested in the ~~trust~~ entrusted property or in any of the 4130  
property included in the inventory, but the six-month period shall 4131  
not apply in case of fraud or concealment of assets. At the 4132  
hearing, the fiduciary and any witness may be examined under oath. 4133  
The probate court shall enter its finding on the journal and tax 4134  
the costs as may be equitable. 4135

**Sec. 2109.59.** If a fiduciary, upon demand, refuses or 4136  
neglects to pay any creditor whose claim has been allowed by the 4137  
fiduciary and not subsequently rejected or to pay any creditor or 4138  
make distribution to any person interested in the estate whose 4139

claim or interest has been established by judgment, decree, or 4140  
order of court, including an order of distribution, ~~such the~~ 4141  
creditor or other person may file a petition against the fiduciary 4142  
in the probate court from which the fiduciary received ~~his the~~ 4143  
fiduciary's appointment to enforce ~~such the~~ payment or 4144  
distribution, briefly setting forth ~~therein in the petition~~ the 4145  
amount and nature of ~~his the creditor's or other person's~~ claim or 4146  
interest. ~~Such The~~ petition shall not be filed against an executor 4147  
or administrator until the expiration of the period prescribed in 4148  
section 2117.30 of the Revised Code. 4149

When ~~such the~~ petition is filed, the probate court shall 4150  
issue a citation to the fiduciary setting forth the filing of the 4151  
petition and the nature of the claim of the petitioner and 4152  
commanding ~~such the~~ fiduciary to appear before the court on the 4153  
return day ~~thereof~~ to answer and show cause why a judgment should 4154  
not be rendered or order entered against ~~him the~~ fiduciary. ~~Such~~ 4155  
The citation shall be returnable not less than twenty nor more 4156  
than forty days from its date and shall be served and returned by 4157  
an officer as in the case of summons. ~~Such The~~ citation may issue 4158  
to any county in the state. 4159

On the return of the citation, the cause shall be set for 4160  
hearing, unless for good cause shown it is continued. The probate 4161  
court may hear and determine all questions necessary to ascertain 4162  
and fix the amount due from the fiduciary to the petitioner and 4163  
render ~~such the~~ judgment or make ~~such the~~ order ~~as that~~ may be 4164  
proper. If necessary, ~~such the~~ court may hear, determine, and 4165  
settle the rights and claims of all parties interested in the 4166  
subject matter of the petition. For ~~such that~~ purpose the probate 4167  
court may ~~cause~~ allow all parties in interest to be made parties 4168  
to ~~such the~~ petition by amended, supplemental, or ~~crosspetition~~ 4169  
cross-petition. The court shall cause notice to be served on all 4170  
~~such the~~ parties in the manner provided in this section for 4171



service of the citation upon the fiduciary. 4172

In any ~~such~~ proceeding under this section, the sureties on 4173  
the bond of the fiduciary, if made parties ~~thereto~~ to the 4174  
proceeding, may make any defense that the fiduciary could make and 4175  
the court may render ~~such~~ the judgment or make ~~such~~ the order with 4176  
respect to the sureties ~~as~~ that may be proper. 4177

**Sec. 2109.60.** When a proceeding set forth in section 2109.59 4178  
of the Revised Code is pending in the probate court, ~~such~~ the 4179  
court, on motion of any party ~~thereto~~ or on the court's own 4180  
motion, may ~~reserve and send such~~ transfer the cause to the court 4181  
of common pleas ~~which~~, and the court of common pleas shall hear, 4182  
settle, and determine all issues as provided in ~~such~~ that section. 4183  
In case of ~~such reservation~~ the transfer, the probate court shall 4184  
prepare a transcript of the proceedings in the cause, so far as it 4185  
has progressed, ~~which~~ that, with the petition and other papers 4186  
therein in the proceedings, ~~forthwith~~ shall be filed with the 4187  
clerk of the court of common pleas. 4188

**Sec. 2109.61.** An action may be prosecuted on the bond of a 4189  
fiduciary against any one or more of the obligors ~~thereof~~ on the 4190  
bond by any person who has been injured by reason of the breach of 4191  
any condition of the bond. ~~Such~~ The action shall be prosecuted for 4192  
the benefit of all persons who are interested in the estate and 4193  
who have been similarly injured. Any such person or any obligor on 4194  
the bond who is not already a party to the action may intervene 4195  
therein in the action or be made a party ~~thereto~~ to the action by 4196  
supplemental, amended, or ~~crosspetition~~ cross-petition. Notice of 4197  
any action or proceeding against the bonded fiduciary shall be 4198  
given to the surety. 4199

If a surety on the bond of a fiduciary is not made a party to 4200  
an action or proceeding against ~~such~~ the fiduciary, the fact that 4201

a judgment was rendered or an order was entered against the 4202  
fiduciary shall constitute only prima-facie evidence of the 4203  
justice and validity of the claim in an action subsequently 4204  
brought against the sureties on the bond of the fiduciary. 4205

**Sec. 2109.62.** (A)(1) Upon the filing of a motion by a trustee 4206  
with the court that has jurisdiction over the trust, upon the 4207  
provision of reasonable notice to all beneficiaries who are known 4208  
and in being and who have vested or contingent interests in the 4209  
trust, and after holding a hearing, the court may terminate the 4210  
trust, in whole or in part, if it determines that all of the 4211  
following apply: 4212

(a) It is no longer economically feasible to continue the 4213  
trust. 4214

(b) The termination of the trust is for the benefit of the 4215  
beneficiaries. 4216

(c) The termination of the trust is equitable and practical. 4217

(d) The current value of the trust is less than one hundred 4218  
thousand dollars. 4219

(2) The existence of a spendthrift or similar provision in a 4220  
trust instrument or will does not preclude the termination of a 4221  
trust pursuant to this section. 4222

(B) If property is to be distributed from an estate being 4223  
probated to a trust and the termination of the trust pursuant to 4224  
this section does not clearly defeat the intent of the testator, 4225  
the probate court has jurisdiction to order the outright 4226  
distribution of the property or to make the property custodial 4227  
property under sections 5814.01 to 5814.09 of the Revised Code. A 4228  
probate court may so order whether the ~~application~~ motion for the 4229  
order is made by an inter vivos trustee named in the will of the 4230  
decedent or by a testamentary trustee. 4231

(C) Upon the termination of a trust pursuant to this section, 4232  
the probate court shall order the distribution of the trust estate 4233  
in accordance with any provision specified in the trust instrument 4234  
for the premature termination of the trust. If there is no 4235  
provision of that nature in the trust instrument, the probate 4236  
court shall order the distribution of the trust estate among the 4237  
beneficiaries of the trust in accordance with their respective 4238  
beneficial interests and in a manner that the court determines to 4239  
be equitable. For purposes of ordering the distribution of the 4240  
trust estate among the beneficiaries of the trust under this 4241  
division, the court shall consider all of the following: 4242

(1) The existence of any agreement among the beneficiaries 4243  
with respect to their beneficial interests; 4244

(2) The actuarial values of the separate beneficial interests 4245  
of the beneficiaries; 4246

(3) Any expression of preference of the beneficiaries that is 4247  
contained in the trust instrument. 4248

**Sec. 2111.02.** (A) ~~When~~ If found necessary, the probate court 4249  
on its own motion or on application by any interested party shall 4250  
appoint, subject to divisions (C) and (D) of this section and to 4251  
section 2109.21 and division (B) of section 2111.121 of the 4252  
Revised Code, a guardian of the person, the estate, or both, of a 4253  
minor or incompetent, provided the person for whom the guardian is 4254  
to be appointed is a resident of the county or has a legal 4255  
settlement in the county and, except in the case of a minor, has 4256  
had the opportunity to have the assistance of counsel in the 4257  
proceeding for the appointment of ~~such~~ that guardian. An 4258  
interested party includes, but is not limited to, a person 4259  
nominated in a durable power of attorney as described in division 4260  
(D) of section 1337.09 of the Revised Code or in a writing as 4261  
described in division (A) of section 2111.121 of the Revised Code. 4262

Except when the guardian of an incompetent is an agency under 4263  
contract with the department of developmental disabilities for the 4264  
provision of protective services under sections 5123.55 to 5123.59 4265  
of the Revised Code, the guardian of an incompetent, by virtue of 4266  
~~such~~ the appointment as guardian, shall be the guardian of the 4267  
minor children of the guardian's ward, unless the court appoints 4268  
some other person as their guardian. 4269

When the primary purpose of the appointment of a guardian is, 4270  
or was, the collection, disbursement, or administration of moneys 4271  
awarded by the veterans administration to the ward, or assets 4272  
derived from ~~such~~ those moneys, no court costs shall be charged in 4273  
the proceeding for the appointment or in any subsequent 4274  
proceedings made in pursuance of the appointment, unless the value 4275  
of the estate, including the moneys then due under the veterans 4276  
administration award, exceeds one thousand five hundred dollars. 4277

(B)(1) If the probate court finds it to be in the best 4278  
interest of an incompetent or minor, it may appoint pursuant to 4279  
divisions (A) and (C) of this section, on its own motion or on 4280  
application by an interested party, a limited guardian with 4281  
specific limited powers. The sections of the Revised Code, rules, 4282  
and procedures governing guardianships apply to a limited 4283  
guardian, except that the order of appointment and letters of 4284  
authority of a limited guardian shall state the reasons for, and 4285  
specify the limited powers of, the guardian. The court may appoint 4286  
a limited guardian for a definite or indefinite period. An 4287  
incompetent or minor for whom a limited guardian has been 4288  
appointed retains all of the incompetent's or minor's rights in 4289  
all areas not affected by the court order appointing the limited 4290  
guardian. 4291

(2) If a guardian appointed pursuant to division (A) of this 4292  
section is temporarily or permanently removed or resigns, and if 4293  
the welfare of the ward requires immediate action, at any time 4294

after the removal or resignation, the probate court may appoint, 4295  
ex parte and with or without notice to the ward or interested 4296  
parties, an interim guardian for a maximum period of fifteen days. 4297  
If the court appoints the interim guardian ex parte or without 4298  
notice to the ward, the court, at its first opportunity, shall 4299  
enter upon its journal with specificity the reason for acting ex 4300  
parte or without notice, and, as soon as possible, shall serve 4301  
upon the ward a copy of the order appointing the interim guardian. 4302  
For good cause shown, after notice to the ward and interested 4303  
parties and after hearing, the court may extend an interim 4304  
guardianship for a specified period, but not to exceed an 4305  
additional thirty days. 4306

(3) If a minor or incompetent has not been placed under a 4307  
guardianship pursuant to division (A) of this section and if an 4308  
emergency exists, and ~~if~~ it is reasonably certain that immediate 4309  
action is required to prevent significant injury to the person or 4310  
estate of the minor or incompetent, at any time after it receives 4311  
notice of the emergency, the court, ex parte, may issue any order 4312  
that it considers necessary to prevent injury to the person or 4313  
estate of the minor or incompetent, or may appoint an emergency 4314  
guardian for a maximum period of seventy-two hours. A written copy 4315  
of any order issued by a court under this division shall be served 4316  
upon the incompetent or minor as soon as possible after its 4317  
issuance. Failure to serve ~~such an~~ that order after its issuance 4318  
or prior to the taking of any action under its authority does not 4319  
invalidate the order or the actions taken. The powers of an 4320  
emergency guardian shall be specified in the letters of 4321  
appointment, and shall be limited to those powers that are 4322  
necessary to prevent injury to the person or estate of the minor 4323  
or incompetent. If the court acts ex parte or without notice to 4324  
the minor or incompetent, the court, at its first opportunity, 4325  
shall enter upon its journal a record of the case and, with 4326  
specificity, the reason for acting ex parte or without notice. For 4327

good cause shown, after notice to the minor or incompetent and interested parties, and after hearing, the court may extend an emergency guardianship for a specified period, but not to exceed an additional thirty days.

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

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

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

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

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

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

(6) The court may deny a guardianship based upon a finding

that a less restrictive alternative to guardianship exists. 4359

(7) If the hearing concerns the appointment of a guardian or 4360  
limited guardian for an alleged incompetent, the alleged 4361  
incompetent has all of the following rights: 4362

(a) The right to be represented by independent counsel of the 4363  
alleged incompetent's choice; 4364

(b) The right to have a friend or family member of the 4365  
alleged incompetent's choice present; 4366

(c) The right to have evidence of an independent expert 4367  
evaluation introduced; 4368

(d) If the alleged incompetent is indigent, upon the alleged 4369  
incompetent's request: 4370

(i) The right to have counsel and an independent expert 4371  
evaluator appointed at court expense; 4372

(ii) If the guardianship, limited guardianship, or standby 4373  
guardianship decision is appealed, the right to have counsel 4374  
appointed and necessary transcripts for appeal prepared at court 4375  
expense. 4376

(D)(1) ~~When~~ If a person has been nominated to be a guardian 4377  
of the estate of a minor in or pursuant to a durable power of 4378  
attorney as described in division (D) of section 1337.09 of the 4379  
Revised Code or a writing as described in division (A) of section 4380  
2111.121 of the Revised Code, the person nominated has preference 4381  
in appointment over a person selected by the minor. A person who 4382  
has been nominated to be a guardian of the person of a minor in or 4383  
pursuant to a durable power of attorney or writing of that nature 4384  
does not have preference in appointment over a person selected by 4385  
the minor, but the probate court may appoint the person named in 4386  
the durable power of attorney or the writing, the person selected 4387  
by the minor, or another person as guardian of the person of the 4388

minor. 4389

(2) A person nominated as a guardian of an incompetent adult 4390  
child pursuant to section 1337.09 or 2111.121 of the Revised Code 4391  
shall have preference in appointment over a person applying to be 4392  
guardian if the person nominated is competent, suitable, and 4393  
willing to accept the appointment, and if the incompetent adult 4394  
child does not have a spouse or an adult child and has not 4395  
designated a guardian prior to the court finding the adult child 4396  
incompetent. 4397

**Sec. 2111.021.** A competent adult who is physically infirm may 4398  
petition the probate court of the county in which ~~he~~ the 4399  
petitioner resides, to place, for a definite or indefinite period 4400  
of time, ~~his~~ the petitioner's person, any or all of ~~his~~ the 4401  
petitioner's real or personal property, or both under a 4402  
conservatorship with the court. A petitioner either may grant 4403  
specific powers to the conservator or court or may limit any 4404  
powers granted by law to the conservator or court, except that the 4405  
petitioner may not limit the powers granted to the court by this 4406  
section and may not limit the requirement for bond as determined 4407  
by the court. The petition shall state whether the person of the 4408  
competent adult will be placed under the conservatorship, shall 4409  
state with particularity all real and personal property that will 4410  
be placed under the conservatorship, shall state the powers 4411  
granted and any limitation upon the powers of the conservator or 4412  
court, and shall state the name of a proposed suitable 4413  
conservator. 4414

After a hearing, if the court finds that the petition was 4415  
voluntarily filed and that the proposed conservator is suitable, 4416  
the court shall issue an order of conservatorship. Upon issuance 4417  
of the order, all sections of the Revised Code governing a 4418  
guardianship of the person, the estate, or both, whichever is 4419



involved, except those sections the application of which 4420  
specifically is limited by the petitioner, and all rules and 4421  
procedures governing ~~such~~ a guardianship of the person, the 4422  
estate, or both, shall apply to the conservatorship, including, 4423  
but not limited to, applicable bond and accounting requirements. 4424

A conservatorship shall terminate upon a judicial 4425  
determination of incompetency, the death of the petitioner, the 4426  
order of the probate court, or the execution of a written 4427  
termination notice by the petitioner. A termination notice shall 4428  
take effect upon execution by the petitioner, and shall be filed 4429  
with the court and served upon the conservator. A termination 4430  
notice executed by a petitioner relative to a conservatorship of 4431  
the estate and the termination of a conservatorship of the estate 4432  
based upon a termination notice are void unless the termination 4433  
notice is filed with the court within fourteen days after its 4434  
execution. Modification of the powers of a conservator or the 4435  
court may be made by the petitioner upon motion to the court at 4436  
any time during the conservatorship. Neither the establishment of 4437  
a conservatorship nor the filing of a petition for conservatorship 4438  
with the probate court shall be considered as evidence of mental 4439  
impairment under section 2111.01 of the Revised Code. 4440

Upon motion to the probate court and a showing of good cause, 4441  
the court may make confidential, or remove from confidential 4442  
status, any file, record, petition, motion, account, or paper, 4443  
except for an index, docket, or journal, that pertains to a 4444  
conservatorship and that is in the possession of the court. 4445

**Sec. 2111.031.** In connection with an application for the 4446  
appointment of a guardian for an alleged incompetent, the court 4447  
may appoint physicians and other qualified persons to examine, 4448  
investigate, or represent the alleged incompetent, to assist the 4449  
court in deciding whether a guardianship is necessary. If the 4450

person is determined to be an incompetent and a guardian is 4451  
appointed for ~~him~~ the person, the costs, fees, or expenses 4452  
incurred to so assist the court shall be charged either against 4453  
the estate of the person or against the applicant, unless the 4454  
court determines, for good cause shown, that the costs, fees, or 4455  
expenses are to be recovered from the county, in which case they 4456  
shall be charged against the county. If the person is not 4457  
determined to be an incompetent or a guardian is not appointed for 4458  
~~him~~ the person, the costs, fees, or expenses incurred to so assist 4459  
the court shall be charged against the applicant, unless the court 4460  
determines, for good cause shown, that the costs, fees, or 4461  
expenses are to be recovered from the county, in which case they 4462  
shall be charged against the county. 4463

A court may require the applicant to make an advance deposit 4464  
of an amount that the court determines is necessary to defray the 4465  
anticipated costs of examinations of an alleged incompetent and to 4466  
cover fees or expenses to be incurred to assist it in deciding 4467  
whether a guardianship is necessary. 4468

This section does not affect or apply to the duties of a 4469  
probate court investigator under sections 2111.04 and 2111.041 of 4470  
the Revised Code. 4471

**Sec. 2111.04.** (A) Except for an interim or emergency guardian 4472  
appointed under division (B)(2) or (3) of section 2111.02 of the 4473  
Revised Code, no guardian of the person, the estate, or both shall 4474  
be appointed until at least seven days after the probate court has 4475  
caused written notice, setting forth the time and place of the 4476  
hearing, to be served as follows: 4477

(1) In the appointment of the guardian of a minor, notice 4478  
shall be served as follows: 4479

(a) Upon the minor, if over the age of fourteen, by personal 4480  
service; 4481

(b) Upon each parent of the minor whose name and address is 4482  
known or with reasonable diligence can be ascertained, provided 4483  
the parent is free from disability other than minority; 4484

(c) Upon the next of kin of the minor who are known to reside 4485  
in this state, if there is no living parent, the name and address 4486  
of the parent cannot be ascertained, or the parent is under 4487  
disability other than minority; 4488

(d) Upon the person having the custody of the minor. 4489

(2) In the appointment of the guardian of an incompetent, 4490  
notice shall be served as follows: 4491

(a)(i) Upon the person for whom appointment is sought by 4492  
personal service, by a probate court investigator, or in the 4493  
manner provided in division (A)(2)(a)(ii) of this section. The 4494  
notice shall be in boldface type and shall inform the alleged 4495  
incompetent, in boldface type, of ~~his~~ the alleged incompetent's 4496  
rights to be present at the hearing, to contest any application 4497  
for the appointment of a guardian for ~~his~~ the alleged 4498  
incompetent's person, estate, or both, and to be represented by an 4499  
attorney and of all of the rights set forth in division (C)(7) of 4500  
section 2111.02 of the Revised Code. 4501

(ii) If the person for whom appointment is sought is a 4502  
resident of, or has a legal settlement in, the county in which the 4503  
court has jurisdiction, but is absent from that county, the 4504  
probate court may designate, by order, a temporary probate court 4505  
investigator, in lieu of a regular probate court investigator 4506  
appointed or designated under section 2101.11 of the Revised Code, 4507  
to make the personal service of the notice described in division 4508  
(A)(2)(a)(i) of this section upon the person for whom appointment 4509  
is sought. 4510

(b) Upon the next of kin of the person for whom appointment 4511  
is sought who are known to reside in this state. 4512

(B) After service of notice in accordance with division (A) 4513  
of this section and for good cause shown, the court may appoint a 4514  
guardian prior to the time limitation specified in that division. 4515

(C) Notice may not be waived by the person for whom the 4516  
appointment is sought. 4517

(D) From the service of notice until the hearing, no sale, 4518  
gift, conveyance, or encumbrance of the property of an alleged 4519  
incompetent shall be valid as to persons having notice of the 4520  
proceeding. 4521

**Sec. 2111.041.** (A) At the time of the service of notice upon 4522  
an alleged incompetent, as required by division (A)(2)(a) of 4523  
section 2111.04 of the Revised Code, the court shall require a 4524  
regular probate court investigator appointed or designated under 4525  
section 2101.11 of the Revised Code or appoint a temporary probate 4526  
court investigator to investigate the circumstances of the alleged 4527  
incompetent, and, to the maximum extent feasible, to communicate 4528  
to the alleged incompetent in a language or method of 4529  
communication that ~~he~~ the alleged incompetent can understand, ~~his~~ 4530  
the alleged incompetent's rights as specified in that division, 4531  
and subsequently to file with the court a report that contains all 4532  
of the following: 4533

(1) A statement indicating that the notice was served and 4534  
describing the extent to which the alleged incompetent's rights to 4535  
be present at the hearing, to contest any application for the 4536  
appointment of a guardian for ~~his~~ the alleged incompetent's 4537  
person, estate, or both, and to be represented by an attorney were 4538  
communicated to ~~him~~ the alleged incompetent in a language or 4539  
method of communication understandable to the alleged incompetent; 4540

(2) A brief description, as observed by the investigator, of 4541  
the physical and mental condition of the alleged incompetent; 4542

(3) A recommendation regarding the necessity for a guardianship or a less restrictive alternative; 4543  
4544

(4) A recommendation regarding the necessity of appointing pursuant to section 2111.031 of the Revised Code, an attorney to represent the alleged incompetent. 4545  
4546  
4547

(B) The report that is required by division (A) of this section shall be made a part of the record in the case and shall be considered by the court prior to establishing any guardianship for the alleged incompetent. 4548  
4549  
4550  
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**Sec. 2111.06.** If the powers of the person appointed as guardian of a minor or incompetent are not limited by the order of appointment, ~~such~~ the person shall be guardian both of the person and estate of the ward. In every instance the court shall appoint the same person as guardian of the person and estate of ~~any such~~ the ward, unless in the opinion of the court the interests of the ward will be promoted by the appointment of different persons as guardians of the person and of the estate. 4552  
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A guardian of the person of a minor shall be appointed as to a minor having ~~neither~~ no father ~~nor~~ or mother, ~~or~~ whose parents are unsuitable persons to have the custody ~~and tuition~~ of ~~such~~ the minor and to provide for the education of the minor as required by section 3321.01 of the Revised Code, or whose interests, in the opinion of the court, will be promoted ~~thereby~~ by the appointment of a guardian. A guardian of the person shall have the custody and provide for the maintenance of the ward, and if the ward is a minor, ~~such~~ the guardian shall also provide for the education of ~~such~~ the ward as required by section 3321.01 of the Revised Code. 4560  
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Before exercising its jurisdiction to appoint a guardian of a minor, the court shall comply with the jurisdictional standards of sections 3127.01 to 3127.53 of the Revised Code. 4570  
4571  
4572

**Sec. 2111.07.** Each person appointed guardian of the person 4573  
and estate of a minor shall have the custody ~~and tuition~~ of his 4574  
the ward, the obligation to provide for the education of the ward 4575  
as required under section 3321.01 of the Revised Code, and the 4576  
management of ~~such~~ the ward's estate during minority, unless ~~such~~ 4577  
the guardian is removed or discharged from ~~such~~ that trust or the 4578  
guardianship terminates from any of the causes specified in 4579  
Chapters 2101. to 2131., ~~inclusive,~~ of the Revised Code. 4580

**Sec. 2111.09.** Unless expressly appointed or designated to act 4581  
both as guardian and executor by a ~~last~~ will in writing, no person 4582  
who is or has been an administrator or executor of a ~~last~~ will 4583  
shall, prior to the approval of ~~his~~ the person's final account as 4584  
~~such~~ executor or administrator, be appointed a guardian of the 4585  
person and estate or of the estate only of a ward who is 4586  
interested in the estate administered upon or entitled to an 4587  
interest under ~~such~~ the will, except that a surviving spouse may 4588  
be executor or administrator of the deceased spouse's estate and 4589  
also guardian of the person and estate or of the estate only of a 4590  
minor child of ~~such~~ the surviving spouse, whether or not ~~such~~ the 4591  
minor child is interested in the estate of the deceased spouse. 4592  
~~But~~ However, an executor or an administrator may be appointed a 4593  
guardian of the person only of a ward. 4594

**Sec. 2111.091.** No attorney who represents any other person 4595  
~~other than himself~~ and who is appointed as a guardian under this 4596  
chapter or under any other provision of the Revised Code shall do 4597  
either of the following: 4598

(A) Act as a person with co-responsibility for any 4599  
guardianship asset for which the guardian ~~he represents~~ is 4600  
responsible; 4601

(B) Be a cosignatory on any financial account related to the 4602

guardianship, including any checking account, savings account, or 4603  
other banking or trust account. 4604

**Sec. 2111.12.** (A) A minor over the age of fourteen years may 4605  
select a guardian who shall be appointed if a suitable person. If 4606  
~~such~~ the minor fails to select a suitable person, an appointment 4607  
may be made without reference to the minor's wishes. The minor 4608  
shall not select one person to be the guardian of the minor's 4609  
estate only and another to be the guardian of the person only, 4610  
unless the court ~~which~~ that appoints the guardian is of the 4611  
opinion that the interests of ~~such~~ the minor will ~~thereby~~ be 4612  
promoted by that selection. 4613

(B) A surviving parent by ~~last~~ a will in writing may appoint 4614  
a guardian for any of the surviving parent's children, whether 4615  
born at the time of making the will or afterward, to continue 4616  
during the minority of the child or for a less time. 4617

When the father or mother of a minor names a person as 4618  
guardian of the estate of ~~such~~ the minor in a will, the person 4619  
named shall have preference in appointment over the person 4620  
selected by ~~such~~ the minor. A person named in ~~such~~ a that will as 4621  
guardian of the person of ~~such~~ the minor shall have no preference 4622  
in appointment over the person selected by ~~such~~ the minor, but in 4623  
~~such~~ that event the probate court may appoint the person named in 4624  
the will, the person selected by the minor, or some other person. 4625

Whenever a testamentary guardian is appointed, the 4626  
testamentary guardian's duties, powers, and liabilities in all 4627  
other respects shall be governed by the law regulating guardians 4628  
not appointed by will. 4629

(C) A parent pursuant to a durable power of attorney as 4630  
described in division (D) of section 1337.09 or a writing as 4631  
described in division (A) of section 2111.121 of the Revised Code 4632  
may nominate a person to be a guardian for one or more of the 4633

parent's minor children, whether born at the time of the making of 4634  
the ~~petition~~ nomination or afterward. 4635

**Sec. 2111.131.** (A) The probate court may enter an order that 4636  
authorizes a person under a duty to pay or deliver money or 4637  
personal property to a minor who does not have a guardian of the 4638  
person and estate or a guardian of the estate, to perform that 4639  
duty in amounts not exceeding five thousand dollars annually, by 4640  
paying or delivering the money or property to any of the 4641  
following: 4642

(1) The guardian of the person only of the minor; 4643

(2) The minor's natural guardians, if any, as determined 4644  
pursuant to section 2111.08 of the Revised Code; 4645

(3) The ~~minor's own self~~ minor; 4646

(4) Any person who has the care and custody of the minor and 4647  
with whom the minor resides, other than a guardian of the person 4648  
only or a natural guardian; 4649

(5) A financial institution incident to a deposit in a 4650  
federally insured savings account in the sole name of the minor; 4651

(6) A custodian designated by the court in its order, for the 4652  
minor under sections 5814.01 to 5814.09 of the Revised Code. 4653

(B) An order entered pursuant to division (A) of this section 4654  
authorizes the person or entity specified in it, to receive the 4655  
money or personal property on behalf of the minor from the person 4656  
under the duty to pay or deliver it, in amounts not exceeding five 4657  
thousand dollars annually. Money or personal property so received 4658  
by guardians of the person only, natural guardians, and custodians 4659  
as described in division (A)(4) of this section may be used by 4660  
them only for the support, maintenance, or education of the minor 4661  
involved. The order of the court is prima-facie evidence that a 4662  
guardian of the person only, a natural guardian, or a custodian as 4663



described in division (A)(4) of this section has the authority to 4664  
use the money or personal property received. 4665

(C) A person who pays or delivers moneys or personal property 4666  
in accordance with a court order entered pursuant to division (A) 4667  
of this section is not responsible for the proper application of 4668  
the moneys or property by the recipient. 4669

**Sec. 2111.14.** (A) In addition to ~~his~~ a guardian's other 4670  
duties, every guardian appointed to take care of the estate of a 4671  
ward shall have the following duties: 4672

~~(A)(1)~~ To make and file within three months after ~~his~~ the 4673  
guardian's appointment a full inventory of the real and personal 4674  
property of the ward, its value, and the value of the yearly rent 4675  
of the real property, provided that, if the guardian fails to file 4676  
the inventory for thirty days after ~~he has~~ having been notified of 4677  
the expiration of the time by the probate judge, the judge shall 4678  
remove ~~him~~ the guardian and appoint a successor; 4679

~~(B)(2)~~ To manage the estate for the best interest of the 4680  
ward; 4681

~~(C)(3)~~ To pay all just debts due from the ward out of the 4682  
estate in ~~his hands~~ the possession or under the control of the 4683  
guardian, collect all debts due to the ward, compound doubtful 4684  
debts, and appear for and defend, or cause to be defended, all 4685  
suits against the ward; 4686

~~(D)(4)~~ To obey all orders and judgments of the courts 4687  
touching the guardianship; 4688

~~(E)(5)~~ To bring suit for the ward when a suit is in the best 4689  
interests of the ward; 4690

~~(F)(6)~~ To settle and adjust, when necessary or desirable, the 4691  
assets that ~~he~~ the guardian may receive in kind from an executor 4692  
or administrator to the greatest advantage of the ward. Before a 4693

settlement and adjustment is valid and binding, it shall be 4694  
approved by the probate court and the approval shall be entered on 4695  
its journal. The guardian also shall have the approval of the 4696  
probate court to hold the assets as received from the executor or 4697  
administrator or to hold what may be received in the settlement 4698  
and adjustment of those assets. 4699

(B) No guardian appointed to take care of the estate of a 4700  
ward may open a safety deposit box held in the name of the ward, 4701  
until the contents of the box have been audited by an employee of 4702  
the county auditor in the presence of the guardian and until a 4703  
verified report of the audit has been filed by the auditor with 4704  
the probate court, ~~which.~~ The court then shall issue a release to 4705  
the guardian permitting the guardian to have access to the safety 4706  
deposit box of the ward. 4707

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

court employees or appointed examiner shall conduct an 4726  
investigation to verify the accuracy of the inventory filed by the 4727  
guardian. Upon order of the court, the assigned court employees or 4728  
appointed examiner may subpoena any documents necessary for ~~his~~ 4729  
the investigation. Upon completion of the investigation, the 4730  
assigned court employees or appointed examiner shall file a report 4731  
with the court. The court shall hold a hearing on the report with 4732  
notice to all interested parties. At the hearing, the guardian 4733  
shall have the right to examine and cross-examine any assigned 4734  
court employees or appointed examiner who conducted the 4735  
investigation and filed the report that is the subject of the 4736  
hearing. The court shall charge any costs associated with the 4737  
verification of an inventory filed by a guardian against the 4738  
estate of the ward, except that, if the court determines that the 4739  
guardian wrongfully withheld, or aided in the wrongful 4740  
withholding, of assets from the inventory filed by the guardian, 4741  
the court shall charge the costs against the guardian. 4742

**Sec. 2111.16.** Unless previously authorized by the court, no 4743  
voucher that is signed or purports to be signed by the ward shall 4744  
be received from or allowed as a credit in the settlement of a 4745  
guardian's account ~~which is signed or purports to be signed by his~~ 4746  
~~ward.~~ 4747

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

a party to a similar suit or proceeding ~~where~~ if the plaintiff 4757  
dies during its pendency. 4758

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

ward attains majority, or for the benefit of the minor, as the 4789  
court may direct. 4790

Upon the finding of the probate court that the minor was, at 4791  
the time of the injury, damage, loss, or claim, an emancipated 4792  
minor, and provided the notice required by this section has been 4793  
given to each living parent, whose name and address is known, then 4794  
the release executed by the emancipated minor shall be a full and 4795  
complete discharge and release of any claim ~~which~~ that either or 4796  
both of the parents might have by reason of the personal injury, 4797  
damage to tangible or intangible property, damage or loss on 4798  
account of personal injury, or damage to tangible or intangible 4799  
property, or any other claim of the minor. 4800

**Sec. 2111.19.** A guardian, whether appointed by a court in 4801  
this state or elsewhere, may complete the contracts of ~~his~~ the 4802  
ward for the purchase or sale of real ~~estate~~ property or any 4803  
authorized contract relating to real ~~estate~~ property entered into 4804  
by a guardian who has died or been removed. ~~Said~~ The appointed 4805  
guardian shall proceed in the manner provided by sections 2113.48 4806  
to 2113.50, ~~inclusive,~~ of the Revised Code. 4807

**Sec. 2111.20.** The guardian of the person and estate, or of 4808  
the estate only, may sell all or any part of the personal ~~estate~~ 4809  
property of the ward ~~when such~~ if the sale is for the interest of 4810  
the ward. 4811

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

~~such the~~ terms ~~as such~~ that the guardian ~~deems~~ considers for the 4819  
interest of ~~such the~~ ward and upon ~~such the~~ terms ~~as that~~ the 4820  
probate court of the county in which the guardian was appointed 4821  
approves, or if ~~such the~~ guardian was appointed to a foreign 4822  
state, upon ~~such the~~ terms ~~as that~~ the probate court of the county 4823  
~~wherein in which~~ the ~~land~~ real property is situated approves. 4824  
After ~~such the~~ approval, the guardian may execute and deliver all 4825  
the necessary deeds, mortgages, releases, and agreements for the 4826  
sale, compromise, assignment, or mortgage of ~~such the~~ dower or 4827  
contingent right to dower. As a basis for computing the value of 4828  
an inchoate dower right in any sale, compromise, or adjustment 4829  
pursuant to this section, the value of the ~~lands or tenements~~ real 4830  
property may be considered to be the sale price or, if there is no 4831  
sale, the appraised value. ~~Such The~~ sale, compromise, adjustment, 4832  
or mortgage may be made upon application and entry in the pending 4833  
proceedings. 4834

**Sec. 2111.22.** When a ward has title to real estate property 4835  
by tax title only, the guardian, by deed of release and quitclaim, 4836  
may convey ~~such the~~ ward's interest or title to the person 4837  
entitled to redeem ~~such the~~ real estate property, upon receiving 4838  
from ~~such that~~ person the amount paid for ~~such the~~ tax title with 4839  
the forfeiture and interest allowed by sections 319.52 and 323.121 4840  
of the Revised Code. If the guardian tenders ~~such that~~ deed to the 4841  
person entitled to redeem ~~such the~~ real estate property and ~~he the~~ 4842  
person so entitled refuses to accept and pay for it, ~~he the person~~ 4843  
entitled shall not recover costs in any proceeding thereafter 4844  
instituted to redeem ~~such the~~ real estate property. 4845

**Sec. 2111.25.** A guardian<sup>7</sup> of the person and estate or of the 4846  
estate only, without application to the probate court, may lease 4847  
the possession or use of any real estate property of ~~his the~~ ward 4848  
for a term not exceeding three years, provided ~~such the~~ term does 4849

not extend beyond the minority, if the ward is a minor. If the  
lease extends beyond the death of the ward or beyond the removal  
of the disability of a ward other than a minor, ~~such the~~ lease  
shall terminate on ~~such that~~ death or removal of disability,  
unless confirmed by the ward or ~~his the ward's~~ legal  
representatives. In the event of such determination, the tenant  
shall have a lien on the premises for any sum expended by ~~him the~~  
tenant in pursuance of the lease in making improvements for which  
compensation was not made in rent or otherwise.

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

~~Such The~~ lease, or modification or change in a lease  
previously made, may be made when the guardian of the person and  
estate or of the estate only applies to the court by which ~~he the~~  
guardian was appointed and ~~such the~~ court finds that the lease or  
modification or change is necessary for the support of the ward or  
of ~~his the ward's~~ family, for the payment of the just debts of the  
ward, for the ward's education, if a minor, to secure the  
improvement of the real ~~estate~~ property of the ward and increase  
the rent, to pay any liens or claims against ~~said the~~ real estate  
property, ~~or~~ if ~~such the~~ court finds that ~~such the~~ real estate  
property is suffering unavoidable waste, or that in any other  
respect it will be for the best interests of the ward or those

persons for whom the ward is required by law to provide. 4882

**Sec. 2111.27.** A guardian's application for authority to lease 4883  
real estate property of a ward shall be by petition setting forth 4884  
the following: 4885

(A) The legal capacity of the petitioner; 4886

(B) The name of the ward, the character of ~~his~~ the ward's 4887  
disability, and if it is ~~idiocy, imbecility, or lunacy~~ 4888  
incompetence, whether ~~such~~ the disability is curable or not, 4889  
temporary, or confirmed, and its duration; 4890

(C) The number, names, ages, and residence of the family of 4891  
the ward, including the spouse and those residents of the county 4892  
who have the next estate of inheritance from ~~such~~ the ward, all of 4893  
whom, as well as the ward, ~~must~~ shall be made defendants; 4894

(D) The indebtedness of the ward, the expense of supporting 4895  
and maintaining ~~him~~ the ward, the expense of educating ~~him~~ the 4896  
ward if ~~he~~ the ward is a minor, and any other expense of the ward; 4897

(E) The value of all the property and effects of the ward 4898  
including the real estate property proposed to be leased; 4899

(F) The income of the ward and the net annual value to the 4900  
ward of the real estate property proposed to be leased; 4901

(G) A description of the real estate property proposed to be 4902  
leased and the probable amount for which ~~such~~ the real estate 4903  
property can be leased; 4904

(H) A detailed statement of the improvements proposed to be 4905  
made to the real estate property sought to be leased; 4906

(I) The reasons for the proposed lease and the terms, 4907  
covenants, conditions, and stipulations ~~thereof~~ of the proposed 4908  
lease, including the time for which it is proposed the real estate 4909  
property should be leased; 4910



(J) ~~Such~~ Any other facts necessary to apprise the court fully 4911  
of the necessity or benefit to the ward or the estate of the 4912  
proposed lease, or ~~such any~~ other facts ~~as that~~ may be required by 4913  
the court; 4914

(K) A prayer for the proper authority. 4915

**Sec. 2111.28.** In an application for authority to lease real 4916  
~~estate~~ property of a ward under sections 2111.26 and 2111.27 of 4917  
the Revised Code, the guardian may act for two or more wards and 4918  
two or more guardians of different wards may unite, ~~when if~~ all 4919  
the wards are jointly or in common interested in the real ~~estate~~ 4920  
property. ~~When If~~ the same person is guardian of two or more wards 4921  
owning lands in common, ~~such the~~ wards may be joined as defendants 4922  
in the same petition under section 2111.27 of the Revised Code. 4923

The ward's spouse shall be made a defendant to ~~such the~~ 4924  
petition, and if the proposed lease is for the purpose of mining 4925  
or removing mineral or other substances, ~~and if such the~~ spouse 4926  
files an answer consenting to the lease, free and discharged of 4927  
all right and expectancy of dower ~~therein~~, ~~such the~~ answer shall 4928  
be a full release of ~~such the~~ spouse's expectancy of dower when 4929  
the lease is confirmed. Unless in ~~such the~~ answer an allowance in 4930  
lieu of dower is waived, the court shall allow, out of the 4931  
proceeds of the lease, ~~such a~~ sum in money ~~as that~~ is the just and 4932  
reasonable value of ~~such the~~ expectancy of dower. 4933

**Sec. 2111.29.** When a guardian files an application for 4934  
authority to lease the real ~~estate~~ property of a ward, the same 4935  
rules shall apply as to the parties and, upon the filing of the 4936  
petition described in section 2111.27 of the Revised Code, like 4937  
similar proceedings shall be had as in an action to sell real 4938  
~~estate~~ property belonging to the ward under sections 2127.01 to 4939  
2127.43, ~~inclusive~~, of the Revised Code, including services of 4940

summons, notice, appraisal, pleading, rule days, and proof. 4941

**Sec. 2111.30.** When a guardian applies for authority to lease 4942  
the real ~~estate~~ property of a ward, the duties of the appraisers 4943  
shall be the same as in proceedings to sell real ~~estate~~ property 4944  
belonging to the ward under sections 2127.22 and 2127.23 of the 4945  
Revised Code, except that they shall appraise not only the value 4946  
of the real ~~estate~~ property but also the value of the annual 4947  
rental upon the terms, covenants, conditions, and stipulations of 4948  
the proposed lease. If ~~said~~ the proposed lease is for the mining 4949  
or removal of mineral or other substances, the appraisers shall 4950  
report in writing to the probate court their opinion as to the 4951  
probability of the lands containing ~~such~~ those substances, the 4952  
probable quantity of ~~such~~ the substances, and the terms upon which 4953  
it would be advantageous to the ward to lease the lands for mining 4954  
or removing ~~such~~ the substances. In their report the appraisers 4955  
shall state whether in their opinion, the proposed lease will be 4956  
for the best interests of the ward, those whom ~~he~~ the ward is 4957  
required by law to support, or the estate. They may also suggest 4958  
any change in the terms, covenants, and stipulations proposed in 4959  
the petition. The report of the appraisers shall be returned on or 4960  
before the day named in the order for the final hearing of the 4961  
case. On the return of the appraisal, the guardian need not 4962  
give an additional bond, but in case of sale under the terms of 4963  
the lease, ~~such~~ the guardian ~~must~~ shall give ~~such~~ the additional 4964  
bond before the confirmation of the sale. 4965

**Sec. 2111.31.** If the report of the appraisers under section 4966  
2111.30 of the Revised Code is favorable to the lease and on the 4967  
final hearing the court is of the opinion that it will be to the 4968  
advantage of the ward, those whom ~~he~~ the ward is required by law 4969  
to support, or the estate to lease the real ~~estate~~ property, the 4970  
probate court shall make an order authorizing the lease to be made 4971

by public or private letting, as it ~~deems~~ considers best, on ~~such~~ 4972  
the terms, covenants, conditions, and stipulations, either in 4973  
accordance with those set forth in the petition or otherwise, ~~as~~ 4974  
that it directs, provided ~~such~~ the terms, covenants, conditions, 4975  
and stipulations are not less favorable to the ward than those 4976  
reported by the appraisers. The lease shall not take effect until 4977  
~~such~~ the lease and the security, if any, ~~therein~~ prescribed in the 4978  
lease are approved and confirmed. 4979

~~In the~~ The lease made ~~in pursuance of such~~ pursuant to the 4980  
court order ~~it may be provided~~ provide that the improvements shall 4981  
be made by the tenant as part of the rent, or by the guardian, 4982  
either out of the rent or other means of the ward as the court 4983  
directs. 4984

If the lease is for the mining or removal of mineral or other 4985  
substances and the guardian is unable to lease the lands upon the 4986  
terms ordered, ~~he~~ the guardian may report the fact to the court 4987  
and ~~such~~ the court may change the terms of leasing, but not below 4988  
the customary royalty in the vicinity of ~~such~~ the lands. 4989

**Sec. 2111.33.** (A) A guardian may use the moneys and personal 4990  
estate property of ~~his~~ the guardian's ward to improve ~~his~~ the 4991  
ward's real estate property. ~~Such~~ The guardian shall file in the 4992  
probate court in which ~~he~~ the guardian was appointed a petition 4993  
containing the following: 4994

~~(A)~~(1) A description of the premises to be improved; 4995

~~(B)~~(2) The amount of rent the premises yield at the time the 4996  
petition is filed; 4997

~~(C)~~(3) In what manner ~~it~~ the improvement is proposed to ~~make~~ 4998  
~~such improvement~~ be made; 4999

~~(D)~~(4) The proposed expenditures for ~~such~~ the improvement; 5000

~~(E)~~ What (5) The rent the premises will probably yield when 5001

so improved; 5002

~~(F)~~(6) A statement of the value of the ward's personal estate 5003  
property; 5004

~~(G)~~(7) Other facts ~~which~~ that are pertinent to the question 5005  
whether the improvement should be made; 5006

~~(H)~~(8) A prayer that ~~such~~ the guardian be authorized to use 5007  
so much of ~~his~~ the ward's money and personal estate ~~as~~ property 5008  
that is necessary to make ~~such~~ the improvement; 5009

~~(I)~~(9) The character of the disability of the ward, and if it 5010  
is incompetency, whether ~~such~~ the disability is curable or not, 5011  
temporary, or confirmed, and its duration; 5012

~~(J)~~(10) The names, ages, and residence of the family of the 5013  
ward, including the spouse and those known to be residents of the 5014  
county who have the next estate of inheritance from the ward. All 5015  
~~such~~ of those persons, as well as the ward, ~~must~~ shall be made 5016  
defendants and notified of the pendency and prayer of the petition 5017  
in ~~such~~ the manner ~~as~~ that the court directs. 5018

(B) If the property is so situated that, to the best 5019  
interests of the ward's estate, it can be advantageously improved 5020  
in connection with the improvement of property adjacent to it, the 5021  
petition shall show this and have a prayer ~~in accordance therewith~~ 5022  
to so improve the property. 5023

**Sec. 2111.34.** Upon the filing of the petition described in 5024  
section 2111.33 of the Revised Code, ~~like~~ similar proceedings 5025  
shall be had as to pleadings and proof as on petition by a 5026  
guardian to sell the real estate property of a ward under sections 5027  
2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code. The probate 5028  
court shall appoint three disinterested freeholders of the county 5029  
as commissioners to examine the premises to be improved, to 5030  
examine the surroundings, and to report to the court their opinion 5031

whether the improvement proposed will be advantageous to the 5032  
estate of the ward. 5033

**Sec. 2111.35.** On the final hearing of a guardian's proceeding 5034  
to improve the real ~~estate~~ property of ~~his~~ the guardian's ward, if 5035  
the prayer of the petition is granted, the probate court shall fix 5036  
the amount of money and personal ~~estate~~ property that may be used 5037  
in making ~~such~~ the improvement. ~~Such~~ The court may authorize ~~such~~ 5038  
the guardian to unite with the owners of adjacent property, upon 5039  
~~such~~ equitable terms and conditions ~~as~~ that the court approves, 5040  
for the improvement of the premises of ~~his~~ the ward and for the 5041  
proper management and repair of the property when so improved. 5042  
5043

**Sec. 2111.36.** A guardian shall distinctly report to the 5044  
probate court the amount of money and personal property expended 5045  
in making an improvement to the ward's real property under section 5046  
2111.35 of the Revised Code, within forty days after the 5047  
improvement is completed. If the ward dies before the removal of 5048  
the disability and there are heirs who inherit real property only 5049  
from ~~him~~ the ward, the money expended shall descend and pass in 5050  
the same manner as ~~his~~ the ward's other personal property and 5051  
shall be a charge on the premises improved in favor of the heirs 5052  
who inherit the personal property. 5053

**Sec. 2111.37.** ~~When~~ If a nonresident minor, incompetent, or 5054  
person confined in a state, charitable, or correctional 5055  
institution has real ~~estate, chattels,~~ property or rights, 5056  
credits, ~~or~~ moneys, or other personal property in this state, the 5057  
probate court of the county in which the property or a part of it 5058  
is situated may appoint a resident guardian of the ward to manage, 5059  
collect, lease, and take care of the ward's property. The 5060  
appointment may be made whether or not a ward has a guardian, 5061

trustee, or other conservator in the state of the ward's 5062  
residence, and, if the ward has a guardian, trustee, or other 5063  
conservator in the state of the ward's residence, the control and 5064  
authority of the resident guardian appointed in ~~Ohio~~ this state 5065  
shall be superior as to all property of the ward in ~~Ohio~~ this 5066  
state. 5067

The first appointment of a resident guardian of a nonresident 5068  
ward shall extend to all the property and effects of the ward in 5069  
this state and exclude the jurisdiction of the probate court of 5070  
any other county. 5071

**Sec. 2111.38.** The resident guardian of a nonresident ward 5072  
shall give bond and be bound and controlled by all the statutes of 5073  
~~Ohio~~ this state as though ~~he~~ the resident guardian were a guardian 5074  
of a ward resident in this state, and shall have all of the 5075  
authority of a guardian of a resident ward including the authority 5076  
to lease or sell real ~~estate~~ property belonging to the ward. 5077

Unless removed by the probate court, a resident guardian of a 5078  
nonresident minor shall hold ~~his~~ that appointment until ~~such~~ the 5079  
minor dies or arrives at the age of majority, whether or not ~~such~~ 5080  
the minor is over fourteen years of age at the time of 5081  
appointment. A resident guardian of any other nonresident ward 5082  
shall hold ~~his~~ that appointment until the death of the ward or 5083  
until the court is satisfied that the necessity for the 5084  
guardianship no longer exists. 5085

All moneys due to ~~such~~ the nonresident ward while ~~such~~ the 5086  
resident guardianship continues shall be paid over to ~~his~~ the 5087  
ward's foreign guardian so far as necessary or proper for the 5088  
ward's support and maintenance. If the ward dies, ~~such~~ the moneys 5089  
shall be paid to ~~his~~ the ward's ancillary administrator or other 5090  
legal representative, provided that the court ~~which~~ that appointed 5091  
~~such~~ the resident guardian has satisfactory proof, as provided by 5092

section 2111.39 of the Revised Code, of the authority of ~~such the~~ 5093  
foreign guardian, administrator, or other legal representative to 5094  
receive the moneys or ~~estates~~ properties of ~~such the~~ nonresident 5095  
ward, that the security given by ~~such the~~ foreign guardian, 5096  
administrator, or other legal representative is sufficient to 5097  
protect ~~such the~~ ward's interest or estate, and ~~provided such that~~ 5098  
the court deems considers it best for ~~him the ward~~ or ~~his the~~ 5099  
ward's estate. 5100

**Sec. 2111.39.** When a foreign legal representative of a 5101  
nonresident ward applies to have all or any of the moneys or 5102  
property in the ~~hands~~ possession or under the control of the 5103  
resident guardian of ~~such the~~ ward paid or delivered to ~~him the~~ 5104  
foreign representative, he must the foreign representative shall 5105  
file ~~his a~~ petition or motion in the probate court by which ~~such~~ 5106  
the resident guardian was appointed. ~~Such The~~ resident guardian 5107  
~~must shall~~ be given thirty days' notice of the time of hearing 5108  
~~thereon on the petition or motion,~~ and ~~such the~~ foreign 5109  
representative ~~must shall~~ produce an exemplification under the 5110  
seal of the office, if there ~~be is~~ a seal, of the proper court of 5111  
the state of ~~his the foreign representative's~~ residence containing 5112  
all the entries on record in relation to ~~his the foreign~~ 5113  
representative's appointment and qualification, authenticated as 5114  
required by the act of congress in ~~such those~~ cases. Upon the 5115  
hearing ~~thereof,~~ the court shall make ~~such an~~ order ~~as that~~ it 5116  
~~deems considers~~ for the best interests of ~~such the~~ nonresident 5117  
ward or ~~his the nonresident ward's~~ estate. 5118

**Sec. 2111.40.** ~~When~~ If a nonresident ward for whom a resident 5119  
guardian was appointed has become a resident since the appointment 5120  
and a guardian has been appointed for ~~such the~~ ward, the probate 5121  
court shall remove the resident guardian previously appointed and 5122  
require an immediate settlement of ~~his the~~ account of the resident 5123

guardian previously appointed. 5124

~~Sec. 2111.41. When~~ If a ward for whom a guardian has been 5125  
appointed in this state removes to another state or territory, and 5126  
a guardian of the ward is there appointed, the guardian in this 5127  
state may be removed and required to settle ~~his~~ that guardian's 5128  
account. 5129

~~Such a~~ That removal of the guardian in this state shall not 5130  
be made unless the guardian appointed in another state or 5131  
territory applies to the probate court in this state that made the 5132  
former appointment, and files an exemplification from the record 5133  
of the court making the foreign appointment containing all the 5134  
entries and proceedings relating to ~~his~~ the foreign guardian's 5135  
appointment, ~~his~~ and giving bond, with a copy ~~thereof,~~ of the bond 5136  
and of the letters of guardianship, all authenticated as required 5137  
by the act of congress. Before ~~such an~~ the application is heard or 5138  
action taken by the court, at least thirty days' written notice 5139  
shall be served on the guardian appointed in this state specifying 5140  
the object of the application, and the time it is to be heard. 5141

No ~~such~~ removal of a guardian under this section shall be 5142  
made in favor of a foreign guardian, unless at the time of the 5143  
hearing the state or territory in which ~~he~~ the foreign guardian 5144  
was appointed has a similar provision as to wards removing from 5145  
that state or territory. The court shall grant the application 5146  
unless it makes an affirmative finding that the removal of the 5147  
guardian appointed in this state would not be in the interest of 5148  
the ward. 5149

If on ~~such a~~ the hearing the court removes the guardian, it 5150  
shall make all suitable orders for discharging the guardian and 5151  
shall deliver to the foreign guardian all moneys and other 5152  
property in the ~~hands~~ possession or under the control of the 5153  
resident guardian after ~~his~~ the resident guardian's settlement. 5154



Sec. 2111.44. Applications for the sale of real estate 5155  
property by guardians of wards who live out of this state shall be 5156  
made in the county in which the land is situated. If ~~such~~ the real 5157  
estate property is situated in two or more counties, ~~such~~ the 5158  
application shall be made in one of the counties in which a part 5159  
of it is situated. Additional security, ~~which~~ that may be approved 5160  
by the probate court of the county in which the application is 5161  
made, shall be required from ~~such~~ the guardian ~~when deemed if~~ 5162  
considered necessary. 5163

Sec. 2111.46. When a guardian has been appointed for a minor 5164  
before ~~such~~ the minor is over fourteen years of age, ~~such~~ the 5165  
guardian's power shall continue until the ward arrives at the age 5166  
of majority, unless removed for good cause or unless ~~such~~ the ward 5167  
selects another suitable guardian. After ~~such~~ the selection is 5168  
made and approved by the probate court and the person selected is 5169  
appointed and qualified, the powers of the former guardian shall 5170  
cease. ~~Thereupon his~~ The former guardian's final account as 5171  
guardian shall then be filed and settled in court. 5172

Upon the termination of a guardianship of the person, estate, 5173  
or both of a minor before ~~such~~ the minor reaches eighteen years of 5174  
age, if a successor guardian is not appointed and if the court 5175  
finds that ~~such~~ the minor is without proper care, the court shall 5176  
certify a copy of its finding together with as much of the record 5177  
and ~~such~~ any further information as that the court ~~deems~~ considers 5178  
necessary, or as the juvenile court may request, to the juvenile 5179  
court for further proceedings ~~and thereupon such~~. Upon that 5180  
certification, the juvenile court shall have exclusive 5181  
jurisdiction respecting ~~such child~~ the minor. 5182

Sec. 2111.48. All sales, leases, encumbrances, or liens made 5183  
or created on any real estate property located in ~~Ohio~~ this state 5184

by guardians for persons who are incompetent by reason of advanced 5185  
age or mental or physical disability since August 17, 1919, by 5186  
order of any court of this state shall not be declared invalid for 5187  
the reason that ~~such~~ the guardians for the incompetents were not 5188  
vested with all the statutory powers given to guardians of ~~idiots,~~ 5189  
~~imbeciles, and lunatics~~ incompetents. ~~Such~~ Those acts of guardians 5190  
for incompetents are legal and effective. 5191

**Sec. 2111.50.** (A)(1) At all times, the probate court is the 5192  
superior guardian of wards who are subject to its jurisdiction, 5193  
and all guardians who are subject to the jurisdiction of the court 5194  
shall obey all orders of the court that concern their wards or 5195  
guardianships. 5196

(2)(a) Subject to divisions (A)(2)(b) and (c) of this 5197  
section, the control of a guardian over the person, the estate, or 5198  
both of ~~his~~ the guardian's ward is limited to the authority that 5199  
is granted to the guardian by the Revised Code, relevant decisions 5200  
of the courts of this state, and orders or rules of the probate 5201  
court. 5202

(b) Except for the powers specified in division (E) of this 5203  
section and unless otherwise provided in or inconsistent with 5204  
another section of the Revised Code, the probate court may confer 5205  
upon a guardian any power that this section grants to the probate 5206  
court in connection with wards. 5207

(c) For good cause shown, the probate court may limit or 5208  
deny, by order or rule, any power that is granted to a guardian by 5209  
a section of the Revised Code or relevant decisions of the courts 5210  
of this state. 5211

(B) In connection with any person whom the probate court has 5212  
found to be an incompetent or a minor subject to guardianship and 5213  
for whom the court has appointed a guardian, the court has, 5214  
subject to divisions (C) to (E) of this section, all the powers 5215

that relate to the person and estate of the ~~person~~ ward and that 5216  
he the ward could exercise if present and not a minor or under a 5217  
disability, except the power to make or revoke a will. These 5218  
powers include, but are not limited to, the power to do any of the 5219  
following: 5220

(1) Convey or release the present, contingent, or expectant 5221  
interests in real or personal property of the ~~person~~ ward, 5222  
including, but not limited to, dower and any right of survivorship 5223  
incident to a survivorship tenancy, joint tenancy, or tenancy by 5224  
the entirety; 5225

(2) Exercise or release powers as a trustee, personal 5226  
representative, custodian for a minor, guardian, or donee of a 5227  
power of appointment; 5228

(3) Enter into contracts, or create revocable trusts of 5229  
property of the estate of the ~~person~~ ward, that may not extend 5230  
beyond the minority, disability, or life of the ~~person~~ or ward; 5231

(4) Exercise options to purchase securities or other 5232  
property; 5233

(5) Exercise rights to elect options under annuities and 5234  
insurance policies, and to surrender an annuity or insurance 5235  
policy for its cash value; 5236

(6) Exercise the right to an elective share in the estate of 5237  
the deceased spouse of the ~~person~~ ward pursuant to section ~~2107.45~~ 5238  
2106.08 of the Revised Code; 5239

(7) Make gifts, in trust or otherwise, to relatives of the 5240  
~~person~~ ward and, consistent with any prior pattern of the ~~person~~ 5241  
ward of giving to charities or of providing support for friends, 5242  
to charities and friends of the ~~person~~ ward. 5243

(C) Except for the powers specified in division (D) of this 5244  
section, all powers of the probate court that are specified in 5245

this chapter and that relate either to any person whom it has 5246  
found to be an incompetent or a minor subject to guardianship and 5247  
for whom it has appointed a guardian and all powers of a guardian 5248  
that relate to ~~his~~ the guardian's ward or guardianship as 5249  
described in division (A)(2) of this section, shall be exercised 5250  
in the best interest, as determined in the court's or guardian's 5251  
judgment, of the following: 5252

(1) The ~~person~~ ward whom the probate court has found to be an 5253  
incompetent or a minor subject to guardianship; 5254

(2) The dependents of the ~~person~~ ward; 5255

(3) The members of the household of the ~~person~~ ward. 5256

(D) If the court is to exercise or direct the exercise, 5257  
pursuant to division (B) of this section, of the power to make 5258  
gifts in trust or otherwise, the following conditions shall apply: 5259

(1) The exercise of the particular power shall not impair the 5260  
financial ability of the estate of the ~~person~~ ward whom the 5261  
probate court has found to be an incompetent or a minor subject to 5262  
guardianship and for whom the court has appointed a guardian, to 5263  
provide for ~~his~~ the ward's foreseeable needs for maintenance and 5264  
care; 5265

(2) If applicable, the court shall consider any of the 5266  
following: 5267

(a) The estate, income, and other tax advantages of the 5268  
exercise of a particular power to the estate of a ~~person~~ ward whom 5269  
the probate court has found to be an incompetent or a minor 5270  
subject to guardianship and for whom the court has appointed a 5271  
guardian; 5272

(b) Any pattern of giving of, or any pattern of support 5273  
provided by, the ~~person~~ ward prior to ~~his~~ the ward's incompetence; 5274

(c) The disposition of property made by the ward's will ~~of~~ 5275

<del>the person;</del>	5276
(d) If there is no knowledge of a will of the <del>person</del> <u>ward</u> ,	5277
<del>his</del> <u>the ward's</u> prospective heirs;	5278
(e) Any relevant and trustworthy statements of the <del>person</del>	5279
<u>ward</u> , whether established by hearsay or other evidence.	5280
(E)(1) The probate court shall cause notice as described in	5281
division (E)(2) of this section to be given and a hearing to be	5282
conducted prior to its exercise or direction of the exercise of	5283
any of the following powers pursuant to division (B) of this	5284
section:	5285
(a) The exercise or release of powers as a donee of a power	5286
of appointment;	5287
(b) Unless the amount of the gift is no more than one	5288
thousand dollars, the making of a gift, in trust or otherwise.	5289
(2) The notice required by division (E)(1) of this section	5290
shall be given to the following persons:	5291
(a) Unless a guardian of a ward has applied for the exercise	5292
of a power specified in division (E)(1) of this section, to the	5293
guardian;	5294
(b) To the <del>person</del> <u>ward</u> whom the probate court has found to be	5295
an incompetent or a minor subject to guardianship;	5296
(c) If known, to a guardian who applied for the exercise of a	5297
power specified in division (E)(1) of this section, to the	5298
prospective heirs of the <del>person</del> <u>ward</u> whom the probate court has	5299
found to be an incompetent or a minor subject to guardianship	5300
under section 2105.06 of the Revised Code, and any person who has	5301
a legal interest in property that may be divested or limited as	5302
the result of the exercise of a power specified in division (E)(1)	5303
of this section;	5304
(d) To any other persons the court orders.	5305

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

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

Revised Code or by the operation of that section and division 5336  
(B)(1) or (2) of section 2106.13 of the Revised Code. 5337

(B) Upon the application of any interested party, after 5338  
notice of the filing of the application has been given to the 5339  
surviving spouse and heirs at law in the manner and for the length 5340  
of time the probate court directs, and after notice to all 5341  
interested parties by publication in a newspaper of general 5342  
circulation in the county, unless the notices are waived or found 5343  
unnecessary, the court, when satisfied that division (A)(1) or (2) 5344  
of this section is satisfied, may enter an order relieving the 5345  
estate from administration and directing delivery of personal 5346  
property and transfer of real ~~estate~~ property to the persons 5347  
entitled to the personal property or real ~~estate~~ property. 5348

(C) For the purposes of this section, the value of an estate 5349  
that reasonably can be considered to be in an amount specified in 5350  
division (A)(1) or (2) of this section and that is not composed 5351  
entirely of money, stocks, bonds, or other property the value of 5352  
which is readily ascertainable, shall be determined by an 5353  
appraiser selected by the applicant, subject to the approval of 5354  
the court. The appraiser's valuation of the property shall be 5355  
reported to the court in the application to relieve the estate 5356  
from administration. The appraiser shall be paid in accordance 5357  
with section 2115.06 of the Revised Code. 5358

(D) For the purposes of this section, the amount of property 5359  
to be delivered or transferred to the surviving spouse, minor 5360  
children, or both, of the decedent as the allowance for support 5361  
shall be established in accordance with section 2106.13 of the 5362  
Revised Code. 5363

~~When a delivery, sale, or transfer of personal property has~~ 5364  
~~been ordered from an estate that has been relieved from~~ 5365  
~~administration, the~~ (E) The court may appoint a commissioner to 5366  
execute all necessary instruments of conveyance, including the 5367

instruments of conveyance and other documents required for the 5368  
transfer of title upon the sale of real property pursuant to 5369  
section 2127.011 of the Revised Code. The commissioner shall 5370  
receipt for the property, distribute the proceeds of the 5371  
conveyance upon court order, and report to the court after 5372  
~~distribution~~ the delivery, sale, or transfer of personal or real 5373  
property from an estate that has been relieved from 5374  
administration. 5375

~~When~~ (F) If the decedent died testate, the will shall be 5376  
presented for probate, and, if admitted to probate, the court may 5377  
relieve the estate from administration and order distribution of 5378  
the estate under the will. 5379

(G) An order of the court relieving an estate from 5380  
administration shall have the same effect as administration 5381  
proceedings in freeing ~~land~~ real property in the ~~hands~~ possession 5382  
or under the control of an innocent purchaser for value from 5383  
possible claims of unsecured creditors. 5384

~~(C)~~(H) Any delivery of personal property or transfer of real 5385  
~~estate~~ property pursuant to an order relieving an estate from 5386  
administration is made subject to the limitations pertaining to 5387  
the claims of creditors set forth in divisions (B) and (C) of 5388  
section 2117.06 of the Revised Code. 5389

~~(D)~~(I) The release of an estate from administration under 5390  
this section does not affect any duty of any person to file an 5391  
estate tax return and certificate under division (A) of section 5392  
5731.21 of the Revised Code and does not affect the duties of a 5393  
probate court set forth in that division. 5394

~~(E)~~(J) This section does not affect the ability of qualified 5395  
persons to file an application for a summary release from 5396  
administration under section 2113.031 of the Revised Code or to 5397  
file an application for the grant of letters testamentary or 5398



letters of administration. 5399

**Sec. 2113.04.** (A) Any employer, including the state or a 5400  
political subdivision, at any time after the death of ~~his or its~~ 5401  
an employee, may pay all wages or personal earnings due to the 5402  
deceased employee to: ~~(A) the surviving spouse; (B) any one or~~ 5403  
~~more of the children eighteen years of age or older; or (C) the~~ 5404  
~~father or mother of the deceased employee~~ the following, 5405  
preference being given in the order named, without requiring 5406  
letters testamentary or letters of administration to be issued 5407  
upon the estate of the deceased employee, and without requiring an 5408  
Ohio estate tax release ~~where~~ if the wages or personal earnings do 5409  
not exceed ~~two~~ five thousand ~~five hundred~~ dollars. ~~The:~~ 5410

(1) The surviving spouse; 5411

(2) Any one or more of the children eighteen years of age or 5412  
older; 5413

(3) The father or mother of the deceased employee. 5414

(B) The payment of wages or personal earnings under division 5415  
(A) of this section is a full discharge and release to the 5416  
employer from any claim for the wages or personal earnings. If 5417  
letters testamentary or letters of administration are thereafter 5418  
issued upon the estate of the deceased employee, any person 5419  
receiving payment of wages or personal earnings under ~~this section~~ 5420  
that division is liable to the executor or administrator for the 5421  
sum received by ~~him~~ the person. 5422

**Sec. 2113.05.** When a will is approved and allowed, the 5423  
probate court shall issue letters testamentary to the executor 5424  
named in the will or to the executor nominated by holders of a 5425  
power as described in section 2107.65 of the Revised Code, or to 5426  
the executor named in the will and to a coexecutor nominated by 5427  
holders of ~~such a~~ that power, if ~~he~~ the executor or coexecutor is 5428

suitable, competent, accepts the appointment, and gives bond if 5429  
that is required. 5430

If no executor is named in a will and no power as described 5431  
in section 2107.65 of the Revised Code is conferred in the will, 5432  
or if the executor named in a will or nominated pursuant to ~~such a~~ 5433  
that power dies, fails to accept the appointment, resigns, or is 5434  
otherwise disqualified and the holders of ~~such a~~ the power do not 5435  
have authority to nominate another executor or ~~no such~~ the power 5436  
is not conferred in the will, or if ~~such a~~ the power is conferred 5437  
in a will but the power cannot be exercised because of the death 5438  
of a holder of the power, letters of administration with the will 5439  
annexed shall be granted to a suitable person or persons, named as 5440  
devisees or legatees in the will, who would have been entitled to 5441  
administer the estate if the decedent had died intestate, unless 5442  
the will indicates an intention that the person or persons shall 5443  
not be granted letters of administration. Otherwise, the court 5444  
shall grant letters of administration with the will annexed to 5445  
some other suitable person. 5446

**Sec. 2113.06.** (A) Administration of the estate of an 5447  
intestate shall be granted to persons mentioned in this ~~section~~ 5448  
division, in the following order: 5449

~~(A)~~(1) To the surviving spouse of the deceased, if resident 5450  
of the state; 5451

~~(B)~~(2) To one of the next of kin of the deceased, resident of 5452  
the state. 5453

(B) If the persons entitled to administer the estate under 5454  
division (A) of this section fail to take or renounce 5455  
administration voluntarily, ~~they shall be cited by the probate~~ 5456  
~~court for that purpose~~ the matter shall be set for hearing and 5457  
notice given to the persons. 5458

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

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

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

The application may be accompanied by a waiver signed by the persons who have priority to administer the estate, and, in the absence of a waiver, those persons shall be ~~cited by the probate court~~ served notice for the purpose of ascertaining whether they desire to take or renounce administration. Minors who would have been entitled to priority to administer the estate except for their minority also shall be served notice pursuant to the Rules of Civil Procedure.

Letters of administration shall not be issued upon the estate of an intestate until the person to be appointed has made and

filed a statement indicating that ~~there is not to his~~ the person 5490  
has no knowledge of a ~~last~~ will ~~and testament~~ of the intestate. 5491

**Sec. 2113.12.** If a person named as executor in the will of a 5492  
decedent, or nominated as an executor by holders of a power as 5493  
described in section 2107.65 of the Revised Code, refuses to 5494  
accept the trust, or, if after being ~~cited~~ served notice for that 5495  
purpose, neglects to appear and accept, or if ~~he~~ the person named 5496  
or nominated as executor neglects for twenty days after the 5497  
probate of the will to give any required bond, the probate court 5498  
shall grant letters testamentary to the other executor, if there 5499  
is one capable and willing to accept the trust, and if there is no 5500  
~~such~~ other executor named in the will or nominated by holders of a 5501  
power as described in section 2107.65 of the Revised Code, the 5502  
court shall commit administration of the estate, with the will 5503  
annexed, to some suitable and competent person, pursuant to 5504  
section 2113.05 of the Revised Code. 5505

**Sec. 2113.13.** When a person ~~appointed~~ nominated as executor 5506  
is under the age of eighteen years at the time of ~~proving~~ 5507  
admitting the will to probate, administration may be granted with 5508  
the will annexed during ~~his~~ the nominee's minority, unless there 5509  
is another executor who will accept the trust. If there is ~~such an~~ 5510  
that other executor, the estate shall be administered by ~~him~~ that 5511  
executor until the minor arrives at full age when ~~such~~ the former 5512  
minor may be admitted as executor ~~with him~~ upon giving bond as 5513  
provided in section 2109.04 of the Revised Code. 5514

**Sec. 2113.14.** The executor of an executor has no authority, 5515  
as such, to administer the estate of the first testator. On the 5516  
death of the sole or surviving executor of a ~~last~~ will, 5517  
administration of that part of the estate of the first testator 5518  
not already administered may be granted, with the will annexed, to 5519

~~such~~ the person as that the probate court appoints. 5520

**Sec. 2113.15.** When there is delay in granting letters 5521  
testamentary or of administration, the probate court may appoint a 5522  
special administrator to collect and preserve the effects of the 5523  
deceased and grant the special administrator any other authority 5524  
that the court considers appropriate. 5525

~~Such~~ The special administrator ~~must~~ shall collect the 5526  
~~chattels~~ assets and debts of the deceased and preserve them for 5527  
the executor or administrator who thereafter is appointed. For 5528  
that purpose ~~such~~ the special administrator may begin ~~and,~~ 5529  
maintain, or defend suits as administrator and also sell ~~such~~ 5530  
~~goods as~~ any assets the court orders sold. ~~He~~ The special 5531  
administrator shall be allowed ~~such~~ the compensation for ~~his~~ the 5532  
special administrator's services ~~as~~ that the court thinks 5533  
reasonable, if ~~he forthwith delivers the property and effects of~~ 5534  
~~the estate to the executor or administrator who supersedes him~~ the 5535  
special administrator faithfully fulfills the fiduciary duties. 5536

**Sec. 2113.16.** Upon granting of letters testamentary or of 5537  
administration, the power of a special administrator appointed 5538  
under section 2113.15 of the Revised Code shall ~~cease~~ terminate 5539  
and ~~he forthwith must deliver~~ the special administrator shall 5540  
transfer to the executor or administrator all the ~~chattels and~~ 5541  
~~moneys~~ assets of the deceased in ~~his hands~~ the possession or under 5542  
the control of the special administrator. The special 5543  
administrator shall file an account of the special administration 5544  
within thirty days of the appointment of the executor or 5545  
administrator. The account shall be in conformance with section 5546  
2109.30 of the Revised Code. The executor or administrator may be 5547  
admitted to prosecute any suit begun by the special administrator, 5548  
as an administrator de bonis non is authorized to prosecute a suit 5549  
commenced by a former executor or administrator. 5550

If ~~such~~ the special administrator neglects or refuses to 5551  
~~deliver over~~ transfer the ~~property assets~~ and estate to the 5552  
executor or administrator, the probate court may compel ~~him to de~~ 5553  
~~se~~ the transfer by citation and attachment. The executor or 5554  
administrator also may proceed, by civil action, to recover the 5555  
value of the assets from ~~such~~ the special administrator and ~~his~~ 5556  
the special administrator's sureties. 5557

Sec. 2113.17. A creditor's claim may be presented in 5558  
accordance with section 2117.06 of the Revised Code to a special 5559  
administration appointed under section 2113.15 of the Revised 5560  
Code. 5561

Sec. 2113.18. (A) The probate court may remove any executor 5562  
or administrator if there are unsettled claims existing between 5563  
~~him~~ the executor or administrator and the estate, ~~which~~ that the 5564  
court thinks may be the subject of controversy or litigation 5565  
between ~~him~~ the executor or administrator and the estate or 5566  
persons interested ~~therein~~ in the estate. 5567

(B) The probate court may remove any executor or 5568  
administrator upon motion of the surviving spouse, children, or 5569  
other next of kin of the deceased person whose estate is 5570  
administered by the executor or administrator if both of the 5571  
following apply: 5572

(1) The executor or administrator refuses to bring an action 5573  
for wrongful death in the name of the deceased person; 5574

(2) The court determines that a prima-facie case for a 5575  
wrongful death action can be made from the information available 5576  
to the executor or administrator. 5577

Sec. 2113.19. When a sole executor or administrator dies 5578  
without having fully administered the estate, the probate court 5579

shall grant letters of administration, with the will annexed or 5580  
otherwise as the case requires, to some suitable person pursuant 5581  
to section 2113.05 or 2113.06 of the Revised Code. ~~Such~~ That 5582  
person shall administer the ~~goods and estate~~ assets of the 5583  
deceased not previously administered, ~~in case there is personal~~ 5584  
~~estate to be administered to the amount of twenty dollars or debts~~ 5585  
~~to that amount due from the estate.~~ 5586

**Sec. 2113.20.** If a will of a deceased is proved and allowed 5587  
after letters of administration have been granted as of an 5588  
intestate estate, the first administration shall be revoked, 5589  
unless before ~~such~~ the revocation a ~~petition~~ complaint contesting 5590  
the probate of ~~such~~ the will is filed in the probate court ~~of~~ 5591  
~~common pleas~~. If ~~such~~ a ~~petition~~ complaint of that nature is 5592  
filed, the probate court may allow the administration to be 5593  
continued ~~in the hands of~~ by the original administrators until the 5594  
final determination of ~~such~~ the contest. If the will is sustained, 5595  
the first administration ~~must~~ shall be revoked. In either case, 5596  
upon revocation of the first administration and the appointment of 5597  
an executor or administrator with the will annexed, ~~such~~ that 5598  
executor or administrator shall be admitted to prosecute or defend 5599  
any suit, proceeding, or matter begun by or against the original 5600  
administrator, in ~~like~~ the same manner as an administrator de 5601  
bonis non is authorized to prosecute or defend a suit commenced by 5602  
a former executor or administrator. 5603

**Sec. 2113.21.** (A) When a will is contested, the executor, the 5604  
administrator de bonis non, with the will annexed, or the 5605  
testamentary trustee may, during the contest, do the following: 5606

~~(A)(1)~~ Control all the real ~~estate which is included in the~~ 5607  
~~will but not specifically devised~~ property and all the personal 5608  
~~estate~~ property of the testator not administered before ~~such~~ the 5609  
contest; 5610

~~(B)~~(2) Collect the debts and convert all assets into money, 5611  
except those ~~which~~ that are specially bequeathed; 5612

~~(C)~~(3) Pay all taxes on ~~such~~ the real and personal property 5613  
and all debts; 5614

~~(D)~~(4) Repair buildings and make other improvements if 5615  
necessary to preserve the real property from waste; 5616

~~(E)~~(5) Insure ~~such~~ those buildings upon an order first 5617  
obtained from the probate court having jurisdiction of ~~such~~ the 5618  
executor, administrator, or testamentary trustee; 5619

~~(F)~~(6) Advance or borrow money on the credit of ~~such~~ the 5620  
estate for ~~such~~ the repairs, taxes, and insurance ~~which~~ that shall 5621  
be a charge ~~thereon~~ on the estate; 5622

~~(G)~~(7) Receive and receipt for a distributive share of an 5623  
estate or trust to which ~~such~~ the testator would have been 5624  
entitled, if living. 5625

(B) The court may require ~~such~~ additional bonds ~~as~~ that from 5626  
time to time ~~seems~~ seem proper. 5627

**Sec. 2113.22.** An ~~administrator or~~ executor or administrator 5628  
appointed in the place of an executor or administrator who has 5629  
resigned or been removed, whose letters have been revoked, or 5630  
whose authority has been extinguished is entitled to the 5631  
possession of all the unadministered personal effects and assets 5632  
of the estate ~~unadministered~~, and all other funds collected and 5633  
unaccounted for by ~~such~~ the former executor or administrator, and 5634  
may maintain a suit against the former executor or administrator 5635  
and ~~his~~ the former executor's or administrator's sureties on the 5636  
administration bond to recover ~~such~~ those effects, assets, and 5637  
funds and for all damages arising from the maladministration or 5638  
omissions of the former executor or administrator. 5639



~~Sec. 2113.25. So far as the executor or administrator is~~ 5640  
~~able, the~~ The executor or administrator of an estate shall collect 5641  
the assets and complete the administration of that estate within 5642  
~~thirteen~~ six months after the date of appointment unless an 5643  
extension of the time to file a final and distributive account is 5644  
authorized under division (B) of section 2109.301 of the Revised 5645  
Code. 5646

~~Upon application of the executor or administrator and notice~~ 5647  
~~to the interested parties, if the probate court considers that~~ 5648  
~~notice necessary, the court may allow further time in which to~~ 5649  
~~collect assets, to convert assets into money, to pay creditors, to~~ 5650  
~~make distributions to legatees or distributees, to file partial,~~ 5651  
~~final, and distributive accounts, and to settle estates. The~~ 5652  
~~court, upon application of any interested party, may authorize the~~ 5653  
~~examination under oath in open court of the executor or~~ 5654  
~~administrator upon any matter relating to the administration of~~ 5655  
~~the estate~~ For good cause shown, the court may grant an extension 5656  
of the time to file the inventory and accounts. 5657

Sec. 2113.26. The court, upon application of any interested 5658  
party, may authorize the examination of the executor or 5659  
administrator under oath in open court on any matter relating to 5660  
the administration of the estate. 5661

**Sec. 2113.30.** (A) Except as otherwise directed by the 5662  
decedent in the decedent's ~~last will and testament~~, an executor or 5663  
administrator, without personal liability for losses incurred, may 5664  
continue the decedent's business during four months next following 5665  
the date of the appointment of that executor or administrator, 5666  
unless the probate court directs otherwise, and for any further 5667  
time that the court may authorize upon a hearing and after notice 5668  
to the surviving spouse and distributees. In either case, no debts 5669

incurred or contracts entered into shall involve the estate beyond 5670  
the assets used in that business immediately prior to the death of 5671  
the decedent without first obtaining the approval of the court. 5672  
During the time the business is continued, the executor or 5673  
administrator shall file monthly reports in the court, setting 5674  
forth the receipts and expenses of the business for the preceding 5675  
month and any other pertinent information that the court may 5676  
require. The executor or administrator may not bind the estate 5677  
without court approval beyond the period during which the business 5678  
is continued. 5679

(B) As used in this section, "decedent's business" means a 5680  
business that is owned by the decedent as a sole proprietor at the 5681  
time of the decedent's death. "Decedent's business" does not 5682  
include a business that is owned in whole or in part by the 5683  
decedent as a shareholder of a corporation, a member of a limited 5684  
liability company, or a partner of a partnership, or under any 5685  
other form of ownership other than a sole proprietorship. 5686

**Sec. 2113.31.** Every executor or administrator is chargeable 5687  
with all ~~chattels, rights, and credits~~ assets of the deceased 5688  
~~which that~~ come into his hands the possession or under the control 5689  
of the executor or administrator and are to be administered, 5690  
although not included in the inventory required by section 2115.02 5691  
of the Revised Code. ~~Such~~ The executor or administrator is also 5692  
chargeable with all the proceeds of personal property and real 5693  
~~estate~~ property sold for the payment of debts or legacies, and all 5694  
the interest, profit, and income that in any way comes ~~to his~~ 5695  
~~hands~~ into the possession or under the control of the executor or 5696  
administrator from the personal ~~estate~~ property of the deceased. 5697

**Sec. 2113.311.** (A) If, within a reasonable time after the 5698  
appointment of the executor or administrator, no one in authority 5699  
has taken over the management and rental of any real estate 5700

property of which the decedent died seized, the executor or 5701  
administrator, or an heir or devisee may, unless the will 5702  
otherwise provides, make application to the probate court for an 5703  
order authorizing the executor or administrator to assume ~~such~~ 5704  
those duties. ~~Such~~ The application shall contain the following: 5705

(1) A brief statement of the facts upon which the application 5706  
is based and ~~such~~ any other pertinent information ~~as~~ that the 5707  
court may require; 5708

(2) A description or identification of the real estate 5709  
property and the interest owned by the decedent at the time of ~~his~~ 5710  
death; 5711

(3) The names and addresses, if known to the applicant, of 5712  
the persons to whom ~~such~~ the real estate property passed by 5713  
descent or devise. 5714

(B) Notice of the time of hearing on ~~such~~ the application 5715  
shall be given to the persons designated in ~~sub-paragraph~~ division 5716  
(A)(3) of this section, unless for good cause the court dispenses 5717  
with ~~such~~ that notice, and also to the executor or administrator, 5718  
unless the executor or administrator is the applicant. 5719

(C) If the court finds that the statements contained in the 5720  
application are true and that it would be for the best interest of 5721  
~~such~~ those heirs or devisees that the application be granted, it 5722  
may authorize the executor or administrator to assume the 5723  
management and rental of ~~such~~ the real estate property. 5724

(D) The court may require bond, new or additional, in an 5725  
amount to be fixed by the court and conditioned that the executor 5726  
or administrator will faithfully and honestly discharge the duties 5727  
devolving ~~upon him by~~ from the provisions of this section. 5728

~~(B)~~(E) In the exercise of ~~such~~ the authority granted under 5729  
this section, the executor or administrator shall be authorized to 5730  
do the following: 5731

- (1) Collect rents; 5732
- (2) From the rents collected: 5733
- (a) Pay all taxes and assessments due on ~~such~~ the real estate 5734  
property, and all ~~such~~ usual operating expenses in connection with 5735  
the its management thereof; 5736
- (b) Make repairs when necessary to preserve ~~such~~ the real 5737  
estate property from waste, provided that an order of the court 5738  
shall first be obtained if the cost of ~~such~~ repairs exceeds one 5739  
hundred dollars; 5740
- (c) Insure buildings against loss by fire or other casualty 5741  
and against public liability; 5742
- (3) Advance money upon an order first obtained from the 5743  
court, for ~~such~~ the repairs, taxes, insurance, and all usual 5744  
operating expenses, ~~which that~~ shall be a charge on ~~such~~ the real 5745  
estate property; 5746
- (4) Rent the property on a month-to-month basis, or, upon an 5747  
order first obtained from the court, for a period not to exceed 5748  
one year; 5749
- (5) Prosecute actions for forcible entry and ~~detention~~ 5750  
detainer of ~~such~~ the real estate property. 5751
- (F) The executor or administrator shall, at intervals not to 5752  
exceed twelve months, pay over to the heirs or devisees, if known, 5753  
their share of the net rents, and shall account for all money 5754  
received and paid out under authority of this section in ~~his~~ the 5755  
executor's or administrator's regular accounts of the 5756  
administration of the estate, but in a separate schedule. If any 5757  
share of the net rents remains unclaimed, it may be disposed of in 5758  
the same manner as ~~is~~ provided for unclaimed money under section 5759  
2113.64 of the Revised Code. 5760
- (G) The authority granted under this section shall terminate 5761

upon the transfer of the real ~~estate~~ property to the heirs or 5762  
devises in accordance with section 2113.61 of the Revised Code, 5763  
~~or~~ upon a sale ~~thereof~~ of the real property, ~~or~~ upon application 5764  
of the executor or administrator, or for a good cause shown, upon 5765  
the application of an heir or devisee. 5766

(H) Upon application the court may allow compensation to the 5767  
executor or administrator for extraordinary services, ~~which that~~ 5768  
shall be charged against the rents, and if ~~said~~ the rents be are 5769  
insufficient, shall be a charge against ~~such~~ the real estate 5770  
property. 5771

Upon application the court may allow reasonable attorney fees 5772  
paid by the executor or administrator when an attorney is employed 5773  
in connection with the management and rental of ~~such~~ the real 5774  
~~estate, which~~ property that shall be charged against the rents, 5775  
and if ~~said~~ the rents be are insufficient, shall be a charge 5776  
against ~~such~~ the real estate property. 5777

**Sec. 2113.33.** An executor or administrator is not accountable 5778  
for debts inventoried as due to the decedent, if it appears to the 5779  
probate court that, without ~~his~~ the executor's or administrator's 5780  
fault, they remain uncollected. 5781

**Sec. 2113.34.** If an executor or administrator neglects to 5782  
sell personal property ~~which he~~ that is required to ~~sell~~ be sold, 5783  
and retains, consumes, or disposes of it for ~~his~~ the executor's or 5784  
administrator's own benefit, ~~he~~ the executor or administrator 5785  
shall be charged ~~therewith~~ with the personal property at double 5786  
the value affixed ~~thereto~~ to the property by the appraisers. 5787

**Sec. 2113.35.** (A) Executors and administrators shall be 5788  
allowed ~~commissions~~ fees upon the amount of all the personal 5789  
~~estate~~ property, including the income from the personal ~~estate~~ 5790  
property, that is received and accounted for by them and upon the 5791

proceeds of real estate property that is sold, as follows: ~~(A)~~ 5792

(1) For the first one hundred thousand dollars, at the rate 5793  
of four per cent; ~~(B)~~ 5794

(2) All above one hundred thousand dollars and not exceeding 5795  
four hundred thousand dollars, at the rate of three per cent; ~~(C)~~ 5796

(3) All above four hundred thousand dollars, at the rate of 5797  
two per cent. ~~Executors~~ 5798

(B) Executors and administrators ~~also~~ shall be allowed a 5799  
~~commission fee~~ of one per cent on the value of real estate 5800  
property that is not sold. Executors and administrators also shall 5801  
be allowed a ~~commission fee~~ of one per cent on all property that 5802  
is not subject to administration and that is includable for 5803  
purposes of computing the Ohio estate tax, except joint and 5804  
survivorship property. ~~The~~ 5805

(C) The basis of valuation for the allowance of ~~such~~ 5806  
~~commissions the fees~~ on real estate property sold shall be the 5807  
gross proceeds of sale, and for all other property the fair market 5808  
value of the other property as of the date of death of the 5809  
decedent. The ~~commissions fees~~ allowed to executors and 5810  
administrators in this section shall be received in full 5811  
compensation for all their ordinary services. ~~If~~ 5812

(D) If the probate court finds, after a hearing, that an 5813  
executor or administrator, in any respect, has not faithfully 5814  
discharged ~~his~~ the duties as executor or administrator, the court 5815  
may deny the executor or administrator any compensation whatsoever 5816  
or may allow the executor or administrator the reduced 5817  
compensation that the court thinks proper. 5818

**Sec. 2113.36.** Allowances, in addition to those provided by 5819  
section 2113.35 of the Revised Code for an executor or 5820  
administrator, ~~which~~ that the probate court considers just and 5821

reasonable shall be made for actual and necessary expenses and for 5822  
extraordinary services not required of an executor or 5823  
administrator in the common course of ~~his duty~~ the executor's or 5824  
administrator's duties. 5825

Upon the application of an executor or administrator for 5826  
further allowances for extraordinary services rendered, the court 5827  
shall review both ordinary and extraordinary services claimed to 5828  
have been rendered. If the ~~commissions~~ fees payable pursuant to 5829  
section 2113.35 of the Revised Code, exceed the reasonable value 5830  
of ~~such~~ the ordinary services rendered, the court ~~must~~ shall 5831  
adjust any allowance made for extraordinary services so that the 5832  
total ~~commissions~~ fees and allowances to be made fairly reflect 5833  
the reasonable value of both ordinary and extraordinary services. 5834

~~When~~ If an attorney has been employed in the administration 5835  
of the estate, reasonable attorney fees paid by the executor or 5836  
administrator shall be allowed as a part of the expenses of 5837  
administration. The court may at any time during administration 5838  
fix the amount of ~~such~~ those fees and, on application of the 5839  
executor or administrator or the attorney, shall fix the amount 5840  
~~thereof~~ of the fees. ~~When~~ If provision is made by the will of the 5841  
deceased for compensation to an executor, the amount provided 5842  
shall be a full satisfaction for ~~his~~ the executor's or 5843  
administrator's services, in lieu of ~~such commissions~~ the fees or 5844  
~~his share thereof~~ of the fees, unless by an instrument filed in 5845  
the court within four months after ~~his~~ appointment ~~he~~ the executor 5846  
or administrator renounces all claim to the compensation given by 5847  
the will. 5848

**Sec. 2113.39.** If a qualified executor, administrator, or 5849  
testamentary trustee is authorized by will or devise to sell any 5850  
class of personal property ~~whatsoever~~ or real estate property, no 5851  
order shall be required from the probate court ~~to enable him~~ for 5852

~~the executor, administrator, or testamentary trustee to act in~~ 5853  
~~pursuance of the power vested in him~~ proceed with the sale. A 5854  
power to sell authorizes a sale for any purpose ~~deemed~~ considered 5855  
by ~~such~~ the executor, administrator, or testamentary trustee to be 5856  
for the best interest of the estate, unless the power is expressly 5857  
limited by ~~such~~ the will or devise. 5858

**Sec. 2113.40.** (A) At any time after the appointment of an 5859  
executor or administrator, the probate court, ~~when~~ if satisfied 5860  
that it would be for the best interests of the estate, may 5861  
authorize ~~such~~ the executor or administrator to sell at public or 5862  
private sale, at a fixed price or for the best price obtainable, 5863  
and for cash or on ~~such~~ the terms ~~as~~ that the court may determine, 5864  
any part or all of the personal property belonging to the estate, 5865  
except the following: 5866

~~(A)~~ Such property as (1) Property that the surviving spouse 5867  
desires to take at the appraised value; 5868

~~(B)~~ (2) Property specifically bequeathed, ~~when~~ if the sale of 5869  
~~such~~ that property is not necessary for the payment of debts, 5870  
provided that ~~such~~ the property may be sold with the consent of 5871  
the person entitled ~~thereto~~ to the property, including executors, 5872  
administrators, guardians, and trustees; 5873

~~(C)~~ (3) Property as to which distribution in kind has been 5874  
demanded prior to the sale by the surviving spouse or other 5875  
beneficiary entitled to ~~such~~ the distribution in kind; 5876

~~(D)~~ (4) Property which that the court directs shall not be 5877  
sold pursuant to a wish expressed by the decedent in ~~his~~ the 5878  
decedent's will; but at any later period, on application of a 5879  
party interested, the court may, and for good cause shall, require 5880  
~~such~~ the sale to be made. 5881

(B) In case of a sale before expiration of the time within 5882



which the surviving spouse may elect to take at the appraised 5883  
value, not less than ten days' notice of ~~such the~~ sale shall be 5884  
given to the surviving spouse, unless ~~such the~~ surviving spouse 5885  
consents to ~~such the~~ sale or waives notice ~~thereof of the sale.~~ 5886  
~~Such The~~ notice shall not be required as to perishable property. 5887

(C) The court may permit the itemized list of personal 5888  
property being sold to be incorporated in documents and records 5889  
relating to the sale, by reference to other documents and records 5890  
~~which that~~ have been filed in the court. ~~Provided, provided~~ that a 5891  
court order shall not be required to permit the public sale of 5892  
personal ~~goods and chattels~~ property. 5893

**Sec. 2113.41.** (A) Public sales of personal property ~~mentioned~~ 5894  
as provided in section 2113.40 of the Revised Code shall be at 5895  
public auction and, unless otherwise directed by the probate 5896  
court, after notice of ~~such the~~ sale has been given by any of the 5897  
following methods: 5898

~~(A)(1)~~ By advertisement appearing at least three times in a 5899  
newspaper of general circulation in the county during a period of 5900  
fifteen days next preceding ~~such the~~ sale; 5901

~~(B)(2)~~ By advertisement posted not less than fifteen days 5902  
next preceding ~~such the~~ sale in at least five public places in the 5903  
township or municipal corporation where ~~such the~~ sale is to take 5904  
place; 5905

~~(C)(3)~~ By both ~~such~~ forms of advertisement specified in 5906  
divisions (A)(1) and (2) of this section. 5907

~~Such (B)~~ The advertisement published or posted as described 5908  
in divisions (A)(1) and (2) of this section shall specify 5909  
generally the property to be sold and the date, place, and terms 5910  
of the sale. The executor or administrator, if considered in the 5911  
best interests of the estate, may employ an auctioneer or clerk, 5912

or both, to conduct ~~such~~ the sale, and their reasonable fees and 5913  
charges shall be deducted from the proceeds of the sale. The court 5914  
for good cause may extend the time for sale. 5915

**Sec. 2113.45.** When a mortgagee of real ~~estate~~ property, or an 5916  
assignee of ~~such~~ the mortgagee, dies without foreclosing the 5917  
mortgage, the mortgaged premises and the debts secured ~~thereby~~ by 5918  
the mortgage shall be considered personal assets in the ~~hands~~ 5919  
possession or under the control of the executor or administrator 5920  
of ~~such~~ the estate of the mortgagee or assignee, and shall be 5921  
administered and accounted for as such. 5922

If the mortgagee or assignee did not obtain possession of the 5923  
mortgaged premises in ~~his~~ the mortgagee's or assignee's lifetime, 5924  
~~his~~ the executor or administrator of the estate of the deceased 5925  
mortgagee or assignee may take possession of the premises by open 5926  
and peaceable entry or by action, as the deceased might have done 5927  
if living. 5928

**Sec. 2113.46.** In case of the redemption of a mortgage 5929  
belonging to the estate of a decedent, the money paid ~~thereon must~~ 5930  
on the redemption shall be received by the executor or 5931  
administrator, ~~and thereupon he~~ the executor or administrator 5932  
shall release and discharge the mortgage. Until ~~such~~ that 5933  
redemption, if the executor, administrator, or decedent has taken 5934  
possession of the mortgaged premises, the executor or 5935  
administrator, ~~if possession has been taken by him or by the~~ 5936  
~~decedent,~~ shall be seized of the mortgaged premises in trust for 5937  
the same persons who would be entitled to the money if the 5938  
premises had been redeemed. 5939

**Sec. 2113.48.** When a person who has entered into a written 5940  
contract for the sale and conveyance of an interest in real ~~estate~~ 5941  
property dies before its completion, ~~his~~ the executor or 5942

administrator ~~when~~ of the decedent's estate, if not required to 5943  
otherwise dispose of ~~such~~ the contract, may, with the consent of 5944  
the purchaser, obtain authority to complete ~~such~~ the contract by 5945  
filing an application ~~therefor~~ for that authority in the probate 5946  
court of the county in which ~~he~~ the executor or administrator was 5947  
appointed. Notice of the time of hearing on ~~such~~ the application 5948  
shall be given to the surviving spouse and heirs, if the decedent 5949  
died intestate, and to the surviving spouse, and devisees or 5950  
legatees having an interest in ~~such~~ the contract, if the decedent 5951  
died testate. If the court is satisfied that it would be for the 5952  
best interests of the estate, it may authorize the executor or 5953  
administrator to complete ~~said~~ the contract and to execute and 5954  
deliver to the purchaser ~~such~~ the instruments ~~as~~ that are required 5955  
to make the order of the court effective. 5956

**Sec. 2113.49.** When a person who has entered into a written 5957  
contract for the sale and conveyance of an interest in real ~~estate~~ 5958  
property dies before its completion, ~~his~~ the executor or 5959  
administrator of the decedent's estate, ~~when~~ if not required to 5960  
otherwise dispose of the contract, may file a ~~petition~~ complaint 5961  
for the alteration or cancellation of the contract, in the probate 5962  
court of the county in which ~~he~~ the executor or administrator was 5963  
appointed, or in which the real ~~estate~~ property or any part of it 5964  
is situated. If the decedent died intestate, the surviving spouse 5965  
and heirs, and if the decedent died testate, the surviving spouse, 5966  
and devisees or legatees having an interest in the contract, ~~when~~ 5967  
if not the plaintiffs, shall, together with the purchaser, be made 5968  
parties defendant. 5969

If, upon hearing, the court is satisfied that it is for the 5970  
best interests of the estate, it may, with the consent of the 5971  
purchaser, authorize the executor or administrator to agree to the 5972  
alteration or cancellation of the contract, and to execute and 5973  
deliver to the purchaser the instruments required to make the 5974

order of the court effective. Before making ~~such an~~ its order, the 5975  
court shall cause to be secured, to and for the benefit of the 5976  
estate of the deceased, its just part of the consideration of the 5977  
contract. The instruments executed and delivered pursuant to ~~such~~ 5978  
~~an~~ the court's order shall recite the order, and be as binding on 5979  
the heirs and other parties in interest, as if made by the 5980  
deceased ~~in his lifetime~~ prior to death. 5981

**Sec. 2113.50.** When a person who has entered into a written 5982  
contract for the purchase of an interest in real estate property 5983  
dies before a the conveyance ~~thereof~~ of the interest to ~~him~~ the 5984  
person, ~~his~~ the executor or administrator of the decedent's 5985  
estate, ~~or~~ the surviving spouse, ~~or~~ any heir, or any devisee or 5986  
legatee having an interest in ~~such~~ the contract, may file an 5987  
application for authority to complete ~~such~~ the contract in the 5988  
probate court of the county in which the executor or administrator 5989  
was appointed. Notice of the time of the hearing on ~~such~~ the 5990  
application shall be given to the surviving spouse and heirs, if 5991  
the decedent died intestate, and to the surviving spouse, and 5992  
devisees or legatees having an interest in ~~such~~ the contract, if 5993  
the decedent died testate, to the executor or administrator, if 5994  
not the applicant, and to all other persons having an interest in 5995  
~~such~~ the real estate property that is the subject of the contract. 5996  
If the court is satisfied that it would be for the best interests 5997  
of the estate, it may, with the consent of the vendor, authorize 5998  
the executor or administrator to complete the contract, pay to the 5999  
vendor the amount due on the contract, and authorize a conveyance 6000  
of the interest in the real estate property to the persons 6001  
entitled ~~thereto~~ to it. If, however, the court finds that the 6002  
condition of the estate at the time of the hearing does not 6003  
warrant the payment out of the estate of the amount due under the 6004  
contract, it may authorize the persons entitled to the interest of 6005  
the decedent in the contract to pay to the vendor the amount due 6006

on the contract. The real estate property so conveyed shall 6007  
thereafter be chargeable with the debts of the estate to the 6008  
extent of the equitable interest of the estate ~~therein~~ in the real 6009  
property, and may be sold in land sale proceedings, except that in 6010  
the event of ~~such~~ that sale, the persons to whom the real estate 6011  
property shall have been conveyed shall have a prior lien on the 6012  
proceeds as against the estate to the extent of any portion of the 6013  
purchase price paid by them. 6014

The executor or administrator, ~~or~~ surviving spouse, ~~or~~ any 6015  
heir, or any devisee or legatee having an interest in ~~such a~~ the 6016  
contract, may file a ~~petition~~ complaint for the alteration or 6017  
cancellation of the contract in the probate court of the county in 6018  
which the executor or administrator was appointed. If the decedent 6019  
died intestate, the surviving spouse and heirs, and if the 6020  
decedent died testate, the surviving spouse, and devisees or 6021  
legatees having an interest in ~~such~~ the contract, and the executor 6022  
or administrator, ~~when~~ if not the plaintiff, together with the 6023  
vendor, and all other persons having an interest in the real 6024  
estate ~~which~~ property that is subject to the contract, shall be 6025  
made parties defendant. If the court is satisfied that it would be 6026  
for the best interests of the estate, the court, with the consent 6027  
of the vendor, may authorize the executor or administrator to 6028  
agree to the alteration or cancellation of the contract and to 6029  
execute and deliver ~~such~~ the deeds or other instruments to the 6030  
vendor ~~as~~ that are required to make the order of the court 6031  
effective. ~~Such~~ The deeds or other instruments ~~as~~ that are 6032  
executed and delivered pursuant to ~~such~~ the court's order shall 6033  
recite the order and be as binding on the parties to the suit as 6034  
if made by the deceased ~~in his lifetime~~ prior to death. 6035

**Sec. 2113.51.** The property of an estate ~~which~~ that is 6036  
specifically bequeathed may be delivered over to the legatee 6037  
entitled ~~thereto~~ to the property. ~~Such~~ The legatee ~~must~~ shall 6038

secure its redelivery on demand to the executor or administrator. 6039  
Otherwise, ~~such~~ the property ~~must~~ shall remain in the ~~hands~~ 6040  
possession or under the control of the executor or administrator 6041  
to be distributed or sold, as required by law and the condition of 6042  
the estate. 6043

**Sec. 2113.52.** (A) A devisee taking real ~~estate~~ property under 6044  
a devise in a will, unless the will otherwise provides, or an heir 6045  
taking real ~~estate~~ property under the statutes of descent and 6046  
distribution shall take the real ~~estate~~ property subject to all 6047  
taxes, penalties, interest, and assessments ~~which~~ that are a lien 6048  
against that real ~~estate~~ property. 6049

(B) If real ~~estate~~ property devised in a will is subject to a 6050  
mortgage lien that exists on the date of the testator's death, the 6051  
person taking the real ~~estate~~ property under the devise has no 6052  
right of exoneration for the mortgage lien, regardless of a 6053  
general direction in the will to pay the testator's debts, unless 6054  
the will specifically provides a right of exoneration that extends 6055  
to that lien. 6056

**Sec. 2113.54.** When five months have expired after the 6057  
appointment of an executor or administrator and the surviving 6058  
spouse has made an election under section 2106.01 of the Revised 6059  
Code, a legatee or distributee may apply to the probate court for 6060  
an order requiring the executor or administrator to distribute the 6061  
assets of the estate, either in whole or in part, in cash or in 6062  
kind. Upon notice to the executor or administrator, the court 6063  
shall inquire into the condition of the estate, and if all claims 6064  
have been paid, or adequate provision has been or can be made for 6065  
their payment, the court shall make ~~such~~ that order with reference 6066  
to distribution of the estate as the condition of the estate and 6067  
the protection of all parties interested in the estate may demand. 6068  
The order of the court shall provide that assets be set aside for 6069

the payment of claims rejected within two months or in suit, and 6070  
each claimant for whom assets are to be set aside shall be 6071  
entitled to be fully heard as to the nature and amount of the 6072  
assets to be set aside for payment of ~~his~~ the claim, and as to all 6073  
other conditions in connection with the claim. Each legatee or 6074  
distributee receiving distribution from the estate shall be liable 6075  
to return the assets distributed to ~~him~~ the legatee or 6076  
distributee, or the proceeds from the assets, if they are 6077  
necessary to pay ~~such~~ those claims. The court, upon its own motion 6078  
or upon application of the executor or administrator, as a 6079  
condition precedent to any distribution, may require any legatee 6080  
or distributee to give bond to the state with surety approved and 6081  
in an amount fixed by the court, conditioned as provided in 6082  
section 2113.53 of the Revised Code or as may be directed by the 6083  
court. ~~Such~~ The bond may be in addition to the assets to be set 6084  
aside or partially or wholly in lieu of those assets, as the court 6085  
shall determine. 6086

**Sec. 2113.58.** ~~When~~ If by a ~~last will and testament~~ the use or 6087  
income of personal property is given to a person for a term of 6088  
years or for life and some other person has ~~an~~ a remainder 6089  
interest in ~~such~~ the property ~~as remainderman~~, the probate court, 6090  
unless ~~such last~~ the will ~~and testament~~ otherwise provides, may 6091  
~~deliver~~ authorize delivery of the personal property to the 6092  
person having the limited estate, with or without bond, as the 6093  
court may determine; or the court may order that ~~such~~ the property 6094  
be held by the executor or some other trustee, with or without 6095  
bond, for the benefit of the person having the limited estate. If 6096  
bond is required of the person having the limited estate, or of 6097  
the trustee, it may be increased or decreased, and if bond is not 6098  
required in the first instance it may be required by the court at 6099  
any time prior to the termination of the limited estate. 6100

Sec. 2113.61. (A)(1) When real property passes by the laws of  
intestate succession or under a will, the administrator or  
executor shall file in probate court, at any time after the filing  
of an inventory that includes the real property but prior to the  
filing of the administrator's or executor's final account, an  
application requesting the court to issue a certificate of  
transfer as to the real property. Real property sold by an  
executor or administrator or land registered under Chapters 5309.  
and 5310. of the Revised Code is excepted from the application  
requirement. Cases in which an order has been made under section  
2113.03 of the Revised Code relieving an estate from  
administration and in which the order directing transfer of real  
property to the person entitled to it may be substituted for the  
certificate of transfer also are excepted from the application  
requirement.

(2) In accordance with division (C)(3)(b) of section 2113.031  
of the Revised Code, an application for a certificate of transfer  
of an interest in real property included in the assets of the  
decedent's estate shall accompany an application for a summary  
release from administration under that section. This section  
applies to the application for and the issuance of the requested  
certificate of transfer except to the extent that the probate  
court determines that the nature of any of the provisions of this  
section is inconsistent with the nature of a grant of a summary  
release from administration.

(B) Subject to division (A)(2) of this section, the  
application for a certificate of transfer shall contain all of the  
following:

(1) The name, place of ~~residence~~ domicile at death, and date  
of death of the decedent;

(2) A statement whether the decedent died testate or



intestate; 6132

~~(3) The fact and date of the filing and probate of the will,~~ 6133  
~~if applicable, and the fact and date of the appointment of the~~ 6134  
~~administrator or executor~~ reason the property is being transferred 6135  
to the devisee or devisees; 6136

~~(4) A description of each parcel of real property situated in~~ 6137  
~~this state that is owned by the decedent at the time of death~~ 6138  
Whether any spousal elections have been exercised; 6139

~~(5) Insofar as they can be ascertained, the names, ages,~~ 6140  
~~places of residence, and relationship to the decedent of the~~ 6141  
~~persons to whom each parcel of real property described in division~~ 6142  
~~(B)(4) of this section passed by descent or devise~~ Whether any 6143  
disclaimers or assignments have been filed; 6144

~~(6) A statement that all the known debts of the decedent's~~ 6145  
~~estate have been paid or secured to be paid, or that sufficient~~ 6146  
~~other assets are in hand to complete the payment of those debts~~ or 6147  
a statement that the estate is insolvent and the transfer is of 6148  
the mansion house and is being made to satisfy all or a portion of 6149  
the spousal allowance for support; 6150

(7) Other pertinent information that the court requires. 6151

(C) Subject to division (A)(2) of this section, within five 6152  
days following the filing of an application for a certificate of 6153  
transfer that complies with division (B) of this section, the 6154  
court shall issue a certificate of transfer for record in each 6155  
county in this state in which real property so passing is 6156  
situated, that shall recite all of the following: 6157

(1) The name and date of death of the decedent; 6158

(2) Whether the decedent died testate or intestate ~~and, if~~ 6159  
~~testate, the volume and page of the record of the will;~~ 6160

(3) The ~~volume and page~~ case number of the probate court 6161

record of the administration of the estate; 6162

(4) The names and places of residence of the devisees, the 6163  
interests passing to them, the names and places of residence of 6164  
the persons inheriting intestate, and the interests inherited by 6165  
them, in each parcel of real property ~~described in division (B)(4)~~ 6166  
~~of this section~~ being transferred; 6167

(5) A description of each parcel of real property ~~described~~ 6168  
~~in division (B)(4) of this section~~ being transferred; 6169

(6) Other information that in the opinion of the court should 6170  
be included. 6171

(D) If an executor or administrator has failed to file an 6172  
application for a certificate of transfer before being discharged, 6173  
the application may be filed by an heir or devisee, or a successor 6174  
in interest, in the probate court in which the testator's will was 6175  
probated or, in the case of intestate estates, in the probate 6176  
court in which administration was had. If no administration was 6177  
had on an estate and if no administration is contemplated, except 6178  
in the case of the grant of or contemplated application for the 6179  
grant of an order of a summary release from administration under 6180  
section 2113.031 of the Revised Code, an application for a 6181  
certificate of transfer may be filed by an heir or devisee, or a 6182  
successor in interest, in the probate court of the county in which 6183  
the decedent was a resident at the time of death or in which the 6184  
real property of the decedent is located. 6185

(E) A foreign executor or administrator, ~~when~~ if no ancillary 6186  
administration proceedings have been had or are being had in this 6187  
state, may file in accordance with this section an application for 6188  
a certificate of transfer in the probate court of any county of 6189  
this state in which real property of the decedent is located. 6190

(F) When a person who has entered into a written contract for 6191  
the sale and conveyance of an interest in real property dies 6192

before its completion, the interest of the decedent in the 6193  
contract and the record title to the real property described in 6194  
the contract may be transferred to the ~~persons, legatees,~~ 6195  
~~devisees,~~ or heirs at law entitled to the interest of the decedent 6196  
in the real property, in the same manner as provided in this 6197  
section and ~~sections~~ section 2113.62 ~~and 2113.63~~ of the Revised 6198  
Code for the transfer of real property. The application for the 6199  
certificate of transfer and the certificate itself also shall 6200  
recite that the real property described in the application or 6201  
certificate is subject to a written contract for its sale and 6202  
conveyance. 6203

**Sec. 2113.62.** Upon receipt of the certificate provided for in 6204  
section 2113.61 of the Revised Code, the county recorder shall 6205  
record it in the books provided for the recording of deeds and 6206  
index ~~such~~ those records in the name of the decedent as grantor 6207  
and the person to whom the real ~~estate~~ property passes as grantee 6208  
in the index provided for the record of deeds. 6209

**Sec. 2113.67.** When a person entitled to the money invested or 6210  
turned into the county treasury under section 2113.64 of the 6211  
Revised Code satisfies the probate court of ~~his~~ the person's right 6212  
to receive it, the court shall order it to be paid over and 6213  
transferred to ~~him~~ the person. In case it has been turned into the 6214  
treasury, the county auditor shall give to ~~him~~ the person a 6215  
warrant ~~therefor~~ for the money upon the certificate of the probate 6216  
judge. 6217

**Sec. 2113.68.** The probate judge with whom the certificates or 6218  
evidences of title required by section 2113.65 of the Revised Code 6219  
are deposited and each succeeding judge to whom they come, and ~~his~~ 6220  
the judges' sureties, shall be responsible for their safekeeping 6221  
and application, as provided in sections 2113.64 to 2113.67~~7~~ 6222

~~inclusive,~~ of the Revised Code. 6223

**Sec. 2113.69.** When newly discovered assets come into the 6224  
~~hands possession or under the control~~ of an executor or 6225  
administrator after the filing of the original inventory required 6226  
by section 2115.02 of the Revised Code, ~~he~~ the executor or 6227  
administrator shall administer, account for, and distribute ~~such~~ 6228  
those assets in ~~like~~ the same manner as if received prior to the 6229  
filing of ~~such~~ the inventory. Within thirty days, ~~he~~ the executor 6230  
or administrator shall file in the probate court an itemized 6231  
report of ~~such~~ those assets, with an estimate of ~~the~~ their value 6232  
~~thereof~~, but shall not be required to make an inventory or 6233  
appraisal of the ~~same~~ assets unless ordered to do so by the 6234  
court, either upon its own motion or upon the application of any 6235  
interested party. 6236

**Sec. 2113.70.** An executor or administrator appointed in any 6237  
other state or country, or ~~his~~ the executor's or administrator's 6238  
legal representatives, may be prosecuted in any appropriate court 6239  
in this state in ~~his~~ the capacity of executor or administrator. 6240

**Sec. 2113.72.** Any court of common pleas may compel a foreign 6241  
administrator or executor residing in this state, or having assets 6242  
or property ~~herein~~ in this state, to account at the suit of an 6243  
heir, distributee, or legatee, who is resident in this state, and 6244  
make distribution of the amount found in ~~his hands~~ the possession 6245  
or under the control of the foreign administrator or executor to 6246  
the respective heirs, distributees, or legatees according to the 6247  
law of the state granting ~~such~~ the letters of administration. ~~When~~ 6248  
If suits are pending or there are unsettled demands against ~~such~~ 6249  
the estate, the court also may require a refunding bond to be 6250  
given to ~~such~~ the foreign executor or administrator by the heirs, 6251  
distributees, or legatees entitled ~~thereto~~ to that distribution in 6252

case the amount paid is needed to pay debts of the estate. 6253

**Sec. 2113.73.** ~~When~~ If a foreign administrator or executor has 6254  
wasted, misapplied, or converted assets of an estate, or has 6255  
insufficient property to discharge ~~his~~ the foreign administrator's 6256  
or executor's liability on account of the trust, or ~~his~~ the 6257  
foreign administrator's or executor's sureties are irresponsible, 6258  
the distributees, heirs, or legatees, in any court of common pleas 6259  
or probate court may compel ~~him~~ the foreign administrator or 6260  
executor to secure the amounts respectively due to them and any of 6261  
~~his~~ the foreign administrator's or executor's sureties may require 6262  
indemnity on account of their liability as bail. 6263

**Sec. 2113.74.** The several provisional remedies and 6264  
proceedings authorized by sections 2113.70 to 2113.73, ~~inclusive,~~ 6265  
of the Revised Code, against a foreign executor or administrator 6266  
also apply to the person and property of a foreign administrator 6267  
or executor. The probate court or the court of common pleas may 6268  
make any order or decree touching ~~his~~ a foreign executor's or 6269  
administrator's property and effects, or the assets of ~~such the~~ 6270  
estate, necessary for the security of those interested ~~therein in~~ 6271  
the property, effects, or assets. 6272

**Sec. 2113.75.** An executor or administrator appointed in any 6273  
other state or country may commence and prosecute an action or 6274  
proceeding in any court in this state, in ~~his~~ the capacity as 6275  
executor or administrator, in ~~like~~ the same manner and under ~~like~~ 6276  
the same restrictions as a ~~non-resident~~ nonresident is permitted 6277  
to sue. 6278

**Sec. 2113.81.** ~~Where~~ If it appears that a legatee or a 6279  
distributee, or a beneficiary of a trust not residing within the 6280  
United States or its territories will not have the benefit ~~of,~~ 6281

use, or control of the money or other property due ~~him~~ the 6282  
legatee or distributee from ~~an~~ the estate or due the beneficiary 6283  
from the trust, because of circumstances prevailing at the place 6284  
of residence of ~~such~~ the legatee, or distributee, or a the 6285  
beneficiary of a the trust, the probate court may direct that ~~such~~ 6286  
the money be paid into the county treasury to be held in trust or 6287  
the probate court may direct that ~~such~~ the money or other property 6288  
be delivered to a trustee ~~which~~. The trustee shall have the same 6289  
powers and duties provided in section 2119.03 of the Revised Code 6290  
for ~~such~~ that legatee, distributee, beneficiary of a the trust, or 6291  
~~such~~ the persons who may thereafter be entitled ~~thereto~~ to the 6292  
money or other property. ~~Such~~ The money or other property held in 6293  
trust by ~~such~~ the county treasurer or trustee shall be paid out by 6294  
order of the probate judge in accordance with section 2113.82 of 6295  
the Revised Code. 6296

The county treasury shall not be liable for interest on ~~such~~ 6297  
the money held in trust. 6298

**Sec. 2113.82.** When a person entitled to money or other 6299  
property invested or turned into the county treasurer or to a 6300  
trustee under section 2113.81 of the Revised Code satisfies the 6301  
probate court of ~~his~~ the person's right to receive it, the court 6302  
shall order the county treasurer or the trustee to pay it over to 6303  
~~such~~ the person. 6304

**Sec. 2113.85.** As used in sections 2113.85 to 2113.90 of the 6305  
Revised Code: 6306

(A) "Estate" means the gross estate of a decedent who is 6307  
domiciled in this state, as determined for federal estate tax 6308  
purposes under Subtitle B of the Internal Revenue Code of 1954, 26 6309  
U.S.C. 2001, as amended, for Ohio estate tax purposes under 6310  
Chapter 5731. of the Revised Code, and for estate tax purposes of 6311

any other jurisdiction that imposes a tax on the transfer of 6312  
property by a decedent who is domiciled in this state. 6313

(B) "Person interested in the estate" means any person who is 6314  
entitled to receive, or who has received, any property or property 6315  
interest included in the decedent's estate. A "person interested 6316  
in the estate" includes, but is not limited to, a personal 6317  
representative, guardian, ~~and~~ or trustee. A "person interested in 6318  
the estate" does not include a creditor of the decedent or of ~~his~~ 6319  
the decedent's estate. 6320

(C) "Tax" means the federal estate tax determined under 6321  
Subtitle B of the "Internal Revenue Code of 1954, 26 U.S.C. 2001, 6322  
as amended, an Ohio estate tax determined under Chapter 5731. of 6323  
the Revised Code, and the estate tax determined by any other 6324  
jurisdiction that imposes a tax on the transfer of property by a 6325  
decedent who is domiciled in this state. 6326

(D) "Fiduciary" means an executor, administrator, or other 6327  
person who, by virtue of ~~his representation of~~ representing the 6328  
decedent's estate, is required to pay the tax. 6329

**Sec. 2113.86.** (A) Unless a will or another governing 6330  
instrument otherwise provides, and except as otherwise provided in 6331  
this section, a tax shall be apportioned equitably in accordance 6332  
with the provisions of this section among all persons interested 6333  
in an estate in proportion to the value of the interest of each 6334  
person as determined for estate tax purposes. 6335

(B) Except as otherwise provided in this division, any tax 6336  
that is apportioned against a gift made in a clause of a will 6337  
other than a residuary clause or in a provision of an inter vivos 6338  
trust other than a residuary provision, shall be reapportioned to 6339  
the residue of the estate or trust. It shall be charged in the 6340  
same manner as a general administration expense. However, when a 6341  
portion of the residue of the estate or trust is allowable as a 6342

deduction for estate tax purposes, the tax shall be reapportioned 6343  
to the extent possible to the portion of the residue that is not 6344  
so allowable. 6345

(C)(1) A tax shall not be apportioned against an interest 6346  
that is allowable as an estate tax marital or charitable 6347  
deduction, except to the extent that the interest is a part of the 6348  
residue of an estate or trust against which tax is reapportioned 6349  
pursuant to division (B) of this section. 6350

(2) Estate tax of this state or another jurisdiction shall 6351  
not be reapportioned against an interest that is allowable as a 6352  
deduction for federal estate tax purposes, to the extent that 6353  
there is other property in the estate or trust that is not 6354  
allowable as a deduction for federal estate tax purposes and 6355  
against which estate tax of this state or another jurisdiction can 6356  
be apportioned. 6357

(D) A tax shall not be apportioned against property that 6358  
passes to a surviving spouse as an elective share under section 6359  
2106.01 of the Revised Code or as an intestate share under section 6360  
2105.06 of the Revised Code, to the extent that there is other 6361  
property in the estate that is not allowable as a deduction for 6362  
estate tax purposes against which the tax can be apportioned. 6363

(E)(1) Any federal estate tax credit for state or foreign 6364  
death taxes on property that is includible in an estate for 6365  
federal estate tax purposes, shall inure to the benefit of the 6366  
persons chargeable with the payment of the state or foreign death 6367  
taxes in proportion to the amount of the taxes paid by each 6368  
person, but any federal estate tax credit for state or foreign 6369  
death taxes inuring to the benefit of a person cannot exceed the 6370  
federal estate tax apportioned to that person. 6371

(2) Any federal estate tax credit for gift taxes paid by a 6372  
donee of a gift shall inure to the benefit of that donee for 6373



purposes of this section. 6374

(3) Credits against tax not covered by division (E)(1) or (2) 6375  
of this section shall be apportioned equitably among persons in 6376  
the manner in which the tax is apportioned among them. 6377

(F) Any additional estate tax that is due because a qualified 6378  
heir has disposed of qualified farm property in a manner not 6379  
authorized by law or ceased to use any part of the qualified farm 6380  
property for a qualified use, shall be apportioned against the 6381  
interest of the qualified heir. 6382

(G) If both a present interest and a future interest in 6383  
property are involved, a tax shall be apportioned entirely to the 6384  
principal. This shall be the case even if the future interest 6385  
qualifies for an estate tax charitable deduction, even if the 6386  
holder of the present interest also has rights in the principal, 6387  
and even if the principal is otherwise exempt from apportionment. 6388

(H) Penalties shall be apportioned in the same manner as a 6389  
tax, and interest on tax shall be apportioned to the income of the 6390  
estate or trust, unless a court directs a different apportionment 6391  
of penalties or interest based on a finding that special 6392  
circumstances make an apportionment as provided in this division 6393  
inequitable. 6394

(I) If any part of an estate consists of property, the value 6395  
of which is included in the gross estate of the decedent by reason 6396  
of section 2044 of the "Internal Revenue Code of 1986," 100 Stat. 6397  
2085, 26 N 2044, as amended, or of section 5731.131 of the Revised 6398  
Code, the estate is entitled to recover from the persons holding 6399  
or receiving the property any amount by which the estate tax 6400  
payable exceeds the estate tax that would have been payable if the 6401  
value of the property had not been included in the gross estate of 6402  
the decedent. This division does not apply if ~~a decedent provides~~ 6403  
~~otherwise in his~~ the decedent's will or another governing 6404

instrument provides otherwise and the will or instrument refers to 6405  
either section mentioned in this division or to qualified 6406  
terminable interest marital deduction property. 6407

**Sec. 2113.87.** (A) The fiduciary, or any person interested in 6408  
the estate who objects to the manner of apportionment of a tax, 6409  
may apply to the court that has jurisdiction of the estate and 6410  
request the court to determine the apportionment of the tax. If 6411  
there are no probate proceedings, the probate court of the county 6412  
in which the decedent was domiciled at death, upon application by 6413  
the fiduciary or any other person interested in the estate who 6414  
objects to the manner of apportionment of a tax, shall determine 6415  
the apportionment of the tax. 6416

(B) The fiduciary may notify any person interested in the 6417  
estate of the manner of the apportionment of tax determined by the 6418  
fiduciary. Upon receipt of ~~such a~~ that notice, a person interested 6419  
in the estate, within thirty days after the date of receipt of the 6420  
notice, may indicate ~~his~~ the person's objection to the manner of 6421  
apportionment by application to a probate court as described in 6422  
division (A) of this section. If the person interested in the 6423  
estate fails to make the application within the thirty-day period, 6424  
~~he~~ the person is bound by the manner of apportionment determined 6425  
by the fiduciary. The notice described in this division shall 6426  
state the name and address of the probate court with jurisdiction 6427  
over the apportionment and include the following statement: 6428

"If you fail to file an objection to this proposed 6429  
apportionment with the probate court within thirty days of the 6430  
receipt of this notice, you are bound by the proposed 6431  
apportionment." 6432

(C) If a probate court finds that an assessment of penalties 6433  
and interest assessed with respect to a tax is due to delay caused 6434  
by the negligence of the fiduciary, the court may charge the 6435

fiduciary with the amount of the assessed penalties and interest. 6436  
In any suit or judicial proceeding to recover from any person 6437  
interested in the estate the amount of the tax apportioned to that 6438  
person, the determination of the probate court is conclusive. 6439

**Sec. 2113.88.** (A) The fiduciary may withhold from any 6440  
property distributable to any person interested in the estate the 6441  
amount of tax attributable to the person's interest. If the 6442  
property in possession of the fiduciary and distributable to any 6443  
person interested in the estate is insufficient to satisfy the 6444  
proportionate amount of the tax determined to be due from that 6445  
person, the fiduciary may recover the deficiency from that person. 6446  
If the property is not in the possession of the fiduciary, the 6447  
fiduciary may recover from any person interested in the estate the 6448  
amount of the tax apportioned to that person in accordance with 6449  
this section by filing a complaint to recover the tax in the 6450  
probate court that has jurisdiction of the administration of the 6451  
estate. 6452

(B) If the property held by the fiduciary is distributed 6453  
prior to final apportionment of the tax, the distributee shall 6454  
provide a bond or other security for the apportionment liability 6455  
in the form and amount prescribed by the fiduciary, with the 6456  
approval of the probate court that has jurisdiction of the 6457  
administration of the estate. 6458

**Sec. 2115.02.** Within three months after the date of the 6459  
executor's or administrator's appointment, unless the probate 6460  
court grants an extension of time for good cause shown, the 6461  
executor or administrator shall file with the court an inventory 6462  
of the decedent's interest in real ~~estate~~ property located in this 6463  
state and of the tangible and intangible personal property of the 6464  
decedent that is to be administered and that has come to the 6465  
executor's or administrator's possession or knowledge. The 6466

inventory shall set forth values as of the date of death of the 6467  
decedent. If a prior executor or administrator has done so, a 6468  
successor executor or administrator need not file an inventory, 6469  
unless, in the opinion of the court, it is necessary. 6470

Any asset, the value of which is readily ascertainable, is 6471  
not required to be appraised but shall be included in the 6472  
inventory. 6473

**Sec. 2115.03.** If an executor or administrator neglects or 6474  
refuses to return an inventory as provided by section 2115.02 of 6475  
the Revised Code, the probate court shall issue an order requiring 6476  
~~him~~ the executor or administrator, at an early day specified in 6477  
the order, to return an inventory. After personal service of the 6478  
order by a person authorized to make the service, if the executor 6479  
or administrator, by the day appointed, does not return the 6480  
inventory or fails to obtain further time from the court to return 6481  
it, or if the order cannot be served personally by reason of ~~his~~ 6482  
the executor or administrator absconding or concealing ~~himself~~ 6483  
self, the court may remove the executor or administrator and new 6484  
letters shall be granted. The letters shall supersede all former 6485  
letters testamentary or of administration, deprive the former 6486  
executor or administrator of all power, authority, or control over 6487  
the estate of the deceased, and entitle the person appointed to 6488  
take, demand, and receive the effects of the deceased wherever 6489  
they are found. 6490

In every case of the revocation of letters under this 6491  
section, the bond given by the former executor or administrator 6492  
shall be prosecuted and a recovery had on the bond to the full 6493  
extent of any injury sustained by the estate of the deceased by 6494  
the former executor's or administrator's acts or omissions, and to 6495  
the full value of all the property of the deceased received and 6496  
not administered by ~~him~~ the former executor or administrator. 6497

Sec. 2115.06. The real estate property and personal property 6498  
comprised in the inventory required by section 2115.02 of the 6499  
Revised Code, unless an appraisalment ~~thereof~~ of that real property 6500  
or personal property has been dispensed with by an order of the 6501  
probate court, shall be appraised by one suitable disinterested 6502  
person appointed by the executor or administrator, subject to the 6503  
approval of the court and sworn to a faithful discharge of ~~his~~ the 6504  
trust. The executor or administrator, subject to the approval of 6505  
the court, may appoint separate appraisers of property located in 6506  
any other county and appoint separate appraisers for each asset. 6507

In lieu of the appointment of an appraiser for real property, 6508  
the executor or administrator may accept the valuation of the real 6509  
property by the county auditor. 6510

If appraisers fail to attend to the performance of their 6511  
duty, the executor or administrator, subject to the approval of 6512  
the probate judge, may appoint others to supply the place of ~~such~~ 6513  
~~delinquents~~ the delinquent appraisers. 6514

Each appraiser shall be paid ~~such an~~ an amount for ~~his~~ the 6515  
appraiser's services ~~as~~ that is determined by the executor or 6516  
administrator, subject to the approval of the probate judge, 6517  
taking into consideration ~~his~~ the appraiser's training, 6518  
qualifications, experience, time reasonably required, and the 6519  
value of the property appraised. The amount of ~~such~~ the fees may 6520  
be charged against the estate as part of the cost of the 6521  
proceeding. 6522

Sec. 2115.09. The inventory required by section 2115.02 of 6523  
the Revised Code shall contain a particular statement of all 6524  
securities for the payment of money that belong to the deceased 6525  
and are known to the executor or administrator. ~~Such~~ The inventory 6526  
shall specify the name of the debtor in each security, the date, 6527

the sum originally payable, the ~~indorsements thereon~~ endorsements 6528  
on the securities with their dates, the serial numbers or other 6529  
identifying data as to each security, and the sum that, in the 6530  
judgment of the appraisers, can be collected on each claim. 6531

~~Such~~ The inventory shall contain a statement of all debts and 6532  
accounts belonging to the deceased that are known to ~~such the~~ 6533  
executor or administrator and specify the name of the debtor, the 6534  
date, the balance or thing due, and the value or sum that can be 6535  
collected ~~thereon~~ on the debt, in the judgment of the appraisers. 6536

~~Such~~ The inventory shall contain an account of all moneys 6537  
that belong to the deceased and have come ~~to~~ into the ~~hands~~ 6538  
possession or under the control of the executor or administrator. 6539  
If none has come ~~to~~ into the ~~executor's or administrator's hands~~ 6540  
possession or under the control of the executor or administrator, 6541  
the fact shall be stated in the inventory. 6542

The inventory shall contain a statement whether or not, 6543  
insofar as it can be ascertained, the filing of an Ohio estate tax 6544  
return will be required. 6545

**Sec. 2115.10.** The emblements raised by labor, whether severed 6546  
or not from the land of the deceased at the time of ~~his~~ the 6547  
decedent's death, are assets in the ~~hands~~ possession or under the 6548  
control of the executor or administrator and shall be included in 6549  
the inventory required by section 2115.02 of the Revised Code. 6550

The executor or administrator, or the person to whom ~~he~~ the 6551  
executor or administrator sells ~~such the~~ emblements, at all 6552  
reasonable times may enter upon the lands to cultivate, sever, and 6553  
gather them. 6554

**Sec. 2115.11.** The discharge or bequest, in a will, of a debt 6555  
or demand of a testator against an executor named ~~therein~~ in the 6556  
will, or against any other person, is not valid as against the 6557

decedent's creditors, but is only a specific bequest of ~~such that~~ 6558  
debt or demand. The amount ~~thereof must~~ of the debt or demand 6559  
shall be included in the inventory of the credits and effects of 6560  
the deceased and, if necessary, ~~such that~~ amount ~~must~~ shall be 6561  
applied in the payment of ~~his~~ the decedent's debts. If not 6562  
necessary for that purpose, ~~such the~~ amount shall be paid in the 6563  
same manner and proportion as other specific legacies. 6564

**Sec. 2115.12.** The naming of a person as executor in a will 6565  
shall not operate as a discharge or bequest of a just claim ~~which~~ 6566  
that the testator had against ~~such that~~ executor. ~~Such~~ The claim 6567  
shall be included among the assets of the deceased in the 6568  
inventory required by section 2115.02 of the Revised Code. The 6569  
executor shall be liable for it as for so much money in ~~his hands~~ 6570  
the possession or under the control of the executor at the time 6571  
~~such that~~ debt or demand becomes due, and ~~must~~ shall apply and 6572  
distribute it as part of the personal ~~estate~~ property of the 6573  
deceased. 6574

**Sec. 2115.16.** Upon the filing of the inventory required by 6575  
section 2115.02 of the Revised Code, the probate court ~~forthwith~~ 6576  
shall set a day, not later than one month after the day the 6577  
inventory was filed, for a hearing on the inventory. 6578

The executor or administrator may serve notice of the 6579  
hearing, or may cause the notice to be served, upon any person who 6580  
is interested in the estate. The probate court, after notice to 6581  
the executor or administrator, either upon the motion of any 6582  
interested party for good cause shown or at its own instance, may 6583  
order that notice of the hearing is to be served upon persons the 6584  
court designates. 6585

For good cause, the hearing may be continued for the time 6586  
that the court considers reasonable. Exceptions to the inventory 6587

or to the allowance for support provided by section 2106.13 of the Revised Code may be filed at any time prior to five days before the date set for the hearing or the date to which the hearing has been continued by any person interested in the estate or in any of the property included in the inventory, but the time limit for the filing of exceptions shall not apply in case of fraud or concealment of assets. When exceptions are filed, notice of them and the time of the hearing on them ~~forthwith~~ shall be given to the executor or administrator and ~~his~~ the attorney of the executor or administrator by certified mail or by personal service, unless the notice is waived. At the hearing, the executor or administrator and any witness may be examined under oath. The court shall enter its finding on the journal and tax the costs as may be equitable.

**Sec. 2115.17.** When the inventory required by section 2115.02 of the Revised Code has been approved by the probate court, the appraisement of the real ~~estate~~ property as set forth ~~therein~~ in the inventory shall be conclusive for all purposes except estate tax, unless a reappraisal is ordered by the court.

**Sec. 2117.01.** No part of the assets of a deceased shall be retained by an executor or administrator in satisfaction of ~~his~~ the executor's or the administrator's own claim, until it has been proved to and allowed by the probate court. ~~Such~~ That debt is not entitled to preference over others of the same class.

**Sec. 2117.02.** An executor or administrator within three months after the date of ~~his~~ appointment shall present any claim ~~he~~ the executor or administrator has against the estate to the probate court for allowance. The claim shall not be paid unless allowed by the court. When an executor or administrator presents a claim amounting to five hundred dollars or more, the court shall



fix a day not less than four nor more than six weeks from its 6618  
presentation, when the testimony touching it shall be heard. The 6619  
court ~~forthwith~~ shall issue an order directed to the executor or 6620  
administrator requiring ~~him~~ the executor or administrator to give 6621  
notice in writing to all the heirs, legatees, or devisees of the 6622  
decedent interested in the estate, and to the creditors named in 6623  
the order. The notice shall contain a statement of the amount 6624  
claimed, designate the time fixed for hearing the testimony, and 6625  
be served upon the persons named in the order at least twenty days 6626  
before the time for hearing. If any persons mentioned in the order 6627  
are not residents of the county, service of notice may be made 6628  
upon them by publication for three consecutive weeks in a 6629  
newspaper published or circulating in the county, or as the court 6630  
may direct. All persons named in the order shall be parties to the 6631  
proceeding, and any other person having an interest in the estate 6632  
may be made a party. 6633

**Sec. 2117.03.** At any time after the presentation by an 6634  
executor or administrator of a claim ~~which he~~ that the executor or 6635  
administrator owns against the estate ~~he~~ the executor or 6636  
administrator represents to the probate court for allowance, the 6637  
court on its own motion, or on motion by any interested party, may 6638  
appoint an attorney to represent the estate, who shall receive 6639  
~~such~~ the compensation from the estate ~~as~~ that may be fixed by the 6640  
court. The court shall ~~thereupon~~ require the executor or 6641  
administrator to make available to ~~such~~ the attorney, for use in 6642  
connection with the proceeding, all documents belonging to the 6643  
estate relating to the subject matter of ~~such~~ the claim. 6644

**Sec. 2117.04.** Upon the hearing as to the allowance of an 6645  
executor's or administrator's claim against the estate ~~he~~ the 6646  
executor or administrator represents, an appeal may be taken from 6647  
a final order or judgment of the probate court upon a matter of 6648

law by any person affected by the order or judgment. 6649

**Sec. 2117.08.** When a claim is presented against the estate of 6650  
a deceased person, the executor or administrator may require 6651  
satisfactory written proof in support of it and also the affidavit 6652  
of the claimant that ~~such~~ the claim is justly due, that no 6653  
payments have been made ~~thereon~~ on the claim, and that there are 6654  
no counterclaims against it to ~~his~~ the claimant's knowledge. ~~Such~~ 6655  
The affidavit shall set forth any security held for the payment of 6656  
~~said~~ the claim and, if the claim is not due, the date of maturity. 6657  
If ~~said~~ the claim arises out of tort, or if preference in payment 6658  
is claimed, the facts in connection with the alleged tort or 6659  
showing the right to ~~such~~ that preference shall be briefly set 6660  
forth. 6661

**Sec. 2117.09.** If an executor or administrator doubts the 6662  
justice of any claim presented against the estate ~~he~~ the executor 6663  
or administrator represents, ~~he~~ the executor or administrator may 6664  
enter into an agreement in writing with the claimant to refer the 6665  
matter in controversy to three disinterested persons, who ~~must~~ 6666  
shall be approved by the probate judge. 6667

Upon filing the agreement of reference in the probate court 6668  
of the county in which the letters testamentary or of 6669  
administration were issued, the judge shall docket the cause and 6670  
make an order referring the matter in controversy to the referees 6671  
selected. 6672

The referees ~~thereupon must~~ shall proceed to hear and 6673  
determine the matter and make their report to the court. The 6674  
referees shall have the same powers and be entitled to the same 6675  
compensation and the same proceedings shall be followed as if the 6676  
reference were made under the provisions for arbitrations under a 6677  
rule of the court of common pleas. The court may set aside the 6678

report of the referees, appoint others in their places, or confirm 6679  
~~such the~~ report and adjudge costs as in actions against executors 6680  
and administrators. The judgment of the court ~~thereupon~~ shall be 6681  
valid and effectual. 6682

**Sec. 2117.10.** The failure of the holder of a valid lien upon 6683  
any of the assets of an estate to present ~~his~~ the lienholder's 6684  
claim upon the indebtedness secured by ~~such the~~ lien, as provided 6685  
in ~~Chapter 2117. of the Revised Code~~ this chapter, shall not 6686  
affect ~~such the~~ lien if the same is evidenced by a document 6687  
admitted to public record, or is evidenced by actual possession of 6688  
the real or personal property ~~which that~~ is subject to ~~such the~~ 6689  
lien. 6690

**Sec. 2117.13.** If a devisee, legatee, heir, creditor, or other 6691  
interested party files in the probate court a written requisition 6692  
on the executor or administrator to reject a claim presented for 6693  
allowance against the estate ~~he~~ the executor or administrator 6694  
represents, whether the claim has been allowed or not, but which 6695  
claim has not been paid in full, and enters into a sufficient bond 6696  
running to ~~such the~~ executor or administrator, the amount, terms, 6697  
and surety of which are to be approved by the probate judge, the 6698  
claim shall be rejected by the executor or administrator. The 6699  
notice of rejection shall inform the claimant of the filing of the 6700  
requisition and of the name of the party filing the same. The 6701  
condition of the bond shall be to pay all costs and expenses of 6702  
contesting ~~such the~~ claim, including ~~such any~~ reasonable fee ~~as~~ 6703  
that the court allows to the attorney for the executor or 6704  
administrator, in case the claim finally is allowed in whole, and 6705  
if ~~such the~~ claim is allowed only in part, to pay ~~such that~~ part 6706  
of the expenses ~~as that~~ the court may determine, including ~~such~~ 6707  
any reasonable fee ~~as that~~ the court may allow to the attorney for 6708  
the executor or administrator. 6709

**Sec. 2117.15.** An executor or administrator may proceed to pay 6710  
the debts due from the estate in accordance with Chapters 2113. to 6711  
2125. of the Revised Code. If it appears at any time that the 6712  
estate is insolvent, the executor or administrator may report that 6713  
fact to the court, and apply for any order that ~~he~~ the executor or 6714  
administrator considers necessary because of the insolvency. In 6715  
case of insolvency, a creditor who has been paid according to law 6716  
shall not be required to make any refund. 6717

**Sec. 2117.17. (A)** The probate court on its own motion may, 6718  
and on motion of the executor or administrator shall, assign all 6719  
claims against the estate that have been presented and any other 6720  
known valid debts of the estate for hearing on a day certain. 6721  
~~Forthwith upon such~~ Upon the assignment, and in no case less than 6722  
ten days before the date fixed for hearing or ~~such a~~ longer period 6723  
~~as~~ that the court may order, the executor or administrator shall 6724  
cause written notice of the hearing to be served upon the 6725  
following persons who have not waived the notice in writing or 6726  
otherwise voluntarily entered their appearance: 6727

~~(A)(1)~~ If it appears that the estate is fully solvent, ~~such~~ 6728  
the notice shall be given to the surviving spouse and all other 6729  
persons having an interest in the estate as devisees, legatees, 6730  
heirs, and distributees. 6731

~~(B)(2)~~ If it appears probable that there will not be 6732  
sufficient assets to pay all of the valid debts of the estate in 6733  
full, then ~~such~~ the notice also shall be given to all creditors 6734  
and claimants whose claims have been rejected and whose rights 6735  
have not been finally determined by judgment, reference, or lapse 6736  
of time. 6737

(B) The notice required by this section shall state that a 6738  
hearing concerning the debts has been scheduled, shall set forth 6739

the time and place of the hearing, and shall state that the action 6740  
of the executor or administrator in allowing and classifying 6741  
claims will be confirmed at ~~such~~ the hearing unless cause to the 6742  
contrary is shown. The notice shall be served personally or by 6743  
certified mail in the manner specified for service of notice of 6744  
the rejection of a claim under section 2117.11 of the Revised 6745  
Code. Proof of service of the notice to the satisfaction of the 6746  
court, by affidavit or otherwise, and all waivers of service shall 6747  
be filed in court at the time of the hearing. At any time before 6748  
hearing, any interested person may file exceptions in writing to 6749  
the allowance or classification of any specific claim. The court 6750  
may cause or permit other interested persons to be served with 6751  
notice and witnesses to be subpoenaed as may be required to 6752  
present the issues fully. 6753

(C) The court, upon the hearing, shall determine whether the 6754  
executor or administrator acted properly in allowing and 6755  
classifying each claim and shall make an order confirming or 6756  
disapproving ~~such~~ that action. 6757

(D) An order of the court disapproving the allowance of a 6758  
claim shall have the same effect as a rejection of the claim on 6759  
the date on which the claimant is served with notice of the 6760  
court's order. Notice of the court's order shall be served 6761  
personally or by certified mail in the manner specified for 6762  
service of notice of the rejection of a claim under section 6763  
2117.11 of the Revised Code. An order of the court confirming the 6764  
allowance or classification of a claim shall constitute a final 6765  
order and shall have the same effect as a judgment at law or 6766  
decree in equity, and shall be final as to all persons having 6767  
notice of the hearing and as to claimants subsequently presenting 6768  
their claims, though without notice of ~~such~~ the hearing. In the 6769  
absence of fraud, the allowance and classification of a claim and 6770  
the subsequent payment of it in good faith shall not be subject to 6771

question upon exceptions to the executor's or administrator's 6772  
accounts. The confirmation of a claim by the court shall not 6773  
preclude the executor or administrator from thereafter rejecting 6774  
the claim on discovery of error in ~~his~~ the executor's or 6775  
administrator's previous action or on requisition as provided in 6776  
sections 2117.13 and 2117.14 of the Revised Code. 6777

**Sec. 2117.18.** Taxes, penalties, and interest placed on a 6778  
duplicate or added by the county auditor or the tax commissioner 6779  
because of a failure to make a return or because of a false or 6780  
incomplete return for taxation shall be a debt of a decedent and 6781  
have the same priority and be paid as other taxes. ~~Such~~ Those 6782  
taxes, penalties, and interest shall be collectible out of the 6783  
property of the estate either before or after distribution, by any 6784  
means provided for collecting other taxes. No distribution or 6785  
payment of inferior debts or claims shall defeat ~~such that~~ 6786  
collection~~+~~, but ~~no such~~ the tax, penalty, or interest ~~can~~ shall 6787  
not be added before notice to the executor or administrator, and 6788  
before an opportunity is given ~~him~~ to the executor or 6789  
administrator to be heard. All taxes omitted by the deceased ~~must~~ 6790  
shall be charged on the tax lists and duplicate in ~~his~~ the 6791  
deceased's name. 6792

In all ~~such~~ additions to the personal tax lists and duplicate 6793  
under this section, each succeeding tax year shall be considered 6794  
as beginning at the time of the completion of the annual 6795  
settlement of the duplicate for the previous year with the county 6796  
treasurer. 6797

**Sec. 2117.30.** (A) No suit shall be brought against an 6798  
executor or administrator by a creditor of the decedent or by any 6799  
other party interested in the estate until after five months from 6800  
the time of the appointment of the executor or administrator, or 6801  
the expiration of the further time allowed by the probate court 6802

for the collection of the assets of the estate, except in the 6803  
following cases: 6804

~~(A)~~(1) On claims rejected in whole or in part; 6805

~~(B)~~(2) For the enforcement of a lien against or involving 6806  
title to specific property; 6807

~~(C)~~(3) For the recovery of a claim that would not be affected 6808  
by the insolvency of the estate; 6809

~~(D)~~(4) On account of fraud, conversion, or concealment of 6810  
assets; 6811

~~(E)~~(5) Any other action as to which a different rule is 6812  
prescribed by statute. 6813

(B) When an executor or administrator dies, resigns, or is 6814  
removed without having fully administered the estate of the 6815  
deceased, the time between ~~his~~ the executor's or administrator's 6816  
death, resignation, or removal and the appointment of a successor 6817  
shall be excluded in computing the five months or longer period 6818  
provided in division (A) of this section. In any event, ~~his~~ the 6819  
executor's or administrator's successor shall not be held to 6820  
answer the suit until after the expiration of four months from the 6821  
date of the successor's appointment, or a further time allowed ~~him~~ 6822  
the executor or administrator by the court for the collection of 6823  
the assets of the estate. 6824

**Sec. 2117.31.** When two or more persons are indebted in a 6825  
joint contract, or upon a judgment founded on ~~such~~ the joint 6826  
contract, and either of them dies, ~~his~~ the decedent's estate shall 6827  
be liable ~~therefor~~ for the debt as if the contract had been joint 6828  
and several, or as if the judgment had been against ~~himself~~ the 6829  
decedent alone. This section shall not affect the rights of a 6830  
surety, when certified as such, in a judgment rendered jointly 6831  
against ~~him~~ the surety and ~~his~~ the surety's principal. 6832

**Sec. 2117.34.** No execution against the assets of an estate 6833  
shall issue upon a judgment against an executor or administrator 6834  
unless upon the order of the probate court ~~which that~~ appointed 6835  
~~him~~ the executor or administrator. If an account has been rendered 6836  
by ~~such the~~ executor or administrator and settled by the court, 6837  
~~such the~~ execution shall issue only for the sum that appeared, on 6838  
settlement of ~~such the~~ account, to be a just proportion of the 6839  
assets applicable to the judgment. The order of the court allowing 6840  
~~such the~~ execution shall fix the amount for which the ~~same~~ 6841  
execution shall issue. 6842

**Sec. 2117.35.** All executions against executors and 6843  
administrators for debts due from the deceased shall run against 6844  
the ~~goods and~~ assets of the estate of the deceased in ~~their hands~~ 6845  
the possession or under the control of the executors and 6846  
administrators. 6847

**Sec. 2117.36.** No real ~~estate~~ property of a deceased person 6848  
~~which that~~ has been aliened or encumbered by the decedent's heirs 6849  
prior to the issuing of letters testamentary or of administration 6850  
shall be liable while in the ~~hands~~ possession or under the control 6851  
of a bona fide purchaser for value or to the prejudice of a bona 6852  
fide lessee or encumbrancer for value for debts of the deceased 6853  
person unless letters testamentary or of administration are 6854  
granted within four years from the date of death of ~~such the~~ 6855  
deceased person. No real ~~estate~~ property of a deceased person 6856  
~~which that~~ has been aliened or encumbered by the decedent's heirs 6857  
or devisees after the ~~issue~~ issuance of letters testamentary or of 6858  
administration shall be liable while in the ~~hands~~ possession or 6859  
under the control of a bona fide purchaser for value or to the 6860  
prejudice of a bona fide lessee or encumbrancer for value for 6861  
debts of a deceased person unless suit is brought to subject ~~such~~ 6862



the real estate property to the payment of ~~such~~ those debts prior 6863  
to the settlement of the executor's or administrator's final 6864  
account or what purports to be ~~his~~ the executor's or 6865  
administrator's final account; provided that if ~~such~~ the final 6866  
account is not filed and settled within four years after the 6867  
granting of letters testamentary or of administration, but 6868  
excluding for ~~the~~ these purposes ~~hereof~~ the time that any action 6869  
is pending against the executors or administrators for the 6870  
establishment or collection of any claim against the deceased, 6871  
~~such~~ the real estate property so aliened shall not be liable for 6872  
the debts of the deceased unless suit is brought to subject ~~such~~ 6873  
the real estate thereto property to those debts within ~~such~~ that 6874  
four-year period. The heir or devisee aliening ~~such~~ the real 6875  
~~estate~~ property shall be liable for ~~the~~ its value ~~thereof~~, with 6876  
legal interest from the time of alienation, to the creditors of 6877  
the deceased in the manner and within the limitations provided by 6878  
law. This section does not enlarge or extend the right of the 6879  
creditors of any deceased person against ~~his~~ the deceased person's 6880  
real estate property, ~~or~~ repeal any limitations contained in other 6881  
sections of the Revised Code, or apply to mortgages or liens of 6882  
record at the time of the death of ~~such~~ the deceased person. 6883

**Sec. 2117.37.** If a claim is contingent at the time of a 6884  
decedent's death and a cause of action subsequently accrues on the 6885  
claim, it shall be presented to the executor or administrator, in 6886  
the same manner as other claims, before the expiration of ~~one year~~ 6887  
six months after the date of death of the decedent, or before the 6888  
expiration of two months after the cause of action accrues, 6889  
whichever is later, except as provided in section 2117.39 of the 6890  
Revised Code. The executor or administrator shall allow or reject 6891  
the claim in the same manner as other claims are allowed or 6892  
rejected. If the claim is allowed, the executor or administrator 6893  
shall proceed to pay it. If the claim is rejected, the claimant 6894

shall commence an action on the claim within two months after the 6895  
rejection or be forever barred from maintaining an action on the 6896  
claim. 6897

**Sec. 2117.41.** A claimant whose cause of action accrues as 6898  
provided in section 2117.37 of the Revised Code may bring suit to 6899  
recover ~~thereon~~ on the claim against the heirs, next of kin, 6900  
surviving spouse as next of kin, devisees, and legatees under the 6901  
decedent's will, each of whom shall be liable to the claimant in 6902  
an amount not exceeding the value of the real and personal ~~estate~~ 6903  
property that ~~he~~ the person received under the will or on 6904  
distribution of the estate. If, by the will of the deceased, any 6905  
part of the estate or any one or more of the devisees and legatees 6906  
is made exclusively liable for the debt, in exoneration of the 6907  
residue of the estate or of the other devisees or legatees, the 6908  
terms of the will shall be complied with in that respect and the 6909  
persons and estate so exempt by the will shall be liable for only 6910  
so much of the debt ~~as~~ that cannot be recovered from those first 6911  
chargeable ~~therewith~~ with the debt. 6912

No ~~such~~ suit shall be maintained under this section unless 6913  
commenced within six months next after the time when the cause of 6914  
action first accrues, except in case the suit is for the balance 6915  
due after a payment by the executor or administrator, in which 6916  
case suit shall be brought within two months after the final 6917  
payment by the executor or administrator. If the person entitled 6918  
to bring ~~such~~ the suit is under legal disability, ~~he~~ the person 6919  
may bring ~~such~~ the action within one year after ~~his~~ the person's 6920  
disability is removed. 6921

If any of ~~such~~ those heirs, next of kin, surviving spouse as 6922  
next of kin, devisees, or legatees dies without having paid ~~his~~ 6923  
the person's just proportion of ~~such~~ the debt, ~~his~~ the executors 6924  
or administrators of that deceased person's estate shall be liable 6925

~~therefor~~ for that proportion to the extent ~~he~~ the deceased person 6926  
would have been if living. 6927

**Sec. 2117.42.** If, in the cases specified in section 2117.41 6928  
of the Revised Code, more than one person is liable for the debt, 6929  
the creditor shall proceed by one action to recover ~~such the~~ debt 6930  
against all so liable, or as many of them ~~as~~ who are within the 6931  
reach of process. ~~Thereupon, by~~ By the verdict of a jury if either 6932  
party requires it, the court ~~must~~ shall determine what sum is due 6933  
to the plaintiff. ~~They~~ The jury also, according to the equities of 6934  
the case, shall decide how much each of the defendants is liable 6935  
to pay toward the satisfaction of the debt and the court shall 6936  
render judgment accordingly. 6937

No suit shall be dismissed or debarred for not making all the 6938  
persons defendants who might have been included as ~~such~~ 6939  
defendants. In any stage of the cause the court may award process 6940  
to bring in other parties and allow amendments necessary to charge 6941  
them, as defendants, upon ~~such the~~ terms ~~as~~ that it ~~deems~~ 6942  
considers reasonable. 6943

If any of the persons who were originally liable for the debt 6944  
is insolvent or unable to pay ~~his~~ the person's proportion, or is 6945  
beyond the reach of process, the others nevertheless shall be 6946  
liable to the creditor for the whole amount of ~~his~~ the debt; 6947  
except that no one shall be compelled to pay more than the amount 6948  
received by ~~him~~ the person from the decedent's estate. 6949

If, in consequence of insolvency, absence, or other cause, 6950  
any of the persons liable for ~~such the~~ debt fails to pay ~~his~~ the 6951  
person's just proportion to the creditor, ~~he~~ the person shall be 6952  
liable to indemnify all who, by reason of ~~such~~ that person's 6953  
failure ~~on his part~~, have paid more than their just proportion of 6954  
the debt, such indemnity to be recovered by all of them jointly or 6955  
in separate actions, by any one or more of them for ~~his~~ or their 6956

respective parts ~~respectively~~, at their election. 6957

**Sec. 2119.01.** When a person owning property in this state has 6958  
disappeared and has not been heard from, after diligent inquiry 6959  
and for at least three months, under circumstances that afford 6960  
reasonable ground to believe that ~~he~~ the person is dead, cannot 6961  
return, or refuses to return to ~~his~~ the person's home, and ~~his~~ the 6962  
person's estate requires attention, supervision, and care, or is 6963  
needed for the maintenance of ~~his~~ the person's dependents, the 6964  
probate court ~~may~~, on application of the spouse or of one of the 6965  
next of kin, may appoint a trustee to take possession and charge 6966  
of the property of ~~such~~ the person, other than the property with 6967  
respect to which ~~such~~ the person has made provision by written 6968  
instrument designating an agent or attorney in fact. ~~Such~~ The 6969  
application shall be filed in the county in which ~~such~~ the person 6970  
last resided or if ~~his~~ the person's last known residence was 6971  
~~without~~ outside this state, ~~such~~ the application may be filed in 6972  
any county in which ~~any such~~ that property is situated. 6973

**Sec. 2119.02.** The probate court, before appointing a trustee 6974  
for an absentee, shall cause notice of the filing of the 6975  
application under section 2119.01 of the Revised Code and of the 6976  
time and place of hearing ~~thereon~~ on the application to be 6977  
published once a week for four consecutive weeks in ~~some a~~ 6978  
newspaper of general circulation in the county and shall cause 6979  
copies of ~~such~~ the notice to be mailed to the spouse and next of 6980  
kin of the absentee residing within the state, ~~excepting~~ except 6981  
the applicant, and to the absentee residing at ~~his~~ the absentee's 6982  
last known address. The court may order notice to be given to ~~such~~ 6983  
any other persons in ~~such~~ the manner ~~as~~ that it ~~deems~~ considers 6984  
best. 6985

**Sec. 2119.03.** (A) The trustee appointed under section 2119.01 6986

of the Revised Code may proceed without order of the probate court 6987  
to do the following: 6988

~~(A) To take~~ (1) Take possession of the property of the 6989  
absentee wherever situated within the state; 6990

~~(B) To collect~~ (2) Collect all debts due to the absentee; 6991

~~(C) To retain~~ (3) Retain and invest the estate in accordance 6992  
with Chapters 2113. to 2125. of the Revised Code. 6993

(B) The trustee may pay ~~such~~ that part or all of the income 6994  
or principal of the estate as the court, from time to time, may 6995  
direct for the maintenance and support of the absentee's 6996  
dependents and, under the order of the court, may bring and defend 6997  
suits on behalf of the absentee, compromise claims in favor of and 6998  
against the absentee, and pay ~~such~~ any debts of the absentee ~~as~~ 6999  
that the court finds necessary for the protection of ~~his~~ the 7000  
absentee's dependents, including insurance premiums, orders for an 7001  
award of spousal support, and other obligations. The court may 7002  
make ~~such~~ any other orders ~~as~~ that it ~~deems~~ considers proper for 7003  
the care and custody of the property and its proceeds. 7004

**Sec. 2119.04.** In order to provide money for the payments 7005  
authorized by section 2119.03 of the Revised Code, proceedings may 7006  
be had for the mortgaging, leasing, or sale of the real ~~estate~~ 7007  
property of an absentee in the same manner as provided by sections 7008  
2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code, for sales of 7009  
real ~~estate~~ property by executors and administrators. The probate 7010  
court, upon notice to the spouse and ~~such~~ any other persons and in 7011  
~~such~~ the manner ~~as~~ that the court directs, may order all or any 7012  
part of the personal ~~estate~~ property to be sold. 7013

**Sec. 2119.05.** If at any time the absentee returns and makes 7014  
application to the probate court for the termination of the trust 7015  
established under section 2119.01 of the Revised Code, the court 7016

shall, on notice to the trustee and other interested parties, 7017  
order the trustee to file ~~his~~ a final account and on settlement 7018  
~~thereof~~ of the account shall terminate the trust and order all 7019  
remaining property returned. If an executor, administrator, or 7020  
guardian is appointed for the estate of ~~such~~ the absentee, the 7021  
court shall ~~thereupon~~ order the trustee to file ~~his~~ a final 7022  
account and on settlement ~~thereof~~ of the account shall terminate 7023  
the trust and order all of the property remaining in the ~~hands~~ 7024  
possession or under the control of the trustee to be delivered to 7025  
the fiduciary entitled ~~thereto~~ to the property. 7026

**Sec. 2121.01.** (A) Except as provided in division (B) of this 7027  
section, a presumption of the death of a person arises upon either 7028  
of the following: 7029

(1) When the person has disappeared and been continuously 7030  
absent from ~~his~~ the person's place of last domicile for a 7031  
five-year period without being heard from during the period; 7032

(2) When the person has disappeared and been continuously 7033  
absent from ~~his~~ the person's place of last domicile without being 7034  
heard from and was at the beginning of ~~his~~ the person's absence 7035  
exposed to a specific peril of death, even though the absence has 7036  
continued for less than a five-year period. 7037

(B) When a person who is on active duty in the armed services 7038  
of the United States has been officially determined to be absent 7039  
in a status of "missing" or "missing in action," a presumption of 7040  
death arises when the head of the federal department concerned has 7041  
made a finding of death pursuant to the "Federal Missing Persons 7042  
Act," 80 Stat. 625 (1966), 37 U.S.C.A. 551, as amended and 7043  
hereafter amended. 7044

**Sec. 2121.02.** (A) When ~~such~~ a presumption of death arises 7045  
under section 2121.01 of the Revised Code with respect to a person 7046

who at the time of disappearance was domiciled in this state, the 7047  
attorney general of this state or any person entitled under the 7048  
~~last~~ will of ~~such~~ the presumed decedent or under Chapter 2105. of 7049  
the Revised Code to any share in the presumed decedent's property 7050  
within this state, or any person or entity who, under the terms of 7051  
any contract, beneficiary designation, trust, or otherwise, may be 7052  
entitled to any property, right, or interest by reason of the 7053  
death of the presumed decedent, may file a complaint setting forth 7054  
the facts ~~which~~ that raise the presumption of death in the probate 7055  
court of the county of the presumed decedent's last residence. 7056

(B) When a presumption of death arises pursuant to section 7057  
2121.01 of the Revised Code with respect to a person who at the 7058  
time of the person's disappearance was domiciled at a place other 7059  
than within the state, and the presumed decedent owns real 7060  
property within this state, the complaint may be filed in the 7061  
county where any part of the real property of the presumed 7062  
decedent is located by any of the persons or entities referred to 7063  
in division (A) of this section, or by any domiciliary executor or 7064  
administrator of the decedent. A foreign fiduciary shall include 7065  
with the complaint an exemplified copy of the domiciliary 7066  
proceedings pursuant to which the foreign fiduciary was appointed. 7067

(C) In the case of a presumed decedent who was domiciled in 7068  
this state, the complainant shall name as parties defendant the 7069  
presumed decedent and each of the following that do not join in 7070  
the complaint: 7071

(1) The presumed decedent's surviving spouse, if any; 7072

(2) All persons known to the complainant who are entitled 7073  
under the presumed decedent's ~~last~~ will and all persons who are 7074  
entitled under Chapter 2105. of the Revised Code to any share of 7075  
the presumed decedent's property; 7076

(3) All persons or entities known to the complainant who have 7077

or would have by reason of the presumed decedent's death any right 7078  
or interest under any contract, beneficiary designation, trust, or 7079  
otherwise; 7080

(4) All contract obligors known to the complainant whose 7081  
rights or obligations would be affected by a determination that 7082  
the presumed decedent is in fact dead. 7083

(D) In the case of a presumed decedent who was not domiciled 7084  
in this state but who owned real estate property in this state, 7085  
the complainant shall name as parties defendant each of the 7086  
following that do not join in the complaint: 7087

(1) The presumed decedent's surviving spouse, if any; 7088

(2) All persons known to the complainant who are entitled 7089  
under the presumed decedent's ~~last~~ will and all persons who are 7090  
entitled under Chapter 2105. of the Revised Code to any share of 7091  
the presumed decedent's real property within this state. 7092

(E) All parties defendant, other than the presumed decedent, 7093  
shall be served with summons in the same manner as provided by the 7094  
Rules of Civil Procedure. 7095

(F) The complainant shall cause to be advertised once a week 7096  
for four consecutive weeks in a newspaper published in the county, 7097  
the fact that the complaint has been filed together with a notice 7098  
that on a day certain, ~~which~~ that shall be at least four weeks 7099  
after the last appearance of the advertisement, or after the final 7100  
publication where any defendant is being served by publication, 7101  
whichever is later, the probate court will hear evidence relevant 7102  
to the allegations of the complaint. 7103

(G) No guardian ad litem, trustee for the suit, or other 7104  
representative shall be required to be appointed to represent the 7105  
presumed decedent in the proceeding. 7106

**Sec. 2121.05.** (A) Except as provided otherwise in ~~Chapter~~ 7107



~~2121. of the Revised Code~~ this chapter, all of the proceedings for 7108  
the probate of the decedent's ~~last~~ will, if any, and all the 7109  
proceedings, domiciliary or ancillary, for the administration of 7110  
the decedent's estate that are set forth in the Revised Code for 7111  
use upon the death of a decedent, shall upon the signing of the 7112  
decree of presumed death be instituted and carried on in the same 7113  
manner as if the presumed decedent were in fact dead. All acts 7114  
pursuant to these proceedings shall be as valid as if the presumed 7115  
decedent were in fact dead. 7116

(B) Following the decree the court may make ~~such~~ any 7117  
supplementary orders ~~as~~ that in its discretion are necessary to 7118  
consummate any right or interest arising by reason of the death of 7119  
the presumed decedent under any contract, trust, or other 7120  
nonprobate property interest of any person or entity who was a 7121  
party to the proceedings. The court may condition the granting of 7122  
~~any such~~ that order by requiring any person or entity who would 7123  
benefit ~~thereby~~ by the order to furnish bond for a three-year 7124  
period after the decree in the form and amount, with or without 7125  
sureties, as the court shall order. If any supplementary order is 7126  
directed to the holder of assets of the presumed decedent ~~which~~ 7127  
that were created by the decree of presumed death, the court, at 7128  
the request of the party defendant to whom the order is directed, 7129  
shall condition the granting of ~~any such~~ that order by requiring 7130  
any person or entity who would benefit ~~thereby~~ by the order to 7131  
furnish a suretyship bond for a three-year period after the decree 7132  
in the amount of the assets so created by the decree with interest 7133  
for the period of the bond at the rate specified in the order. 7134

(C) The term "assets of the presumed decedent ~~which~~ that were 7135  
created by the decree of presumed death" as used in division (B) 7136  
of this section and division (D) of section 2121.08 of the Revised 7137  
Code, means those potential assets of the presumed decedent in 7138  
which the presumed decedent had a contractual or other right, 7139

contingent upon the presumed decedent's death, to have ~~such~~ those 7140  
assets paid to ~~his~~ the presumed decedent's designee and the decree 7141  
of presumed death would fulfill the contingency. Only that portion 7142  
of the proceeds of life insurance policies on the life of the 7143  
presumed decedent that exceeds any net cash surrender value of 7144  
~~such~~ the policies on the date of the decree is within the 7145  
definition of the term "assets of the presumed decedent ~~which~~ that 7146  
were created by the decree of presumed death." 7147

(D) The bond shall provide that, if within the three-year 7148  
period after the decree is entered by the court it is established 7149  
that the presumed decedent is alive, ~~such~~ the person or entity 7150  
shall on the subsequent order of the court refund or return any 7151  
sums, with interest as provided in the court order, or property 7152  
received by virtue of ~~such~~ the order, to the presumed decedent or 7153  
to the person or entity who, by reason of the erroneous finding of 7154  
death of the presumed decedent, made ~~such~~ the payment or delivered 7155  
~~such~~ the property. The bond shall be further conditioned on 7156  
returning the fair value of the property if the same shall have 7157  
been sold or otherwise disposed of in the interim. 7158

(E) If the person or entity who would benefit by an order, as 7159  
provided in division (B) of this section, fails to provide a bond 7160  
for the amount of the assets of the presumed decedent ~~which~~ that 7161  
were created by the decree, with interest as specified in the 7162  
order, the holder shall hold those assets for the three-year 7163  
period they would have been bonded. In that event, the holder 7164  
shall pay interest at the same rate specified in the order as a 7165  
condition of the bond and the interest shall accumulate and be 7166  
held throughout that period. 7167

(F) Nothing in this section shall preclude ~~such~~ the person or 7168  
entity from selling, encumbering, or otherwise disposing of any 7169  
property so received and any purchaser, transferee, or mortgagee 7170  
acquires good title to ~~such~~ the property free and clear of any 7171

claim of the presumed decedent. 7172

**Sec. 2121.06.** Upon the signing of the decree establishing the 7173  
death of the presumed decedent, the real ~~estate~~ property of the 7174  
presumed decedent passes and ~~devolves~~ devolves as in the case of 7175  
actual death, and the persons entitled by will, or under Chapter 7176  
2105. of the Revised Code, may enter and take possession. Persons 7177  
taking the real ~~estate~~ property may sell or mortgage it and the 7178  
purchaser or mortgagee takes a good title, free and discharged of 7179  
any interest or claim of the presumed decedent. The persons taking 7180  
~~such~~ the real ~~estate~~ property shall not sell, convey, or mortgage 7181  
any part ~~thereof~~ of the property within the three-year period 7182  
specified in section 2121.08 of the Revised Code without first 7183  
giving bond in an amount to be fixed by the probate court and with 7184  
sureties to be approved by the court. In the discretion of the 7185  
court the bond may be taken without sureties. ~~Such~~ The bond shall 7186  
be conditioned to account for and pay over to the presumed 7187  
decedent, in case within the three-year period after the decree is 7188  
entered by the court it is established that the presumed decedent 7189  
is still alive, the value of the real ~~estate~~ property sold or 7190  
conveyed, or in the case of the making of a mortgage, to pay the 7191  
amount of the mortgage and interest ~~thereon~~ on the mortgage, or in 7192  
case of a foreclosure of ~~such~~ that mortgage, to account for and 7193  
pay over the value of the real ~~estate~~ property mortgaged. 7194

**Sec. 2121.08.** (A) The probate court may at any time within a 7196  
three-year period from the date of the decree establishing the 7197  
death of a presumed decedent, upon proof satisfactory to the court 7198  
that the presumed decedent is in fact alive, vacate the decree 7199  
establishing the presumption of ~~his~~ death. After the decree has 7200  
been vacated all the powers of the executor or administrator of 7201  
the presumed decedent cease, but all proceedings had and steps 7202

taken with respect to the administration of the estate of the 7203  
presumed decedent prior to the vacating of ~~such the~~ decree remain 7204  
valid. The executor or administrator of the estate of ~~such the~~ 7205  
presumed decedent who is found to be alive shall settle ~~his the~~ 7206  
account of ~~his the executor's or administrator's~~ administration 7207  
down to the time of the vacating of the decree and shall transfer 7208  
all assets remaining in ~~his hands~~ the possession or under the 7209  
control of the executor or administrator to the person ~~as whose~~ 7210  
for whom the executor or administrator ~~he has acted~~ is acting, or 7211  
to ~~such that~~ person's authorized agent or attorney. 7212

(B) The title of any person to any money, property, right, or 7213  
interest as surviving spouse, next of kin, heir, legatee, devisee, 7214  
co-owner with right of survivorship, beneficiary or other 7215  
contractual payee, successor to a trust interest, or otherwise of 7216  
the presumed decedent shall be subject to this section, and upon 7217  
vacating of ~~such the~~ decree as provided in this section any 7218  
property, money, right, or interest, or ~~the its~~ fair value ~~thereof~~ 7219  
if the same shall have been sold or otherwise disposed of, may be 7220  
recovered from the person who had received ~~any such that~~ property, 7221  
money, right, or interest. 7222

(C) Except as provided in division (D) of this section, in 7223  
any action against a beneficiary for the recovery of property or 7224  
the value ~~thereof~~ of the property, or upon the bond given as 7225  
condition for delivery of money, other personal property, or sale 7226  
or encumbrance of real property, the beneficiary may set off as 7227  
against ~~such that~~ claim, an allowance for services rendered in 7228  
maintaining or preserving the property, and for any moneys or 7229  
other considerations made or given by the beneficiary for the 7230  
preservation, care, or maintenance of the property during the 7231  
period of absence of the person erroneously presumed to be dead, 7232  
and the reasonable value of any part of the property used for 7233  
support by those whom the person erroneously presumed to be dead 7234

had a legal obligation to support during ~~his~~ the person's absence. 7235

(D) There shall be no set off as against those assets defined 7236  
in division (C) of section 2121.05 of the Revised Code to be 7237  
assets of the presumed decedent ~~which~~ that were created by the 7238  
decree of presumed death. Those assets created by the erroneous 7239  
decree of presumed death shall be returned with interest to the 7240  
person entitled ~~thereto~~ to them. 7241

(E) Any net cash surrender value on any policies of life 7242  
insurance on the life of a person erroneously presumed to be dead 7243  
are subject to the set off provision in division (C) of this 7244  
section. The person erroneously presumed to be dead, or persons 7245  
claiming under ~~him~~ the person erroneously presumed to be dead, may 7246  
recover whatever remains of cash values from the person to whom 7247  
paid. ~~Such~~ The claimants have no recourse against the insurance 7248  
company ~~which~~ that made ~~such~~ the payments, and it is discharged 7249  
from liability on the policies affected. 7250

**Sec. 2121.09.** After vacation of the decree of the presumption 7251  
of death has been established, as provided by section 2121.08 of 7252  
the Revised Code, the person erroneously presumed to be dead ~~may~~, 7253  
on motion filed of record stating the facts, may be substituted as 7254  
plaintiff or petitioner in all actions or proceedings brought by 7255  
the executor or administrator, whether prosecuted to judgment or 7256  
decree or otherwise. ~~Such~~ That person ~~may~~, in all actions or 7257  
proceedings previously brought against the executor or 7258  
administrator, may be substituted as defendant or respondent, on 7259  
motion filed by ~~him~~ the person or on ~~his~~ the person's behalf, but 7260  
shall not be compelled to go to trial in less than three months 7261  
from the time of filing of ~~such~~ the motion. Judgments or decrees 7262  
recovered against the executor or administrator, before the 7263  
vacation of the decree, may be opened on application made by the 7264  
person erroneously presumed to be dead within three months after 7265

the vacating of the decree, provided it is supported by an 7266  
affidavit alleging the existence of facts ~~which~~ that would be a 7267  
valid defense. If the application is not made within the three 7268  
months or is made but the supporting alleged facts are adjudged an 7269  
insufficient defense, the judgment or decree is conclusive to all 7270  
intents, saving the defendant's right to review as in other cases 7271  
on appeal. 7272

**Sec. 2123.02.** In a situation described in section 2123.01 of 7273  
the Revised Code, the executor or administrator may file in the 7274  
probate court of the county where the estate is being administered 7275  
a ~~petition~~ complaint signed by ~~such the~~ executor or administrator 7276  
or ~~his~~ the executor's or administrator's attorney, which ~~petition~~ 7277  
complaint shall be verified. The surviving spouse and the legatees 7278  
and devisees, or the heirs and distributees of the decedent, 7279  
including those whose names are unknown, shall be made parties 7280  
defendant. The ~~petition~~ complaint shall contain a concise 7281  
statement of the pertinent facts and shall conclude with a prayer, 7282  
for the determination of the heirs and distributees of ~~such the~~ 7283  
decedent or of the devisees or legatees not named in the will and 7284  
their respective interests in the estate. 7285

**Sec. 2123.03.** Upon the filing of the ~~petition~~ complaint 7286  
mentioned in section 2123.02 of the Revised Code, the same 7287  
proceedings, pleadings, and rule days as in civil actions in the 7288  
court of common pleas shall apply. All parties defendant who are 7289  
known to be residents of the state and whose ~~place~~ places of 7290  
residence ~~is~~ are known shall be served with summons, as provided 7291  
for the service of summons in civil actions in ~~such~~ that court. 7292

**Sec. 2123.05.** At the time assigned for the hearing of a 7293  
proceeding set forth under section 2123.01 of the Revised Code, or 7294  
at any time to which ~~said~~ the hearing may be adjourned, the 7295

probate court may hear proof taken by commission, or by witnesses 7296  
produced in open court, of the facts set forth in the ~~petition~~ 7297  
complaint, and shall, if satisfied from the evidence, find and 7298  
adjudge who are or were the heirs or next of kin of the decedent, 7299  
and entitled by the laws of this state to inherit the estate of 7300  
the deceased, or the devisees or legatees named or unnamed in the 7301  
will, ~~which~~. The finding and adjudication shall be entered on the 7302  
journal of the court, which entry, or a certified copy ~~thereof~~ of 7303  
the entry, shall be prima facie evidence of the facts ~~therein~~ 7304  
found. 7305

**Sec. 2123.06.** Whenever it is necessary for any person other 7306  
than an executor or administrator to determine who are or were the 7307  
heirs at law of a deceased person, on the ~~petition~~ complaint of 7308  
any interested party and proceedings ~~like~~ similar to those set 7309  
forth in sections 2123.01 to 2123.05, ~~inclusive~~, of the Revised 7310  
Code, the probate court may make a determination ~~thereof~~ of who 7311  
are or were the heirs at law of the deceased person. 7312

**Sec. 2127.011.** (A) In addition to the other methods provided 7313  
by law or in the will and unless expressly prohibited by the will, 7314  
an executor or administrator may sell at public or private sale, 7315  
grant options to sell, exchange, re-exchange, or otherwise dispose 7316  
of any parcel of real ~~estate~~ property belonging to the estate at 7317  
any time at prices and upon terms ~~as~~ that are consistent with this 7318  
section and may execute and deliver deeds and other instruments of 7319  
conveyance if all of the following conditions are met: 7320

(1) The surviving spouse, all of the legatees and devisees in 7321  
the case of testacy, and all of the heirs in the case of 7322  
intestacy, give written consent to a power of sale for a 7323  
particular parcel of real ~~estate~~ property or to a power of sale 7324  
for all the real ~~estate~~ property belonging to the estate. Each 7325  
consent to a power of sale provided for in this section shall be 7326

filed in the probate court. 7327

(2) Any sale under a power of sale authorized pursuant to 7328  
this section shall be made at a price of at least eighty per cent 7329  
of the appraised value, as set forth in an approved inventory. 7330

(3) No power of sale provided for in this section is 7331  
effective if the surviving spouse, or any legatee, devisee, or 7332  
heir is a minor. No person may give the consent of the minor that 7333  
is required by this section. 7334

(B) A surviving spouse who is the executor or administrator 7335  
may sell real ~~estate~~ property to ~~himself~~ self pursuant to this 7336  
section. 7337

**Sec. 2127.02.** As soon as an executor or administrator 7338  
ascertains that the personal property in ~~his hands~~ the possession 7339  
or under the control of the executor or administrator is 7340  
insufficient to pay all the debts of the decedent, together with 7341  
the allowance for support to the surviving spouse, minor children, 7342  
or surviving spouse and minor children of the decedent as provided 7343  
in section 2106.13 of the Revised Code, and the costs of 7344  
administering the estate, ~~he~~ the executor or administrator shall 7345  
commence a civil action in the probate court for authority to sell 7346  
the decedent's real property. 7347

**Sec. 2127.04.** (A) With the consent of all persons entitled to 7348  
share in an estate upon distribution, the executor, administrator, 7349  
or administrator with the will annexed may, and upon the request 7350  
of these persons shall, commence an action in the probate court 7351  
for authority to sell any part or all of the decedent's real 7352  
~~estate~~ property, even though the real ~~estate~~ property is not 7353  
required to be sold to pay debts or legacies. A guardian may make 7354  
a request under this division, or give consent, on behalf of the 7355  
guardian's ward. 7356



(B) An executor, administrator, or administrator with the will annexed may commence an action in the probate court, on the executor or administrator's own motion, to sell any part or all of the decedent's real ~~estate~~ property, even though the real ~~estate~~ property is not required to be sold to pay debts or legacies. The court shall not issue an order of sale in the action unless one of the categories specified in divisions (B)(1)(a), (b), and (c), (B)(2)(a), (b), and (c), and (B)(3) of this section applies:

(1)(a) At least fifty per cent of all the persons interested in the real ~~estate~~ property proposed to be sold have consented to the sale.

(b) Prior to the issuance of the order, no written objection is filed with the court by any person or persons who hold aggregate interests in the interest of the decedent in the real ~~estate~~ property proposed to be sold, that total in excess of twenty-five per cent.

(c) The court determines that the sale is in the best interest of the decedent's estate.

(2)(a) No person's interest in the interest of the decedent in the real ~~estate~~ property proposed to be sold exceeds ten per cent.

(b) Prior to the issuance of the order, no written objection is filed with the court by any person or persons who hold aggregate interests in the interest of the decedent in the real ~~estate~~ property proposed to be sold, that total in excess of twenty-five per cent.

(c) The court determines that the sale is in the best interest of the decedent's estate.

(3) The real ~~estate~~ property proposed to be sold escheats to the state under division (K) of section 2105.06 of the Revised Code.

(C) Notwithstanding any provision of the Revised Code, an executor, administrator, or administrator with the will annexed shall commence an action in the probate court to sell any part or all of the decedent's real estate property if any person who is entitled to inherit all or part of the real estate property cannot be found after a due and diligent search. The court shall not issue an order of sale in the action unless the sale is in the best interest of the person who cannot be found and in the best interest of the decedent's estate.

If a sale is ordered under this division, the costs of its administration shall be taken from the proceeds of the sale.

(D) A surviving spouse who is an executor or administrator of the decedent spouse's estate is not disqualified, by reason of being executor or administrator, as a person to whom a parcel of real estate property may be sold pursuant to this section.

**Sec. 2127.05.** Whenever necessary for the education, support, or the payment of the just debts of the ward, or for the discharge of liens on the real estate property of the ward, ~~or whenever~~ whenever the real estate property of the ward is suffering unavoidable waste, or a better investment of its value can be made, or whenever it appears that a sale of the real estate property will be for the benefit of the ward or ~~his~~ the ward's children, the guardian of the person and estate or of the estate only of a minor, person unable to manage ~~his~~ the person's property because of mental illness or deficiency, habitual drunkard, confined person, or other person under disability may commence a civil action in the probate court for authority to sell all or any part of the real estate property of the ward. If it appears to the advantage of the ward to lay out all or any part of the ~~land~~ real property in town lots, application for ~~such~~ that authority may also be made in the action.

When the same person is guardian for two or more wards whose  
real estate property is owned by them jointly or in common, the  
actions may be joined, and in one complaint the guardian may ask  
for the sale of the interest of all or any number of ~~his~~ the  
guardian's wards in the real estate property. If different persons  
are guardians of wards interested jointly or in common in the same  
real estate property, they may join as parties plaintiff in the  
same action. On the hearing, in either case, the court may  
authorize the sale of the interest of one or more of the wards.

**Sec. 2127.06.** If the fiduciary who brings an action under  
section 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code, dies,  
resigns, or is removed, or ~~his~~ the fiduciary's powers cease at any  
time before the real estate property sold is conveyed, a successor  
fiduciary may be substituted as a party to the action and may  
convey ~~land~~ real property, whether sold before or after ~~his~~ the  
successor fiduciary's appointment. ~~He~~ The successor fiduciary may  
also be required to give an additional bond.

**Sec. 2127.07.** Any interest in real estate property, whether  
legal or equitable, ~~which~~ that the deceased had a right to sell or  
dispose of at the time of ~~his~~ the deceased's death, or of  
which the ward was seized at the time the action was brought,  
including coal, iron ore, limestone, fireclay, or other mineral  
upon or under ~~such~~ the real estate property, or the right to mine  
them, may be sold by an executor, administrator, or guardian under  
sections 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code. This  
section does not give an executor or administrator with the will  
annexed authority to sell real estate property for the payment of  
legacies, other than as charged by the testator or by operation of  
law. This section does not give a guardian authority to sell an  
equitable estate in real estate property placed by deed of trust,  
beyond the power of the ward to sell, convey, or assign.

Sec. 2127.08. When the interest of a decedent or ward in real 7450  
estate property is fractional and undivided, the action for 7451  
authority to sell ~~such the~~ real estate property shall include only 7452  
~~such the~~ undivided fractional interest, except that the executor, 7453  
administrator, or guardian, ~~or~~ the owner of any other fractional 7454  
interest, or any lien holder may, by pleading filed in the cause 7455  
setting forth all interests in the property and liens ~~thereon on~~ 7456  
the property, require that the action include the entire interest 7457  
in the property, and the owner of ~~said the~~ interests and liens 7458  
shall receive ~~his~~ the owner's respective share of the proceeds of 7459  
sale after payment has been made of the expenses of sale including 7460  
reasonable attorney fees for services in the case, ~~which. Those~~ 7461  
fees ~~must~~ shall be paid to the plaintiff's attorney unless the 7462  
court awards some part ~~thereof~~ of the fees to other counsel for 7463  
services in the case for the common benefit of all the parties, 7464  
having regard to the interest of the parties, the benefit each may 7465  
derive from the sale, and the equities of the case. The fees of 7466  
the executor, administrator, or guardian shall be a charge only 7467  
against ~~such the~~ portion of the proceeds of sale as that 7468  
represents the interests of the decedent or ward. 7469

Sec. 2127.09. An action by an executor, administrator, or 7470  
guardian to obtain authority to sell real estate property shall be 7471  
brought in the county in which ~~he~~ the executor, administrator, or 7472  
guardian was appointed or in which the real estate property 7473  
subject to sale or any part ~~thereof~~ of the property is situated. 7474  
If the action is brought in a county other than that in which the 7475  
real estate property or a part ~~thereof~~ of the property is 7476  
situated, a certified transcript of the record of all proceedings 7477  
had ~~therein~~ in that county shall be filed with and recorded by the 7478  
probate court of each county in which ~~such the~~ real estate 7479  
property or any part ~~thereof~~ of the property is situated. 7480

**Sec. 2127.10.** An action to obtain authority to sell real estate property shall be commenced by the executor, administrator, or guardian by filing a complaint with the probate court.

The complaint shall contain a description of the real estate property proposed to be sold and its value, as near as can be ascertained, a statement of the nature of the interest of the decedent or ward in the real estate property, a recital of all mortgages and liens upon and adverse interests in the real estate property, the facts showing the reason or necessity for the sale, and any additional facts necessary to constitute the cause of action under the section of the Revised Code on which the action is predicated.

**Sec. 2127.11.** When the actual market value of a decedent's or ward's real estate property to be sold is less than three thousand dollars, and the court so finds, it may by summary order authorize the sale and conveyance of the ~~land~~ real property at private sale, on ~~such the~~ terms as that it ~~deems~~ considers proper, and in ~~such a~~ that proceeding, all requirements of sections 2127.01 to 2127.43 of the Revised Code, as to service of summons, appraisal, and additional bond, shall be waived.

**Sec. 2127.12.** In an action by an executor or administrator to obtain authority to sell real estate property, the following persons shall be made parties defendant:

(A) The surviving spouse;

(B) The heirs, devisees, or persons entitled to the next estate of inheritance from the decedent in the real estate property and having an interest in it, but their spouses need not be made parties defendant;

(C) All mortgagees and other lienholders whose claims affect

the real estate property or any part of it; 7510

(D) If the interest subject to sale is equitable, all persons 7511  
holding legal title to the interest or any part of it, and those 7512  
who are entitled to the purchase money for it, other than 7513  
creditors; 7514

(E) If a fraudulent transfer is sought to be set aside, all 7515  
persons holding or claiming under the transfer; 7516

(F) All other persons having an interest in the real estate 7517  
property. 7518

**Sec. 2127.13.** In an action by a guardian to obtain authority 7519  
to sell the real estate property of ~~his~~ the guardian's ward the 7520  
following persons shall be made parties defendant: 7521

(A) The ward; 7522

(B) The spouse of the ward; 7523

(C) All persons entitled to the next estate of inheritance 7524  
from the ward in ~~such~~ the real estate property who are known to 7525  
reside in Ohio, but their spouses need not be made parties 7526  
defendant; 7527

(D) All lienholders whose claims affect ~~such~~ the real estate 7528  
property or any part ~~thereof~~ of the property; 7529

(E) If the interest subject to ~~such~~ the sale is equitable, 7530  
all persons holding legal title ~~thereto~~ to the real property or 7531  
any part ~~thereof~~ of the property; 7532

(F) All other persons having an interest in ~~such~~ the real 7533  
~~estate~~ property, other than creditors. 7534

**Sec. 2127.14.** Service of summons, actual or constructive, in 7535  
an action to sell the real estate property of a decedent or a ward 7536  
shall be had as in other civil actions, but if any competent 7537

person in interest enters appearance or consents in writing to the 7538  
sale, service on ~~such that~~ person shall not be necessary. If all 7539  
parties consent in writing to the sale, an order ~~therefor~~ for the 7540  
sale may issue forthwith. 7541

**Sec. 2127.15.** All pleadings and proceedings in an action to 7542  
obtain authority to sell the real ~~estate~~ property of a decedent or 7543  
a ward in the probate court shall be the same as in other civil 7544  
actions, except as otherwise provided in sections 2127.01 to 7545  
2127.43 of the Revised Code. 7546

**Sec. 2127.16.** In a sale of real ~~estate~~ property by an 7547  
executor, administrator, or guardian, ~~such the~~ real ~~estate~~ 7548  
property shall be sold free of all right and expectancy of dower 7549  
~~therein in the property~~, but out of the proceeds of the sale, in 7550  
lieu of dower, the court shall allow to the person having any 7551  
dower interest in the property ~~such a~~ sum in money ~~as that~~ is the 7552  
just and reasonable value of ~~such the~~ dower, unless the answer of 7553  
~~such the~~ person waives ~~such that~~ allowance. 7554

**Sec. 2127.17.** In an action to obtain authority to sell real 7555  
~~estate~~ property, if a party in ~~his~~ the party's answer objects to 7556  
an order for the sale of real ~~estate~~ property by an executor, 7557  
administrator, or guardian, and on hearing it appears to the court 7558  
that either the complaint or the objection is unreasonable, it may 7559  
award costs to the party prevailing on that issue. 7560

**Sec. 2127.18.** Upon the hearing of an action to obtain 7561  
authority to sell real ~~estate~~ property by an executor, 7562  
administrator, or guardian, if satisfied that all necessary 7563  
parties defendant are properly before the court, and that the 7564  
demand for relief ought to be granted, the court may determine the 7565  
equities among the parties and the priorities of lien of the 7566

several lien holders on the real estate property, and order a 7567  
distribution of the money arising from the sale in accordance with 7568  
its determination. The court may in the same cause order 7569  
contributions among all parties in interest. 7570

**Sec. 2127.19.** When an action to obtain authority to sell real 7571  
estate property is determined by the probate court, the probate 7572  
judge shall make the necessary order for an entry of release and 7573  
satisfaction of all mortgages and other liens upon the real estate 7574  
property except ~~such the~~ mortgage ~~as that~~ is assumed by the 7575  
purchaser. The executor, administrator, or guardian shall 7576  
~~thereupon~~ enter ~~such the~~ release and satisfaction, together with a 7577  
memorandum of the title of the case, the character of the 7578  
proceedings, and the volume and page of record where recorded, 7579  
upon the record of ~~such the~~ mortgage, judgment, or other lien in 7580  
the office where it appears as matter of record. If the executor, 7581  
administrator, or guardian fails to enter ~~such the~~ release and 7582  
satisfaction, the court ~~may~~, on the application of an interested 7583  
party, may enter ~~such the~~ release and satisfaction and tax in ~~his~~ 7584  
the executor's, administrator's, or guardian's cost bill the fee 7585  
provided by law for entering ~~such the~~ release and satisfaction, 7586  
and a fee of twenty-five cents to the court. 7587

**Sec. 2127.21.** If a guardian's complaint in an action to 7588  
obtain authority to sell real estate property seeks to have ~~land~~ 7589  
real property laid out in town lots, and the court finds it to the 7590  
advantage of the ward, it shall authorize the survey and platting 7591  
of the ~~land~~ real property as provided by law. Upon subsequent 7592  
return of the survey and plat, the court, if it approves it, shall 7593  
authorize the guardian on behalf of ~~his~~ the guardian's ward to 7594  
sign, seal, and acknowledge the plat in that behalf for record. 7595

**Sec. 2127.22.** If an appraisement of the real estate property 7596



is contained in the inventory required of an executor or 7597  
administrator by section 2115.02 of the Revised Code, and of a 7598  
guardian by section 2111.14 of the Revised Code, the probate court 7599  
may order a sale in accordance with the appraisement, or order a 7600  
new appraisement. If a new appraisement is not ordered, the value 7601  
set forth in the inventory shall be the appraised value of the 7602  
real estate property. If the court orders a new appraisement, the 7603  
value returned shall be the appraised value of the real estate 7604  
property. 7605

If the interest of the deceased or ward in the real estate 7606  
property is fractional and undivided, and if a party requests and 7607  
the court orders the entire interest in the real estate property 7608  
to be sold, a new appraisement of the entire interest in the real 7609  
estate property shall be ordered. 7610

If the relief requested is granted and new appraisement is 7611  
ordered, the court shall appoint one, or on request of the 7612  
executor, administrator, or guardian, not exceeding three 7613  
judicious and disinterested persons of the vicinity, not next of 7614  
kin of the complainant, to appraise the real estate property in 7615  
whole and in parcels at its true value in money. ~~Where~~ If the real 7616  
estate property lies in two or more counties the court may appoint 7617  
appraisers in any or all of the counties in which the real estate 7618  
property or a part of it is situated. 7619

**Sec. 2127.23.** The appraisers appointed under section 2127.22 7620  
of the Revised Code shall agree to truly and impartially appraise 7621  
the real estate property at its fair cash value upon actual view 7622  
and to perform the duties required of them by the order of the 7623  
court. The appraisement shall be signed by the appraisers, and the 7624  
officer to whom it is issued shall make return of it to the court 7625  
for confirmation. 7626

**Sec. 2127.24.** ~~When~~ If a person appointed by the court under 7627  
section 2127.22 of the Revised Code as an appraiser fails to 7628  
discharge ~~his~~ the person's duties, the probate judge on ~~his~~ the 7629  
judge's own motion or on the motion of the executor, 7630  
administrator, or guardian may appoint another appraiser. 7631

**Sec. 2127.27.** Upon the return and approval of the 7632  
appraisement provided for by section 2127.22 of the Revised Code, 7633  
the court shall require the executor, administrator, or guardian 7634  
to execute a bond with two or more personal sureties, or one or 7635  
more corporate sureties, whose qualifications shall be those 7636  
provided by section 2109.17 of the Revised Code. ~~Such~~ The bond 7637  
shall be payable to the state in an amount ~~which~~ that the court 7638  
~~deems~~ considers sufficient, having regard to the amount of real 7639  
~~estate~~ property to be sold, its appraised value, the amount of the 7640  
original bond given by the executor, administrator, or guardian, 7641  
and the distribution to be made of the proceeds arising from the 7642  
sale, ~~and such~~. The bond shall be conditioned for the faithful 7643  
discharge of ~~his~~ the executor's, administrator's, or guardian's 7644  
duties and the payment of, and accounting for, all moneys arising 7645  
from ~~such~~ the sale according to law. ~~Such~~ The bond shall be 7646  
additional to that given by the executor, administrator, or 7647  
guardian at the time of ~~his~~ appointment. If the court finds the 7648  
amount of the original bond given by the executor, administrator, 7649  
or guardian is sufficient, having regard for the amount of real 7650  
~~estate~~ property to be sold, its appraised value, and the 7651  
distribution to be made of the proceeds arising from the sale, the 7652  
giving of additional bond may be dispensed with by order of the 7653  
court. ~~Such~~ The bond shall be given in the court from which the 7654  
executor, administrator, or guardian ~~received his appointment~~ was 7655  
appointed. 7656

If the action to obtain authority to sell real estate 7657

property is pending in another court, the latter shall proceed no 7658  
further until there is filed ~~therein~~ in that court a certificate 7659  
from the court ~~wherein~~ in which the executor, administrator, or 7660  
guardian ~~received his appointment~~ was appointed, under its seal, 7661  
that ~~such~~ the bond has been given or that the original bond is 7662  
sufficient. This section does not prevent the court in an action 7663  
to sell real ~~estate~~ property from ordering the sale of ~~such that~~ 7664  
real ~~estate~~ property without bond in cases where the testator had 7665  
provided by ~~his~~ the testator's will that the executor need not 7666  
give bond. 7667

**Sec. 2127.28.** The probate court may, after notice to all 7668  
parties in interest, allow a real estate commission in an action 7669  
to sell real ~~estate~~ property by an executor, administrator, or 7670  
guardian, but an allowance shall be passed upon by the court prior 7671  
to the sale. 7672

The court may allow payment for certificate or abstract of 7673  
title or policy of title insurance in connection with the sale of 7674  
any ~~land~~ real property by an executor, administrator, or guardian. 7675

**Sec. 2127.29.** When the bond required by section 2127.27 of 7676  
the Revised Code is filed and approved by the court, it shall 7677  
order the sale of the real ~~estate~~ property included in the 7678  
complaint set forth in section 2127.10 of the Revised Code, or the 7679  
part of the real ~~estate~~ property it ~~deems~~ considers necessary for 7680  
the interest of all parties concerned. If the complaint alleges 7681  
that it is necessary to sell part of the real ~~estate~~ property, and 7682  
that by the partial sale the residue of the ~~estate~~ real property, 7683  
or a specific part of it, would be greatly injured, the court, if 7684  
it so finds, may order a sale of the whole ~~estate~~ real property. 7685

**Sec. 2127.30.** If the order of sale set forth in section 7686  
2127.29 of the Revised Code includes real ~~estate~~ property in which 7687

the ward or the estate has an equitable interest only, the court 7688  
may make an order for the appraisal and sale of ~~such~~ that 7689  
equitable estate free from dower, for the indemnity of the estate 7690  
against any claim for purchase money, and for payment of the value 7691  
of ~~such~~ the dower in money, as the court ~~deems~~ considers 7692  
equitable, having regard for the rights of all parties in 7693  
interest. 7694

**Sec. 2127.32.** The real estate property included in the 7695  
court's order of sale, as provided in section 2127.29 of the 7696  
Revised Code, shall be sold either in whole or in parcels at 7697  
public auction at the door of the courthouse in the county in 7698  
which the order of sale was granted, or at another place, as the 7699  
court directs, and the order shall fix the place, day, and hour of 7700  
sale. If it appears to be more for the interest of the ward or the 7701  
estate to sell the real estate property at private sale, the court 7702  
may authorize the complainant to sell it either in whole or in 7703  
parcels. If an order for private sale is issued, it shall be 7704  
returned by the complainant. Upon motion and showing of a person 7705  
interested in the proceeds of the sale, filed after thirty days 7706  
from the date of the order, the court may require the complainant 7707  
to return the order, if the premises have not been sold. ~~Thereupon~~ 7708  
Upon return of the order, the court may order the real estate 7709  
property to be sold at public sale. 7710

If upon showing of any person interested, the court finds 7711  
that it will be to the interest of the ward or the estate, it may 7712  
order a reappraisal and sale in parcels. 7713

If the sale is to be public, the executor, administrator, or 7714  
guardian ~~must~~ shall give notice of the time and place of the sale 7715  
by advertisement at least three weeks successively in a newspaper 7716  
published in the county where the ~~lands~~ are real property is 7717  
situated. 7718

**Sec. 2127.33.** ~~Where~~ If the sale authorized by a court as 7719  
provided in section 2127.32 of the Revised Code is private, the 7720  
real ~~estate~~ property shall not be sold for less than the appraised 7721  
value. ~~When~~ If the sale is at public auction, the real ~~estate~~ 7722  
property if improved shall not be sold for less than two thirds of 7723  
the appraised value, or if not improved, for less than one half of 7724  
the appraised value. In private sales if no sale has been effected 7725  
after one bona fide effort to sell under this section, or if in 7726  
public sales the ~~land~~ real property remains unsold for want of 7727  
bidders when offered pursuant to advertisement, the court may fix 7728  
the price for which ~~such~~ the real ~~estate~~ property may be sold or 7729  
may set aside the appraisal and order a new appraisal. If 7730  
~~such~~ the new appraisal does not exceed five hundred dollars, 7731  
and upon the first offer ~~thereunder~~ under the new appraisal at 7732  
public sale there are no bids, then upon the motion of any party 7733  
interested the court may order the real ~~estate~~ property to be 7734  
readvertised and sold at public auction to the highest bidder. 7735

**Sec. 2127.34.** The order for the sale of real ~~estate~~ property, 7736  
granted by the probate court in an action by an executor, 7737  
administrator, or guardian, shall prescribe the terms of the sale, 7738  
and payment of the purchase money, either in whole or in part, for 7739  
cash, or on deferred payments. In the sales by executors or 7740  
administrators, deferred payments shall not exceed two years with 7741  
interest. 7742

**Sec. 2127.35.** An executor, administrator, or guardian shall 7743  
make return of ~~his~~ the executor's, administrator's, or guardian's 7744  
proceedings under the order for the sale of real ~~estate~~ property 7745  
granted by the probate court. The court, after careful 7746  
examination, if satisfied that the sale has in all respects been 7747  
legally made, shall confirm the sale, and order the executor, 7748

administrator, or guardian to make a deed to the purchaser. 7749

The deed shall be received in all courts as prima-facie 7750  
evidence that the executor, administrator, or guardian in all 7751  
respects observed the direction of the court, and complied with 7752  
the requirements of the law, ~~and~~ shall convey the interest in the 7753  
real ~~estate~~ property directed to be sold by the court, and shall 7754  
vest title to the interest in the purchaser as if conveyed by the 7755  
deceased in ~~his~~ the deceased's lifetime, or by the ward free from 7756  
disability, and by the owners of the remaining interests in the 7757  
real ~~estate~~ property. 7758

**Sec. 2127.36.** The order for the sale of real ~~estate~~ property 7759  
granted in an action by an executor, administrator, or guardian 7760  
shall require that before the delivery of the deed the deferred 7761  
installments of the purchase money be secured by mortgage on the 7762  
real ~~estate~~ property sold, and mortgage notes bearing interest at 7763  
a rate approved by the probate court. If after the sale is made, 7764  
and before delivery of the deed, the purchaser offers to pay the 7765  
full amount of the purchase money in cash, the court may order 7766  
that it be accepted, if for the best interest of the estate or the 7767  
ward, and direct its distribution. 7768

The court in ~~such an~~ that order may also direct the sale, 7769  
without recourse, of any or all of the notes taken for deferred 7770  
payments, if for the best interest of the estate or the ward, at 7771  
not less than their face value with accrued interest, and direct 7772  
the distribution of the proceeds. 7773

**Sec. 2127.37.** ~~When~~ If an action to sell real ~~estate~~ property 7774  
is prosecuted by an executor or administrator ~~he,~~ the executor or 7775  
administrator shall be allowed the compensation provided by law, 7776  
by the probate court from which ~~his~~ the executor's or 7777  
administrator's letters issued. ~~When such~~ If that action is by a 7778

guardian, ~~his~~ the guardian's duties and obligations ~~therein in the~~ 7779  
action shall be considered by the court appointing ~~him~~ the 7780  
guardian in awarding ~~such~~ the compensation ~~as~~ that the court ~~deems~~ 7781  
considers reasonable. 7782

**Sec. 2127.38.** The sale price of real ~~estate~~ property sold 7783  
following an action by an executor, administrator, or guardian 7784  
shall be applied and distributed as follows: 7785

(A) To discharge the costs and expenses of the sale, 7786  
including reasonable fees to be fixed by the probate court for 7787  
services performed by attorneys for the fiduciary in connection 7788  
with the sale, and compensation, if any, to the fiduciary for ~~his~~ 7789  
services in connection with the sale as the court may fix, which 7790  
costs, expenses, fees, and compensation shall be paid prior to any 7791  
liens upon the real ~~estate~~ property sold and notwithstanding the 7792  
purchase of the real ~~estate~~ property by a lien holder; 7793

(B) To the payment of taxes, interest, penalties, and 7794  
assessments then due against the real ~~estate~~ property, and to the 7795  
payment of mortgages and judgments against the ward or deceased 7796  
person, according to their respective priorities of lien, so far 7797  
as they operated as a lien on the real ~~estate~~ property of the 7798  
deceased at the time of the sale, or on the estate of the ward at 7799  
the time of the sale, ~~which~~ that shall be apportioned and 7800  
determined by the court, or on reference to a master, or 7801  
otherwise; 7802

(C) (1) In the case of an executor or administrator, the 7803  
remaining proceeds of sale shall be applied as follows: 7804

~~(1)~~ (a) To the payment of legacies with which the real ~~estate~~ 7805  
property of the deceased was charged, if the action is to sell 7806  
real ~~estate~~ property to pay legacies; 7807

~~(2)~~ (b) To discharge the claims and debts of the estate in the 7808

order provided by law. 7809

(2) Whether the executor or administrator was appointed in 7810  
this state or elsewhere, the surplus of the proceeds of sale ~~must~~ 7811  
shall be considered for all purposes as real ~~estate~~ property, and 7812  
be disposed of accordingly. 7813

**Sec. 2127.39.** ~~When~~ If an action to sell real ~~estate~~ property 7814  
is brought by an executor or administrator with the will annexed, 7815  
if in the ~~last~~ will of the deceased there is a disposition of ~~his~~ 7816  
the decedent's estate for the payment of debts, or a provision 7817  
that may require or induce the probate court to marshal the assets 7818  
differently from the way the law otherwise would prescribe, ~~such~~ 7819  
those devises, or parts of the will, shall be set forth in the 7820  
complaint, and a copy of the will exhibited to the court, 7821  
whereupon the court shall marshal the proceeds of the sale 7822  
accordingly, so far as it can be done consistently with the rights 7823  
of creditors. 7824

**Sec. 2127.40.** When an action is brought by an executor or 7825  
administrator to sell real ~~estate~~ property to pay debts, the real 7826  
~~estate~~ property subject to sale shall include all rights and 7827  
interests in ~~lands, tenements, and hereditaments~~ real property 7828  
transferred by the decedent in ~~his~~ the decedent's lifetime with 7829  
intent to defraud ~~his~~ the decedent's creditors, except that ~~lands~~ 7830  
real property fraudulently transferred cannot be taken from any 7831  
person who purchased them for a valuable consideration, in good 7832  
faith, and without knowledge of the fraud. No claim to ~~such lands~~ 7833  
that real property shall be made unless within four years next 7834  
after the decease of the grantor. 7835

If real ~~estate~~ property fraudulently transferred is to be 7836  
included in ~~such an~~ that action, the executor or administrator, 7837  
either before or at the same time, may commence a civil action in 7838



the court of common pleas in the county in which the real estate 7839  
property is situated to recover possession of it, or, in ~~his~~ the 7840  
action for its sale, ~~he~~ the executor or administrator may allege 7841  
the fraud and have the fraudulent transfer avoided. But when the 7842  
real estate property is included in the complaint before the 7843  
recovery of possession by the executor or administrator, the 7844  
action shall be brought in the court of common pleas in the county 7845  
in which the real estate property is situated. 7846

**Sec. 2127.41.** If, after the institution of proceedings for 7847  
the partition of the real property of a decedent, it is found that 7848  
the assets in the ~~hands~~ possession or under the control of the 7849  
executor or administrator probably are insufficient to pay the 7850  
debts of the estate, together with the allowance for support of 7851  
the surviving spouse, minor children, or surviving spouse and 7852  
minor children as provided in section 2106.13 of the Revised Code, 7853  
the expenses of administration, and the legacies that are a charge 7854  
upon the real property, the executor or administrator shall make a 7855  
written statement to the probate court of the assets, 7856  
indebtedness, expenses, and legacies, and the court ~~forthwith~~ 7857  
shall ascertain the amount necessary to pay the debts, expenses, 7858  
and legacies and give a certificate of the amount to the executor 7859  
or administrator. 7860

The executor or administrator then shall present the 7861  
certificate to the court in which the proceedings for partition 7862  
are or have been pending, and, on ~~his~~ the motion of the executor 7863  
or administrator, the court shall order the amount named in the 7864  
certificate to be paid over to the executor or administrator out 7865  
of the proceeds of the sale of the premises, if thereafter they 7866  
are sold or already have been sold. This section does not prohibit 7867  
an executor or administrator from proceeding to sell real property 7868  
belonging to the estate for the payment of debts or legacies, 7869  
although it has been sold on partition or otherwise, or the 7870

proceeds of the sale have been fully distributed. 7871

**Sec. 2127.42.** Wards living out of this state and owning ~~lands~~ real property within it are entitled to the benefit of sections 7872  
real property within it are entitled to the benefit of sections 7873  
2127.01 to 2127.43 of the Revised Code. Complaints for the sale of 7874  
real ~~estate~~ property by guardians of ~~such~~ those wards shall be 7875  
filed in the county in which the ~~land~~ real property is situated, 7876  
or if situated in two or more counties, then in one of the 7877  
counties in which a part of it is situated. Additional security 7878  
shall be required from ~~such~~ the guardians, ~~when deemed if~~ 7879  
considered necessary by the probate court of the county in which 7880  
the complaints are filed. 7881

**Sec. 2127.43.** ~~Chapter 2127. of the Revised Code~~ This chapter 7882  
extends to an action brought by the trustee of a nonresident minor 7883  
or mentally ill or deficient person to sell the real ~~estate~~ 7884  
property of the ward. 7885

**Sec. 2129.02.** ~~When~~ If letters of administration or letters 7886  
testamentary have been granted in any state other than this state, 7887  
in any territory or possession of the United States, or in any 7888  
foreign country, as to the estate of a deceased resident of that 7889  
state, territory, possession, or country, and ~~when~~ if no ancillary 7890  
administration proceedings have been commenced in this state, the 7891  
person to whom the letters of appointment were granted may file an 7892  
authenticated copy of them in the probate court of any county of 7893  
this state in which is located real ~~estate~~ property of the 7894  
decendent. 7895

The claim of any creditor of ~~such~~ that decedent shall be 7896  
subject to section 2117.06 of the Revised Code. The person filing 7897  
~~such~~ those letters in the probate court may accelerate the bar 7898  
against claims against the estate established by that section, by 7899  
giving written notice to a potential claimant that identifies the 7900

decedent by name, states the date of the death of the decedent, 7901  
identifies the court, states its mailing address, and informs the 7902  
potential claimant that any claims ~~he~~ the potential claimant may 7903  
have against the estate are required to be presented to the court 7904  
within the earlier of thirty days after receipt of the notice by 7905  
the potential claimant or ~~one year~~ six months after the date of 7906  
the death of the decedent. A claim of that potential claimant that 7907  
is not presented to the court within the earlier of thirty days 7908  
after receipt of the notice by the potential claimant or ~~one year~~ 7909  
six months after the date of the death of the decedent is forever 7910  
barred as a possible lien upon the real ~~estate~~ property of the 7911  
decedent in this state. If, at the expiration of that period, any 7912  
such claim has been filed and remains unpaid after reasonable 7913  
notice of the claim to the nonresident executor or administrator, 7914  
ancillary administration proceedings as to the estate may be had 7915  
forthwith. 7916

**Sec. 2129.05.** Authenticated copies of wills, executed and 7917  
proved according to the laws of any state or territory of the 7918  
United States, relative to property in this state, may be admitted 7919  
to record in the probate court of a county where a part of ~~such~~ 7920  
that property is situated. ~~Such~~ The authenticated copies, so 7921  
recorded, shall be as valid as wills made in this state. 7922

When such a will, or authenticated copy, is admitted to 7923  
record, a copy ~~thereof~~ of the will or of the authenticated copy, 7924  
with the copy of the order to record it annexed ~~thereto~~ to that 7925  
copy, certified by the probate judge under the seal of ~~his~~ the 7926  
probate court, may be filed and recorded in the office of the 7927  
probate judge of any other county where a part of ~~such~~ the 7928  
property is situated, and it shall be as effectual as the 7929  
authenticated copy of ~~such~~ the will would be if approved and 7930  
admitted to record by the court. 7931

Sec. 2129.08. (A) After an authenticated copy of the will of 7932  
a nonresident decedent has been allowed and admitted to record as 7933  
provided in this chapter, and after there has been filed in the 7934  
probate court a complete exemplification of the record of the 7935  
grant of the domiciliary letters of appointment and of any other 7936  
records of the court of domiciliary administration that the court 7937  
requires, the court shall appoint as the ancillary administrator 7938  
the person named in the will, or nominated in accordance with any 7939  
power of nomination conferred in the will, as general executor of 7940  
the decedent's estate or as executor of the portion of the 7941  
decedent's estate located in this state, provided that the person 7942  
makes application and qualifies under division (B)(2) of section 7943  
2109.21 of the Revised Code and in all other respects as required 7944  
by law. If the testator in the will naming or providing for the 7945  
nomination of that executor orders or requests that bond not be 7946  
given by ~~him~~ that executor, bond shall not be required unless, for 7947  
sufficient reason, the court requires it. 7948

(B) If a nonresident decedent died intestate, or failed to 7949  
designate in ~~his~~ the nonresident decedent's will any person 7950  
qualified to act as ancillary administrator or to confer in the 7951  
will a power to nominate a person as an executor as described in 7952  
division (A) of this section, or if the will of a nonresident 7953  
decedent conferred ~~such a~~ that power but no person qualified to 7954  
act as ancillary administrator was nominated, the court shall 7955  
appoint in ~~such~~ that capacity ~~some~~ a suitable person who is a 7956  
resident of the county including, but not limited to, a creditor 7957  
of the estate. 7958

(C) An ancillary administrator, acting as to the estate of a 7959  
testate decedent that is located in this state, may sell and 7960  
convey the real and personal property by virtue of the will as 7961  
executors or administrators with the will annexed may do. 7962

(D) No person shall be appointed as an ancillary administrator of the estate of a nonresident presumed decedent that is located in this state, except after Chapter 2121. of the Revised Code, relative to the appointment of an ancillary administrator, has been complied with.

**Sec. 2129.11.** If no domiciliary administration has been commenced, the ancillary administrator shall proceed with the administration in ~~Ohio~~ this state as though the decedent had been a resident of ~~Ohio~~ this state at the time of ~~his~~ the decedent's death.

**Sec. 2129.13.** If an ancillary administrator finds that the personal property of the nonresident decedent in ~~Ohio~~ this state is not sufficient to pay the expenses of administration, public rates and taxes, and other valid claims ~~which~~ that have been presented, ~~he~~ the ancillary administrator shall proceed to sell as much of the real estate property of the decedent located in this state ~~as~~ that is necessary to pay ~~such~~ those debts. The procedure shall be the same as in sales of real estate property in administration proceedings relating to the estates of resident decedents under sections 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code.

**Sec. 2129.14.** A domiciliary executor or administrator of a nonresident decedent may file in the probate court by which the ancillary administrator was appointed information showing that it will be necessary to sell ~~Ohio~~ real estate property of the decedent located in this state to pay debts and legacies, and the court may thereupon authorize the ancillary administrator to sell ~~such~~ any part or all of ~~such~~ the real estate ~~as~~ property that is necessary. The ancillary administrator shall proceed to sell ~~such~~ the real estate property in the manner provided by section 2129.13

of the Revised Code. 7993

**Sec. 2129.15.** Within five months after ~~his~~ appointment, the 7994  
ancillary administrator of a nonresident decedent shall forward to 7995  
the domiciliary administrator, if any, of ~~such~~ the decedent, if 7996  
the name and address of ~~such~~ the domiciliary administrator are 7997  
known, a certificate showing all assets of the estate in this 7998  
state and all debts and liabilities including estimated expenses 7999  
of administration. If the name and address of ~~such~~ the domiciliary 8000  
administrator are not known, ~~such~~ the certificate shall be 8001  
forwarded to the next of kin of the deceased whose names and 8002  
addresses are known and to the court having jurisdiction in estate 8003  
matters in the county in which the decedent resided at the time of 8004  
~~his~~ death. 8005

**Sec. 2129.17.** An ancillary administrator shall file in the 8006  
probate court of every county in ~~Ohio~~ this state in which real 8007  
estate property of the nonresident decedent is located a certified 8008  
copy of the records in the court of ~~his~~ the ancillary 8009  
administrator's appointment ~~which~~ that affect the title to ~~such~~ 8010  
that real estate property. 8011

**Sec. 2129.18.** Whenever property of a nonresident decedent as 8012  
to whose estate ancillary administration proceedings are being had 8013  
in ~~Ohio~~ this state passes by the laws of intestate succession or 8014  
under a will to a beneficiary not named ~~therein~~ in the will, 8015  
proceedings may be had to determine the persons entitled to ~~such~~ 8016  
that property in the same manner as in the estates of resident 8017  
decedents under sections 2123.01 to 2123.07, ~~inclusive~~, of the 8018  
Revised Code. The ancillary administrator shall file a certified 8019  
copy of ~~such~~ the finding in the probate court in every county in 8020  
~~Ohio~~ this state in which real estate property of the decedent is 8021  
located. ~~Such~~ The administrator shall procure and file in the 8022

court for the information of the court a certified copy of any 8023  
determination of heirship relative to ~~such~~ the decedent's estate 8024  
made in the state of the domiciliary administration. 8025

**Sec. 2129.19.** Prior to filing ~~his~~ the ancillary 8026  
administrator's final account, an ancillary administrator shall 8027  
file in the probate court an application for a certificate of 8028  
transfer as to the real ~~estate~~ property of the nonresident 8029  
decedent situated in ~~Ohio~~ this state, in the same manner as in the 8030  
administration of the estates of resident decedents under section 8031  
2113.61 of the Revised Code. 8032

**Sec. 2129.23.** When the expense of the ancillary 8033  
administration of a nonresident decedent's estate, including ~~such~~ 8034  
any attorney's fee ~~as~~ that is allowed by the probate court, all 8035  
public charges and taxes, and all claims of creditors presented as 8036  
provided in section 2129.12 of the Revised Code, have been paid, 8037  
any residue of the personal ~~estate~~ property and the proceeds of 8038  
any real ~~estate~~ property sold for the payment of debts shall be 8039  
distributed by the ancillary administrator as follows: 8040

(A) With the approval of the court ~~such,~~ the residue may be 8041  
delivered to the domiciliary administrator or executor. 8042

(B) If the court so orders, ~~such~~ the residue shall be 8043  
delivered to the persons entitled ~~thereto~~ to it. 8044

**Sec. 2129.25.** When an executor or administrator is appointed 8045  
in any other state, territory, or foreign country for the estate 8046  
of a person dying out of this state, and no executor or 8047  
administrator ~~thereon~~ for the estate is appointed in this state, 8048  
the foreign executor or administrator may file an authenticated 8049  
copy of ~~his~~ the foreign executor's or administrator's appointment 8050  
in the probate court of any county in which there is real ~~estate~~ 8051  
property of the deceased, together with an authenticated copy of 8052

the will. After filing ~~such~~ those copies, ~~he~~ the foreign executor  
or administrator may be authorized, under an order of the court,  
to sell real estate property for the payment of debts or legacies  
and charges of administration, in the manner prescribed in  
sections 2127.01 to 2127.43, ~~inclusive,~~ of the Revised Code.

**Sec. 2129.26.** ~~When~~ If it appears to the probate court  
granting the order of sale set forth in section 2129.25 of the  
Revised Code that the foreign executor or administrator is bound  
with sufficient surety in the state or country in which ~~he~~ the  
foreign executor or administrator was appointed to account for the  
proceeds of ~~such~~ the sale, for the payment of debts or legacies,  
and for charges of administration, and an authenticated copy of  
~~such~~ the bond is filed in court, no further bond for that purpose  
shall be required of ~~him~~ the foreign executor or administrator.  
~~When~~ If the court finds that ~~such~~ the bond is insufficient, before  
making ~~such~~ the sale, ~~such~~ the foreign executor or administrator  
~~must~~ shall give bond to this state with two or more sufficient  
sureties, conditioned to account for and dispose of ~~such~~ the  
proceeds of the sale for the payment of the debts or legacies of  
the deceased and the charges of administration according to the  
laws of the state or country in which ~~he~~ the foreign executor or  
administrator was appointed.

~~When such~~ If the foreign executor or administrator is  
authorized by order of the court to sell more than is necessary  
for the payment of debts, legacies, and charges of administration,  
before making the sale, ~~he~~ the foreign executor or administrator  
shall give bond with two or more sufficient sureties to this  
state, conditioned to account before the court for all the  
proceeds of the sale that remain and to dispose of ~~such~~ the  
proceeds after payment of ~~such~~ the debts, legacies, and charges.

**Sec. 2129.28.** If a trustee is named in a foreign will ~~which~~



that creates a trust relating to ~~lands~~ real property situated in 8084  
this state, ~~such~~ the trustee may execute the trust upon giving 8085  
bond to the state in ~~such~~ the sum and with ~~such~~ the sureties ~~as~~ 8086  
that the probate court of the county in which ~~such lands~~ the real 8087  
property or a part ~~thereof~~ are of the real property is situated 8088  
approves, conditioned to discharge with fidelity the trust reposed 8089  
in ~~him~~ the trustee. If the testator in the will naming the trustee 8090  
orders or requests that bond ~~be~~ not be given by ~~him~~ the trustee, 8091  
bond shall not be required, unless for sufficient cause the court 8092  
requires it. 8093

**Sec. 2129.29.** If a trustee has been appointed under a foreign 8094  
will ~~which~~ that creates a trust relating to ~~lands~~ real property 8095  
situated in this state by a foreign court according to the laws of 8096  
the foreign jurisdiction, ~~he~~ the trustee may execute the trust 8097  
upon giving bond as provided in section 2129.28 of the Revised 8098  
Code, and after satisfying the probate court of the county in 8099  
which ~~such lands~~ the real property or a part of ~~them~~ are it is 8100  
situated, by an authenticated record of ~~his~~ appointment, that ~~he~~ 8101  
the person or entity has been appointed trustee to execute the 8102  
trust. 8103

**Sec. 2129.30.** ~~When~~ If necessary, the probate court of the 8104  
county where the property affected by the trust is situated, on 8105  
application by petition of the parties interested, may appoint a 8106  
trustee to carry into effect a trust created by a foreign will. 8107  
~~Such~~ The trustee, before entering upon ~~his~~ the trust, ~~must~~ shall 8108  
give bond with ~~such~~ the security and in ~~such~~ the amount ~~as~~ that 8109  
the court directs. 8110

**Sec. 2131.08.** (A) Subject to sections 1746.14, 1747.09, and 8111  
2131.09 of the Revised Code, no interest in real or personal 8112  
property shall be good unless it must vest, if at all, not later 8113

than twenty-one years after a life or lives in being at the 8114  
creation of the interest. All estates given in tail, by deed or 8115  
will, in ~~lands or tenements~~ real property lying within this state 8116  
shall be and remain an absolute estate in fee simple to the issue 8117  
of the first donee in tail. It is the intention by the adoption of 8118  
this section to make effective in this state what is generally 8119  
known as the common law rule against perpetuities, except as set 8120  
forth in divisions (B) and (C) of this section. 8121

(B) For the purposes of this section and subject to sections 8122  
1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the 8123  
creation of an interest in real or personal property subject to a 8124  
power reserved by the grantor to revoke or terminate the interest 8125  
shall be the time at which the reserved power expires by reason of 8126  
the death of the grantor, by release of the power, or otherwise. 8127

(C) Any interest in real or personal property that would 8128  
violate the rule against perpetuities, under division (A) of this 8129  
section, shall be reformed, within the limits of the rule, to 8130  
approximate most closely the intention of the creator of the 8131  
interest. In determining whether an interest would violate the 8132  
rule and in reforming an interest, the period of perpetuities 8133  
shall be measured by actual rather than possible events. 8134

(D) Divisions (B) and (C) of this section shall be effective 8135  
with respect to interests in real or personal property created by 8136  
wills of decedents dying after December 31, 1967, with respect to 8137  
interests in real or personal property created by inter vivos 8138  
instruments executed after December 31, 1967, and with respect to 8139  
interests in real or personal property created by inter vivos 8140  
instruments executed on or before December 31, 1967, that by 8141  
reason of division (B) of this section will be treated as 8142  
interests created after December 31, 1967. Divisions (B) and (C) 8143  
of this section shall be effective with respect to interests in 8144  
real or personal property created by the exercise of a power of 8145

appointment if divisions (B) and (C) of this section apply to the 8146  
instrument that exercises the power, whether or not divisions (B) 8147  
and (C) of this section apply to the instrument that creates the 8148  
power. 8149

**Sec. 2131.11.** ~~When~~ If an investment share certificate, share 8150  
account, deposit, or stock deposit is made, in any bank, building 8151  
and loan or savings and loan association, credit union, or society 8152  
for savings, payable to the owner during ~~his~~ the owner's lifetime, 8153  
and to another on ~~his~~ the owner's death, ~~such~~ the investment share 8154  
certificate, share account, deposit, or stock deposit ~~or~~, any part 8155  
~~thereof of that certificate, account, or deposit,~~ or any interest 8156  
or dividend ~~thereon~~ on the certificate, account, or deposit, may 8157  
be paid to the owner during ~~his~~ the owner's lifetime, and on ~~his~~ 8158  
the owner's death ~~such~~ the investment share certificate, share 8159  
account, deposit, or stock deposit ~~or~~, any part ~~thereof of that~~ 8160  
certificate, account, or deposit, or any interest or dividend 8161  
~~thereon on the certificate, account, or deposit,~~ may be paid to 8162  
the designated beneficiary, and the receipt of acquittance of the 8163  
person paid is a sufficient release and discharge of the bank, 8164  
building and loan or savings and loan association, credit union, 8165  
or society for savings for any payment so made. 8166

**Sec. 2133.04.** (A) A declarant may revoke a declaration at any 8167  
time and in any manner. The revocation shall be effective when the 8168  
declarant expresses ~~his~~ an intention to revoke the declaration, 8169  
except that, if the declarant made ~~his~~ the declarant's attending 8170  
physician aware of the declaration, the revocation shall be 8171  
effective upon its communication to the attending physician of the 8172  
declarant by the declarant ~~himself~~, a witness to the revocation, 8173  
or other health care personnel to whom the revocation is 8174  
communicated by ~~such~~ a that witness. Absent actual knowledge to 8175  
the contrary, the attending physician of a declarant and other 8176

health care personnel who are informed of the revocation of a 8177  
declaration by an alleged witness may rely on the information and 8178  
act in accordance with the revocation. 8179

(B) Upon the communication as described in division (A) of 8180  
this section to the attending physician of a declarant of the fact 8181  
that ~~his~~ the declaration has been revoked, the attending physician 8182  
or other health care personnel acting under the direction of the 8183  
attending physician shall make the fact a part of the declarant's 8184  
medical record. 8185

**Sec. 2133.05.** (A) If the attending physician of a declarant 8186  
and one other physician who examines the declarant determine that 8187  
~~he~~ the declarant is in a terminal condition or in a permanently 8188  
unconscious state, whichever is addressed in the declaration, if 8189  
the attending physician additionally determines that the declarant 8190  
no longer is able to make informed decisions regarding the 8191  
administration of life-sustaining treatment for ~~himself~~ the 8192  
declarant and that there is no reasonable possibility that the 8193  
declarant will regain the capacity to make those informed 8194  
decisions for ~~himself~~ the declarant, and if the attending 8195  
physician is aware of the existence of the declarant's 8196  
declaration, then the attending physician shall do all of the 8197  
following: 8198

(1) Record the determinations, together with the terms of the 8199  
declaration or any copy of the declaration acquired as described 8200  
in division (C) of section 2133.02 of the Revised Code, in the 8201  
declarant's medical record; 8202

(2)(a) Make a good faith effort, and use reasonable 8203  
diligence, to notify either of the following of the 8204  
determinations: 8205

(i) If the declarant designated in ~~his~~ the declarant's 8206  
declaration one or more persons to be notified at any time that 8207

life-sustaining treatment would be withheld or withdrawn pursuant 8208  
to the declaration, that person or those persons; 8209

(ii) If division (A)(2)(a)(i) of this section is not 8210  
applicable, the appropriate individual or individuals, in 8211  
accordance with the following descending order of priority: if 8212  
any, the guardian of the declarant, but this division does not 8213  
permit or require, and shall not be construed as permitting or 8214  
requiring, the appointment of a guardian for the declarant; the 8215  
declarant's spouse; the declarant's adult children who are 8216  
available within a reasonable period of time for consultation with 8217  
the declarant's attending physician; the declarant's parents; or 8218  
an adult sibling of the declarant or, if there is more than one 8219  
adult sibling, a majority of the declarant's adult siblings who 8220  
are available within a reasonable period of time for ~~such~~ the 8221  
consultation. 8222

(b) The attending physician shall record in the declarant's 8223  
medical record the names of the individual or individuals notified 8224  
pursuant to division (A)(2)(a) of this section and the manner of 8225  
notification. 8226

(c) If, despite making a good faith effort, and despite using 8227  
reasonable diligence, to notify the appropriate individual or 8228  
individuals described in division (A)(2)(a) of this section, the 8229  
attending physician cannot notify the individual or individuals of 8230  
the determinations because the individual or individuals are 8231  
deceased, cannot be located, or cannot be notified for some other 8232  
reason, then the requirements of divisions (A)(2)(a) and (b) and 8233  
(3) of this section and, except as provided in division (B)(1)(b) 8234  
of this section, the provisions of division (B) of this section 8235  
shall not apply in connection with the declarant and ~~his~~ the 8236  
declarant's declaration. However, the attending physician shall 8237  
record in the declarant's medical record information pertaining to 8238  
the reason for the failure to provide the requisite notices and 8239

information pertaining to the nature of the good faith effort and 8240  
reasonable diligence used. 8241

(3) Afford time for the individual or individuals notified in 8242  
accordance with division (A)(2) of this section to object in the 8243  
manner described in division (B)(1)(a) of this section. 8244

(B)(1)(a) Within forty-eight hours after receipt of a notice 8245  
pursuant to division (A)(2) of this section, any individual so 8246  
notified shall advise the attending physician of the declarant 8247  
whether ~~he~~ the individual objects on a basis specified in division 8248  
(B)(2)(c) of this section. If an objection as described in that 8249  
division is communicated to the attending physician, then, within 8250  
two business days after the communication, the individual shall 8251  
file a complaint as described in division (B)(2) of this section 8252  
in the probate court of the county in which the declarant is 8253  
located. If the individual fails to so file a complaint, ~~his~~ the 8254  
individual's objections as described in division (B)(2)(c) of this 8255  
section shall be considered to be void. 8256

(b) Within forty-eight hours after a person described in 8257  
division (A)(2)(a)(i) of this section or a priority individual or 8258  
any member of a priority class of individuals described in 8259  
division (A)(2)(a)(ii) of this section receives a notice pursuant 8260  
to division (A)(2) of this section or within forty-eight hours 8261  
after information pertaining to an unnotified person described in 8262  
division (A)(2)(a)(i) of this section or an unnotified priority 8263  
individual or unnotified priority class of individuals described 8264  
in division (A)(2)(a)(ii) of this section is recorded in a 8265  
declarant's medical record pursuant to division (A)(2)(c) of this 8266  
section, either of the following shall advise the attending 8267  
physician of the declarant whether ~~he or they object~~ there is an 8268  
objection on a basis specified in division (B)(2)(c) of this 8269  
section: 8270

(i) If a person described in division (A)(2)(a)(i) of this 8271

section was notified pursuant to division (A)(2) of this section 8272  
or was the subject of a recordation under division (A)(2)(c) of 8273  
this section, then the objection shall be communicated by the 8274  
individual or a majority of the individuals in either of the first 8275  
two classes of individuals that pertain to the declarant in the 8276  
descending order of priority set forth in division (A)(2)(a)(ii) 8277  
of this section. 8278

(ii) If an individual or individuals in the descending order 8279  
of priority set forth in division (A)(2)(a)(ii) of this section 8280  
were notified pursuant to division (A)(2) of this section or were 8281  
the subject of a recordation under division (A)(2)(c) of this 8282  
section, then the objection shall be communicated by the 8283  
individual or a majority of the individuals in the next class of 8284  
individuals that pertains to the declarant in the descending order 8285  
of priority set forth in division (A)(2)(a)(ii) of this section. 8286

If an objection as described in division (B)(2)(c) of this 8287  
section is communicated to the attending physician in accordance 8288  
with division (B)(1)(b)(i) or (ii) of this section, then, within 8289  
two business days after the communication, the objecting 8290  
individual or majority shall file a complaint as described in 8291  
division (B)(2) of this section in the probate court of the county 8292  
in which the declarant is located. If the objecting individual or 8293  
majority fails to file a complaint, ~~his or their~~ the objections as 8294  
described in division (B)(2)(c) of this section shall be 8295  
considered to be void. 8296

(2) A complaint of an individual that is filed in accordance 8297  
with division (B)(1)(a) of this section or of an individual or 8298  
majority of individuals that is filed in accordance with division 8299  
(B)(1)(b) of this section shall satisfy all of the following: 8300

(a) Name any health care facility in which the declarant is 8301  
confined; 8302

(b) Name the declarant, ~~his~~ the declarant's attending physician, and the consulting physician associated with the determination that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration;

(c) Indicate whether the plaintiff or plaintiffs object on one or more of the following bases:

(i) To the attending physician's and consulting physician's determinations that the declarant is in a terminal condition or in a permanently unconscious state, whichever is addressed in the declaration;

(ii) To the attending physician's determination that the declarant no longer is able to make informed decisions regarding the administration of life-sustaining treatment;

(iii) To the attending physician's determination that there is no reasonable possibility that the declarant will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment;

(iv) That the course of action proposed to be undertaken by the attending physician is not authorized by the declarant's declaration;

(v) That the declaration was executed when the declarant was not of sound mind or was under or subject to duress, fraud, or undue influence;

(vi) That the declaration otherwise does not substantially comply with this chapter.

(d) Request the probate court to issue one of the following types of orders:

(i) An order to the attending physician to reevaluate, in light of the court proceedings, the determination that the



declarant is in a terminal condition or in a permanently 8333  
unconscious state, whichever is addressed in the declaration, the 8334  
determination that the declarant no longer is able to make 8335  
informed decisions regarding the administration of life-sustaining 8336  
treatment, the determination that there is no reasonable 8337  
possibility that the declarant will regain the capacity to make 8338  
those informed decisions, or the course of action proposed to be 8339  
undertaken; 8340

(ii) An order invalidating the declaration because it was 8341  
executed when the declarant was not of sound mind or was under or 8342  
subject to duress, fraud, or undue influence, or because it 8343  
otherwise does not substantially comply with this chapter; 8344

(e) Be accompanied by an affidavit of the plaintiff or 8345  
plaintiffs that includes averments relative to whether ~~he~~ the 8346  
plaintiff is an individual or ~~they~~ the plaintiffs are individuals 8347  
as described in division (A)(2)(a)(i) or (ii) of this section and 8348  
to the factual basis for ~~his~~ the plaintiff's or ~~their~~ the 8349  
plaintiffs' objections; 8350

(f) Name any individuals who were notified by the attending 8351  
physician in accordance with division (A)(2)(a) of this section 8352  
and who are not joining in the complaint as plaintiffs; 8353

(g) Name, in the caption of the complaint, as defendants the 8354  
attending physician of the declarant, the consulting physician 8355  
associated with the determination that the declarant is in a 8356  
terminal condition or in a permanently unconscious state, 8357  
whichever is addressed in the declaration, any health care 8358  
facility in which the declarant is confined, and any individuals 8359  
who were notified by the attending physician in accordance with 8360  
division (A)(2)(a) of this section and who are not joining in the 8361  
complaint as plaintiffs. 8362

(3) Notwithstanding any contrary provision of the Revised 8363

Code or of the Rules of Civil Procedure, the state and persons 8364  
other than an objecting individual as described in division 8365  
(B)(1)(a) of this section, other than an objecting individual or 8366  
majority of individuals as described in division (B)(2)(b)(i) or 8367  
(ii) of this section, and other than persons described in division 8368  
(B)(2)(g) of this section are prohibited from commencing a civil 8369  
action under this section and from joining or being joined as 8370  
parties to an action commenced under this section, including 8371  
joining by way of intervention. 8372

(4)(a) A probate court in which a complaint as described in 8373  
division (B)(2) of this section is filed within the period 8374  
specified in division (B)(1)(a) or (b) of this section shall 8375  
conduct a hearing on the complaint after a copy of the complaint 8376  
and a notice of the hearing have been served upon the defendants. 8377  
The clerk of the probate court in which the complaint is filed 8378  
shall cause the complaint and the notice of the hearing to be so 8379  
served in accordance with the Rules of Civil Procedure, which 8380  
service shall be made, if possible, within three days after the 8381  
filing of the complaint. The hearing shall be conducted at the 8382  
earliest possible time, but no later than the third business day 8383  
after ~~such~~ the service has been completed. Immediately following 8384  
the hearing, the court shall enter on its journal its 8385  
determination whether a requested order will be issued. 8386

(b) If the declarant's declaration authorized the use or 8387  
continuation of life-sustaining treatment should ~~he~~ the declarant 8388  
be in a terminal condition or in a permanently unconscious state 8389  
and if the plaintiff or plaintiffs requested a reevaluation order 8390  
to the attending physician of the declarant as described in 8391  
division (B)(2)(d)(i) of this section, the court shall issue the 8392  
reevaluation order only if it finds that the plaintiff or 8393  
plaintiffs have established a factual basis for the objection or 8394  
objections involved by clear and convincing evidence, to a 8395

reasonable degree of medical certainty, and in accordance with 8396  
reasonable medical standards. 8397

(c) If the declarant's declaration authorized the withholding 8398  
or withdrawal 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 a preponderance of the evidence, to a 8406  
reasonable degree of medical certainty, and in accordance with 8407  
reasonable medical standards. 8408

(d) If the plaintiff or plaintiffs requested an invalidation 8409  
order as described in division (B)(2)(d)(ii) of this section, the 8410  
court shall issue the order only if it finds that the plaintiff or 8411  
plaintiffs have established a factual basis for the objection or 8412  
objections involved by clear and convincing evidence. 8413

(e) If the court issues a reevaluation order to the 8414  
declarant's attending physician pursuant to division (B)(4)(b) or 8415  
(c) of this section, then the attending physician shall make the 8416  
requisite reevaluation. If, after doing so, the attending 8417  
physician again determines that the declarant is in a terminal 8418  
condition or in a permanently unconscious state, that the 8419  
declarant no longer is able to make informed decisions regarding 8420  
the administration of life-sustaining treatment, that there is no 8421  
reasonable possibility that the declarant will regain the capacity 8422  
to make those informed decisions, or that ~~he~~ the attending 8423  
physician would undertake the same proposed course of action, then 8424  
~~he~~ the attending physician shall notify the court in writing of 8425  
the determination and comply with the provisions of section 8426  
2133.10 of the Revised Code. 8427

Sec. 2133.06. (A) As long as a qualified patient is able to 8428  
make informed decisions regarding the administration of 8429  
life-sustaining treatment, ~~he~~ the qualified patient may continue 8430  
to do so. 8431

(B) Life-sustaining treatment shall not be withheld or 8432  
withdrawn from a declarant pursuant to a declaration if ~~she~~ the 8433  
declarant is pregnant and if the withholding or withdrawal of the 8434  
treatment would terminate the pregnancy, unless the declarant's 8435  
attending physician and one other physician who has examined the 8436  
declarant determine, to a reasonable degree of medical certainty 8437  
and in accordance with reasonable medical standards, that the 8438  
fetus would not be born alive. 8439

Sec. 2133.08. (A)(1) If written consent to the withholding or 8440  
withdrawal of life-sustaining treatment, witnessed by two 8441  
individuals who satisfy the witness eligibility criteria set forth 8442  
in division (B)(1) of section 2133.02 of the Revised Code, is 8443  
given by the appropriate individual or individuals as specified in 8444  
division (B) of this section to the attending physician of a 8445  
patient who is an adult, and if all of the following apply in 8446  
connection with the patient, then, subject to section 2133.09 of 8447  
the Revised Code, ~~his~~ the patient's attending physician may 8448  
withhold or withdraw the life-sustaining treatment: 8449

(a) The attending physician and one other physician who 8450  
examines the patient determine, in good faith, to a reasonable 8451  
degree of medical certainty, and in accordance with reasonable 8452  
medical standards, that the patient is in a terminal condition or 8453  
the patient currently is and for at least the immediately 8454  
preceding twelve months has been in a permanently unconscious 8455  
state, and the attending physician additionally determines, in 8456  
good faith, to a reasonable degree of medical certainty, and in 8457  
accordance with reasonable medical standards, that the patient no 8458

longer is able to make informed decisions regarding the 8459  
administration of life-sustaining treatment and that there is no 8460  
reasonable possibility that the patient will regain the capacity 8461  
to make those informed decisions. 8462

(b) The patient does not have a declaration that addresses 8463  
~~his~~ the patient's intent should ~~he~~ the patient be determined to be 8464  
in a terminal condition or in a permanently unconscious state, 8465  
whichever applies, or a durable power of attorney for health care, 8466  
or has a document that purports to be such a declaration or 8467  
durable power of attorney for health care but that document is not 8468  
legally effective. 8469

(c) The consent of the appropriate individual or individuals 8470  
is given after consultation with the patient's attending physician 8471  
and after receipt of information from the patient's attending 8472  
physician or a consulting physician that is sufficient to satisfy 8473  
the requirements of informed consent. 8474

(d) The appropriate individual or individuals who give a 8475  
consent are of sound mind and voluntarily give the consent. 8476

(e) If a consent would be given under division (B)(3) of this 8477  
section, the attending physician made a good faith effort, and 8478  
used reasonable diligence, to notify the patient's adult children 8479  
who are available within a reasonable period of time for 8480  
consultation as described in division (A)(1)(c) of this section. 8481

(2) The consulting physician under division (A)(1)(a) of this 8482  
section associated with a patient allegedly in a permanently 8483  
unconscious state shall be a physician who, by virtue of advanced 8484  
education or training, of a practice limited to particular 8485  
diseases, illnesses, injuries, therapies, or branches of medicine 8486  
or surgery or osteopathic medicine and surgery, of certification 8487  
as a specialist in a particular branch of medicine or surgery or 8488  
osteopathic medicine and surgery, or of experience acquired in the 8489

practice of medicine or surgery or osteopathic medicine and 8490  
surgery, is qualified to determine whether the patient currently 8491  
is and for at least the immediately preceding twelve months has 8492  
been in a permanently unconscious state. 8493

(B) For purposes of division (A) of this section, a consent 8494  
to withhold or withdraw life-sustaining treatment may be given by 8495  
the appropriate individual or individuals, in accordance with the 8496  
following descending order of priority: 8497

(1) If any, the guardian of the patient. This division does 8498  
not permit or require, and shall not be construed as permitting or 8499  
requiring, the appointment of a guardian for the patient. 8500

(2) The patient's spouse; 8501

(3) An adult child of the patient or, if there is more than 8502  
one adult child, a majority of the patient's adult children who 8503  
are available within a reasonable period of time for consultation 8504  
with the patient's attending physician; 8505

(4) The patient's parents; 8506

(5) An adult sibling of the patient or, if there is more than 8507  
one adult sibling, a majority of the patient's adult siblings who 8508  
are available within a reasonable period of time for ~~such~~ that 8509  
consultation; 8510

(6) The nearest adult who is not described in divisions 8511  
(B)(1) to (5) of this section, who is related to the patient by 8512  
blood or adoption, and who is available within a reasonable period 8513  
of time for ~~such~~ that consultation. 8514

(C) If an appropriate individual or class of individuals 8515  
entitled to decide under division (B) of this section whether or 8516  
not to consent to the withholding or withdrawal of life-sustaining 8517  
treatment for a patient is not available within a reasonable 8518  
period of time for ~~such~~ the consultation and competent to so 8519

decide, or declines to so decide, then the next priority 8520  
individual or class of individuals specified in that division is 8521  
authorized to make the decision. However, an equal division in a 8522  
priority class of individuals under that division does not 8523  
authorize the next class of individuals specified in that division 8524  
to make the decision. If an equal division in a priority class of 8525  
individuals under that division occurs, no written consent to the 8526  
withholding or withdrawal of life-sustaining treatment from the 8527  
patient can be given pursuant to this section. 8528

(D)(1) A decision to consent pursuant to this section to the 8529  
use or continuation, or the withholding or withdrawal, of 8530  
life-sustaining treatment for a patient shall be made in good 8531  
faith. 8532

(2) Except as provided in division (D)(4) of this section, if 8533  
the patient previously expressed ~~his~~ an intention with respect to 8534  
the use or continuation, or the withholding or withdrawal, of 8535  
life-sustaining treatment should ~~he~~ the patient subsequently be in 8536  
a terminal condition or in a permanently unconscious state, 8537  
whichever applies, and no longer able to make informed decisions 8538  
regarding the administration of life-sustaining treatment, a 8539  
consent given pursuant to this section shall be valid only if it 8540  
is consistent with that previously expressed intention. 8541

(3) Except as provided in division (D)(4) of this section, if 8542  
the patient did not previously express ~~his~~ an intention with 8543  
respect to the use or continuation, or the withholding or 8544  
withdrawal, of life-sustaining treatment should ~~he~~ the patient 8545  
subsequently be in a terminal condition or in a permanently 8546  
unconscious state, whichever applies, and no longer able to make 8547  
informed decisions regarding the administration of life-sustaining 8548  
treatment, a consent given pursuant to this section shall be valid 8549  
only if it is consistent with the type of informed consent 8550  
decision that the patient would have made if ~~he~~ the patient 8551

previously had expressed ~~his~~ an intention with respect to the use 8552  
or continuation, or the withholding or withdrawal, of 8553  
life-sustaining treatment should ~~he~~ the patient subsequently be in 8554  
a terminal condition or in a permanently unconscious state, 8555  
whichever applies, and no longer able to make informed decisions 8556  
regarding the administration of life-sustaining treatment, as 8557  
inferred from the lifestyle and character of the patient, and from 8558  
any other evidence of the desires of the patient, prior to ~~his~~ the 8559  
patient's becoming no longer able to make informed decisions 8560  
regarding the administration of life-sustaining treatment. The 8561  
Rules of Evidence shall not be binding for purposes of this 8562  
division. 8563

(4)(a) The attending physician of the patient, and other 8564  
health care personnel acting under the direction of the attending 8565  
physician, who do not have actual knowledge of a previously 8566  
expressed intention as described in division (D)(2) of this 8567  
section or who do not have actual knowledge that the patient would 8568  
have made a different type of informed consent decision under the 8569  
circumstances described in division (D)(3) of this section, may 8570  
rely on a consent given in accordance with this section unless a 8571  
probate court decides differently under division (E) of this 8572  
section. 8573

(b) The immunity conferred by division (C)(1) of section 8574  
2133.11 of the Revised Code is not forfeited by an individual who 8575  
gives a consent to the use or continuation, or the withholding or 8576  
withdrawal, of life-sustaining treatment for a patient under 8577  
division (B) of this section if the individual gives the consent 8578  
in good faith and without actual knowledge, at the time of giving 8579  
the consent, of either a contrary previously expressed intention 8580  
of the patient, or a previously expressed intention of the 8581  
patient, as described in division (D)(2) of this section, that is 8582  
revealed to the individual subsequent to the time of giving the 8583



consent. 8584

(E)(1) Within forty-eight hours after a priority individual 8585  
or class of individuals gives a consent pursuant to this section 8586  
to the use or continuation, or the withholding or withdrawal, of 8587  
life-sustaining treatment and communicates the consent to the 8588  
patient's attending physician, any individual described in 8589  
divisions (B)(1) to (5) of this section who objects to the 8590  
application of this section to the patient shall advise the 8591  
attending physician of the grounds for the objection. If an 8592  
objection is so communicated to the attending physician, then, 8593  
within two business days after that communication, the objecting 8594  
individual shall file a complaint against the priority individual 8595  
or class of individuals, the patient's attending physician, and 8596  
the consulting physician associated with the determination that 8597  
the patient is in a terminal condition or that the patient 8598  
currently is and for at least the immediately preceding twelve 8599  
months has been in a permanently unconscious state, in the probate 8600  
court of the county in which the patient is located for the 8601  
issuance of an order reversing the consent of the priority 8602  
individual or class of individuals. If the objecting individual 8603  
fails to so file a complaint, ~~his~~ the individual's objections 8604  
shall be considered to be void. 8605

A probate court in which a complaint is filed in accordance 8606  
with this division shall conduct a hearing on the complaint after 8607  
a copy of the complaint and a notice of the hearing have been 8608  
served upon the defendants. The clerk of the probate court in 8609  
which the complaint is filed shall cause the complaint and the 8610  
notice of the hearing to be so served in accordance with the Rules 8611  
of Civil Procedure, which service shall be made, if possible, 8612  
within three days after the filing of the complaint. The hearing 8613  
shall be conducted at the earliest possible time, but no later 8614  
than the third business day after ~~such~~ the service has been 8615

completed. Immediately following the hearing, the court shall 8616  
enter on its journal its determination whether the decision of the 8617  
priority individual or class of individuals to consent to the use 8618  
or continuation, or the withholding or withdrawal, of 8619  
life-sustaining treatment in connection with the patient will be 8620  
confirmed or reversed. 8621

(2) If the decision of the priority individual or class of 8622  
individuals was to consent to the use or continuation of 8623  
life-sustaining treatment in connection with the patient, the 8624  
court only may reverse that consent if the objecting individual 8625  
establishes, by clear and convincing evidence and, if applicable, 8626  
to a reasonable degree of medical certainty and in accordance with 8627  
reasonable medical standards, one or more of the following: 8628

(a) The patient is able to make informed decisions regarding 8629  
the administration of life-sustaining treatment. 8630

(b) The patient has a legally effective declaration that 8631  
addresses ~~his~~ the patient's intent should ~~he~~ the patient be 8632  
determined to be in a terminal condition or in a permanently 8633  
unconscious state, whichever applies, or a legally effective 8634  
durable power of attorney for health care. 8635

(c) The decision to use or continue life-sustaining treatment 8636  
is not consistent with the previously expressed intention of the 8637  
patient as described in division (D)(2) of this section. 8638

(d) The decision to use or continue life-sustaining treatment 8639  
is not consistent with the type of informed consent decision that 8640  
the patient would have made if ~~he~~ the patient previously had 8641  
expressed ~~his~~ an intention with respect to the use or 8642  
continuation, or the withholding or withdrawal, of life-sustaining 8643  
treatment should ~~he~~ the patient subsequently be in a terminal 8644  
condition or in a permanently unconscious state, whichever 8645  
applies, and no longer able to make informed decisions regarding 8646

the administration of life-sustaining treatment as described in 8647  
division (D)(3) of this section. 8648

(e) The decision of the priority individual or class of 8649  
individuals was not made after consultation with the patient's 8650  
attending physician and after receipt of information from the 8651  
patient's attending physician or a consulting physician that is 8652  
sufficient to satisfy the requirements of informed consent. 8653

(f) The priority individual, or any member of the priority 8654  
class of individuals, who made the decision to use or continue 8655  
life-sustaining treatment was not of sound mind or did not 8656  
voluntarily make the decision. 8657

(g) If the decision of a priority class of individuals under 8658  
division (B)(3) of this section is involved, the patient's 8659  
attending physician did not make a good faith effort, and use 8660  
reasonable diligence, to notify the patient's adult children who 8661  
were available within a reasonable period of time for consultation 8662  
as described in division (A)(1)(c) of this section. 8663

(h) The decision of the priority individual or class of 8664  
individuals otherwise was made in a manner that does not comply 8665  
with this section. 8666

(3) If the decision of the priority individual or class of 8667  
individuals was to consent to the withholding or withdrawal of 8668  
life-sustaining treatment in connection with the patient, the 8669  
court only may reverse that consent if the objecting individual 8670  
establishes, by a preponderance of the evidence and, if 8671  
applicable, to a reasonable degree of medical certainty and in 8672  
accordance with reasonable medical standards, one or more of the 8673  
following: 8674

(a) The patient is not in a terminal condition, the patient 8675  
is not in a permanently unconscious state, or the patient has not 8676  
been in a permanently unconscious state for at least the 8677

immediately preceding twelve months. 8678

(b) The patient is able to make informed decisions regarding 8679  
the administration of life-sustaining treatment. 8680

(c) There is a reasonable possibility that the patient will 8681  
regain the capacity to make informed decisions regarding the 8682  
administration of life-sustaining treatment. 8683

(d) The patient has a legally effective declaration that 8684  
addresses ~~his~~ the patient's intent should ~~he~~ the patient be 8685  
determined to be in a terminal condition or in a permanently 8686  
unconscious state, whichever applies, or a legally effective 8687  
durable power of attorney for health care. 8688

(e) The decision to withhold or withdraw life-sustaining 8689  
treatment is not consistent with the previously expressed 8690  
intention of the patient as described in division (D)(2) of this 8691  
section. 8692

(f) The decision to withhold or withdraw life-sustaining 8693  
treatment is not consistent with the type of informed consent 8694  
decision that the patient would have made if ~~he~~ the patient 8695  
previously had expressed ~~his~~ an intention with respect to the use 8696  
or continuation, or the withholding or withdrawal, of 8697  
life-sustaining treatment should ~~he~~ the patient subsequently be in 8698  
a terminal condition or in a permanently unconscious state, 8699  
whichever applies, and no longer able to make informed decisions 8700  
regarding the administration of life-sustaining treatment as 8701  
described in division (D)(3) of this section. 8702

(g) The decision of the priority individual or class of 8703  
individuals was not made after consultation with the patient's 8704  
attending physician and after receipt of information from the 8705  
patient's attending physician or a consulting physician that is 8706  
sufficient to satisfy the requirements of informed consent. 8707

(h) The priority individual, or any member of the priority 8708

class of individuals, who made the decision to withhold or 8709  
withdraw life-sustaining treatment was not of sound mind or did 8710  
not voluntarily make the decision. 8711

(i) If the decision of a priority class of individuals under 8712  
division (B)(3) of this section is involved, the patient's 8713  
attending physician did not make a good faith effort, and use 8714  
reasonable diligence, to notify the patient's adult children who 8715  
were available within a reasonable period of time for consultation 8716  
as described in division (A)(1)(c) of this section. 8717

(j) The decision of the priority individual or class of 8718  
individuals otherwise was made in a manner that does not comply 8719  
with this section. 8720

(4) Notwithstanding any contrary provision of the Revised 8721  
Code or of the Rules of Civil Procedure, the state and persons 8722  
other than individuals described in divisions (B)(1) to (5) of 8723  
this section are prohibited from filing a complaint under division 8724  
(E) of this section and from joining or being joined as parties to 8725  
a hearing conducted under division (E) of this section, including 8726  
joining by way of intervention. 8727

(F) A valid consent given in accordance with this section 8728  
supersedes any general consent to treatment form signed by or on 8729  
behalf of the patient prior to, upon, or after ~~his~~ the patient's 8730  
admission to a health care facility to the extent there is a 8731  
conflict between the consent and the form. 8732

(G) Life-sustaining treatment shall not be withheld or 8733  
withdrawn from a patient pursuant to a consent given in accordance 8734  
with this section if ~~she~~ the patient is pregnant and if the 8735  
withholding or withdrawal of the treatment would terminate the 8736  
pregnancy, unless the patient's attending physician and one other 8737  
physician who has examined the patient determine, to a reasonable 8738  
degree of medical certainty and in accordance with reasonable 8739

medical standards, that the fetus would not be born alive. 8740

**Sec. 2133.09.** (A) The attending physician of a patient who is 8741  
an adult and who currently is and for at least the immediately 8742  
preceding twelve months has been in a permanently unconscious 8743  
state may withhold or withdraw nutrition and hydration in 8744  
connection with the patient only if all of the following apply: 8745

(1) Written consent to the withholding or withdrawal of 8746  
life-sustaining treatment in connection with the patient has been 8747  
given by an appropriate individual or individuals in accordance 8748  
with section 2133.08 of the Revised Code, and divisions (A)(1)(a) 8749  
to (e) and (2) of that section have been satisfied. 8750

(2) A probate court has not reversed the consent to the 8751  
withholding or withdrawal of life-sustaining treatment in 8752  
connection with the patient pursuant to division (E) of section 8753  
2133.08 of the Revised Code. 8754

(3) The attending physician of the patient and one other 8755  
physician as described in division (A)(2) of section 2133.08 of 8756  
the Revised Code who examines the patient determine, in good 8757  
faith, to a reasonable degree of medical certainty, and in 8758  
accordance with reasonable medical standards, that nutrition and 8759  
hydration will not or no longer will provide comfort or alleviate 8760  
pain in connection with the patient. 8761

(4) Written consent to the withholding or withdrawal of 8762  
nutrition and hydration in connection with the patient, witnessed 8763  
by two individuals who satisfy the witness eligibility criteria 8764  
set forth in division (B)(1) of section 2133.02 of the Revised 8765  
Code, is given to the attending physician of the patient by an 8766  
appropriate individual or individuals as specified in division (B) 8767  
of section 2133.08 of the Revised Code. 8768

(5) The written consent to the withholding or withdrawal of 8769

the nutrition and hydration in connection with the patient is 8770  
given in accordance with division (B) of this section. 8771

(6) The probate court of the county in which the patient is 8772  
located issues an order to withhold or withdraw the nutrition and 8773  
hydration in connection with the patient pursuant to division (C) 8774  
of this section. 8775

(B)(1) A decision to consent pursuant to this section to the 8776  
withholding or withdrawal of nutrition and hydration in connection 8777  
with a patient shall be made in good faith. 8778

(2) Except as provided in division (B)(4) of this section, if 8779  
the patient previously expressed ~~his~~ an intention with respect to 8780  
the use or continuation, or the withholding or withdrawal, of 8781  
nutrition and hydration should ~~he~~ the patient subsequently be in a 8782  
permanently unconscious state and no longer able to make informed 8783  
decisions regarding the administration of nutrition and hydration, 8784  
a consent given pursuant to this section shall be valid only if it 8785  
is consistent with that previously expressed intention. 8786

(3) Except as provided in division (B)(4) of this section, if 8787  
the patient did not previously express ~~his~~ an intention with 8788  
respect to the use or continuation, or the withholding or 8789  
withdrawal, of nutrition and ~~hydration~~ hydration should ~~he~~ the 8790  
patient subsequently be in a permanently unconscious state and no 8791  
longer able to make informed decisions regarding the 8792  
administration of nutrition and hydration, a consent given 8793  
pursuant to this section shall be valid only if it is consistent 8794  
with the type of informed consent decision that the patient would 8795  
have made if ~~he~~ the patient previously had expressed ~~his~~ an 8796  
intention with respect to the use or continuation, or the 8797  
withholding or withdrawal, of nutrition and hydration should ~~he~~ 8798  
the patient subsequently be in a permanently unconscious state and 8799  
no longer able to make informed decisions regarding the 8800  
administration of nutrition and hydration, as inferred from the 8801

lifestyle and character of the patient, and from any other 8802  
evidence of the desires of the patient, prior to ~~his~~ the patient's 8803  
becoming no longer able to make informed decisions regarding the 8804  
administration of nutrition and hydration. The Rules of Evidence 8805  
shall not be binding for purposes of this division. 8806

(4)(a) The attending physician of the patient, and other 8807  
health care personnel acting under the direction of the attending 8808  
physician, who do not have actual knowledge of a previously 8809  
expressed intention as described in division (B)(2) of this 8810  
section or who do not have actual knowledge that the patient would 8811  
have made a different type of informed consent decision under the 8812  
circumstances described in division (B)(3) of this section, may 8813  
rely on a consent given in accordance with this section unless a 8814  
probate court decides differently under division (C) of this 8815  
section. 8816

(b) The immunity conferred by division (C)(2) of section 8817  
2133.11 of the Revised Code is not forfeited by an individual who 8818  
gives a consent to the withholding or withdrawal of nutrition and 8819  
hydration in connection with a patient under division (A)(4) of 8820  
this section if the individual gives the consent in good faith and 8821  
without actual knowledge, at the time of giving the consent, of 8822  
either a contrary previously expressed intention of the patient, 8823  
or a previously expressed intention of the patient, as described 8824  
in ~~divison~~ division (B)(2) of this section, that is revealed to 8825  
the individual subsequent to the time of giving the consent. 8826

(C)(1) Prior to the withholding or withdrawal of nutrition 8827  
and hydration in connection with a patient pursuant to this 8828  
section, the priority individual or class of individuals that 8829  
consented to the withholding or withdrawal of the nutrition and 8830  
hydration shall apply to the probate court of the county in which 8831  
the patient is located for the issuance of an order that 8832  
authorizes the attending physician of the patient to commence the 8833



withholding or withdrawal of the nutrition and hydration in 8834  
connection with the patient. Upon the filing of the application, 8835  
the clerk of the probate court shall schedule a hearing on it and 8836  
cause a copy of it and a notice of the hearing to be served in 8837  
accordance with the Rules of Civil Procedure upon the applicant, 8838  
the attending physician, the consulting physician associated with 8839  
the determination that nutrition and hydration will not or no 8840  
longer will provide comfort or alleviate pain in connection with 8841  
the patient, and the individuals described in divisions (B)(1) to 8842  
(5) of section 2133.08 of the Revised Code who are not applicants, 8843  
which service shall be made, if possible, within three days after 8844  
the filing of the application. The hearing shall be conducted at 8845  
the earliest possible time, but no sooner than the thirtieth 8846  
business day, and no later than the sixtieth business day, after 8847  
~~such~~ the service has been completed. 8848

At the hearing, any individual described in divisions (B)(1) 8849  
to (5) of section 2133.08 of the Revised Code who is not an 8850  
applicant and who disagrees with the decision of the priority 8851  
individual or class of individuals to consent to the withholding 8852  
or withdrawal of nutrition and hydration in connection with the 8853  
patient shall be permitted to testify and present evidence 8854  
relative to the use or continuation of nutrition and hydration in 8855  
connection with the patient. Immediately following the hearing, 8856  
the court shall enter on its journal its determination whether the 8857  
requested order will be issued. 8858

(2) The court shall issue an order that authorizes the 8859  
patient's attending physician to commence the withholding or 8860  
withdrawal of nutrition and hydration in connection with the 8861  
patient only if the applicants establish, by clear and convincing 8862  
evidence, to a reasonable degree of medical certainty, and in 8863  
accordance with reasonable medical standards, all of the 8864  
following: 8865

(a) The patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state. 8866  
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(b) The patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment. 8869  
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(c) There is no reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment. 8871  
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8873

(d) The conditions specified in divisions (A)(1) to (4) of this section have been satisfied. 8874  
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(e) The decision to withhold or withdraw nutrition and hydration in connection with the patient is consistent with the previously expressed intention of the patient as described in division (B)(2) of this section or is consistent with the type of informed consent decision that the patient would have made if ~~he~~ the patient previously had expressed ~~his~~ an intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should ~~he~~ the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration as described in division (B)(3) of this section. 8876  
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(3) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in division (A)(4) of this section or in divisions (B)(1) to (5) of section 2133.08 of the Revised Code and other than the attending physician and consulting physician associated with the determination that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient are prohibited from filing an application under this division and from joining or being joined as parties to a hearing conducted under this division, including 8887  
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joining by way of intervention. 8897

(D) A valid consent given in accordance with this section 8898  
supersedes any general consent to treatment form signed by or on 8899  
behalf of the patient prior to, upon, or after ~~his~~ the patient's 8900  
admission to a health care facility to the extent there is a 8901  
conflict between the consent and the form. 8902

**Sec. 2335.34.** On the first Monday of January, each year, the 8903  
clerk of each court of common pleas and court of appeals, each 8904  
probate judge, and each sheriff shall make two certified lists of 8905  
causes in which money has been paid and has remained in the hands 8906  
of ~~such that~~ that person or in the hands of a former clerk, probate 8907  
judge, or sheriff, for one year next preceding ~~such that~~ first 8908  
Monday of January. ~~Such~~ The lists shall designate the amount of 8909  
money and in whose hands it remains. One list shall be set up in a 8910  
conspicuous place by ~~such the~~ the officer, in ~~his~~ the officer's 8911  
office, for the period of thirty days, and the other list shall be 8912  
posted at ~~or on the door~~ a public area of the courthouse or 8913  
published on the web site of the court or officer, on the second 8914  
Monday of January, for the same period of time. 8915

**Sec. 3101.02.** Any consent required under section 3101.01 of 8916  
the Revised Code shall be personally given before the probate 8917  
judge or a deputy clerk of the probate court, or certified under 8918  
the hand of the person consenting, by two witnesses, one of whom 8919  
~~must~~ shall appear before the judge and make oath that ~~he~~ the 8920  
witness saw the person whose name is annexed to the certificate 8921  
subscribe it, or heard ~~him~~ the person consenting acknowledge it. 8922

**Sec. 3101.03.** If the parent or guardian of a minor is a 8923  
nonresident of, or is absent from, the county in which the 8924  
marriage license is applied for, ~~he~~ the parent or guardian 8925  
personally may appear before the official upon whose authority 8926

marriage licenses are issued, in the county in which ~~he~~ the parent 8927  
or guardian is at the time domiciled, and give ~~his~~ consent in 8928  
writing to ~~such~~ that marriage. The consent ~~must~~ shall be attested 8929  
to by two witnesses, certified to by ~~such~~ that official, and 8930  
forwarded to the probate judge of the county in which the license 8931  
is applied for. The probate judge may administer any oath 8932  
required, issue and sign ~~such~~ the license, and affix the seal of 8933  
the probate court. 8934

**Sec. 3101.10.** A minister upon producing to the secretary of 8935  
state, credentials of ~~his~~ the minister's being a regularly 8936  
ordained or licensed minister of any religious society or 8937  
congregation, shall be entitled to receive from the secretary of 8938  
state a license authorizing ~~him~~ the minister to solemnize 8939  
marriages in this state so long as ~~he~~ the minister continues as a 8940  
regular minister in ~~such~~ that society or congregation. A minister 8941  
shall produce for inspection ~~his~~ the minister's license to 8942  
solemnize marriages upon demand of any party to a marriage at 8943  
which ~~he~~ the minister officiates or proposes to officiate or upon 8944  
demand of any probate judge. 8945

**Sec. 3101.13.** Except as otherwise provided in this section, a 8946  
certificate of every marriage solemnized shall be transmitted by 8947  
the authorized person solemnizing the marriage, within thirty days 8948  
after the solemnization, to the probate judge of the county in 8949  
which the marriage license was issued. If, in accordance with 8950  
section 2101.27 of the Revised Code, a probate judge solemnizes a 8951  
marriage and if the probate judge issued the marriage license to 8952  
the husband and wife, ~~he~~ the probate judge shall file a 8953  
certificate of that solemnized marriage in ~~his~~ the probate judge's 8954  
office within thirty days after the solemnization. All ~~such~~ of the 8955  
transmitted and filed certificates shall be consecutively numbered 8956  
and recorded in the order in which they are received. 8957

**Sec. 3101.14.** Every marriage license shall have printed upon 8958  
it in prominent type the notice that, unless the person 8959  
solemnizing the marriage returns a certificate of the solemnized 8960  
marriage to the probate court that issued the marriage license 8961  
within thirty days after performing the ceremony, or, if the 8962  
person solemnizing the marriage is a probate judge who is acting 8963  
in accordance with section 2101.27 of the Revised Code and who 8964  
issued the marriage license to the husband and wife, unless ~~such a~~ 8965  
~~that~~ probate judge files a certificate of the solemnized marriage 8966  
in ~~his~~ the probate judge's office within thirty days after the 8967  
solemnization, ~~he~~ the person or probate judge is guilty of a minor 8968  
misdemeanor and, upon conviction, may be punished by a fine of 8969  
fifty dollars. An envelope suitable for returning the certificate 8970  
of marriage, and addressed to the proper probate court, shall be 8971  
given with each license, except that this requirement does not 8972  
apply if a marriage is to be solemnized by a probate judge who is 8973  
acting in accordance with section 2101.27 of the Revised Code and 8974  
who issued the marriage license to the husband and wife. 8975

**Sec. 3313.85.** If the board of education of any city, exempted 8976  
village, or local school district or the governing board of any 8977  
educational service center ~~fails to perform the duties imposed~~ 8978  
~~upon it or~~ fails to fill a vacancy in ~~such~~ that board within a 8979  
period of thirty days after ~~such~~ the vacancy occurs, the probate 8980  
court of the county in which ~~such~~ the district or service center 8981  
is located, upon being advised and satisfied of ~~such~~ that failure, 8982  
shall act as ~~such~~ that board and ~~perform all duties imposed upon~~ 8983  
~~such board~~ to fill any vacancy as promptly as possible. 8984

8985

**Sec. 5111.113.** (A) As used in this section: 8986

(1) "Adult care facility" has the same meaning as in section 8987

3722.01 of the Revised Code. 8988

(2) "Commissioner" means a person appointed by a probate 8989  
court under division ~~(B)~~(E) of section 2113.03 of the Revised Code 8990  
to act as a commissioner. 8991

(3) "Home" has the same meaning as in section 3721.10 of the 8992  
Revised Code. 8993

(4) "Personal needs allowance account" means an account or 8994  
petty cash fund that holds the money of a resident of an adult 8995  
care facility or home and that the facility or home manages for 8996  
the resident. 8997

(B) Except as provided in divisions (C) and (D) of this 8998  
section, the owner or operator of an adult care facility or home 8999  
shall transfer to the department of job and family services the 9000  
money in the personal needs allowance account of a resident of the 9001  
facility or home who was a recipient of the medical assistance 9002  
program no earlier than sixty days but not later than ninety days 9003  
after the resident dies. The adult care facility or home shall 9004  
transfer the money even though the owner or operator of the 9005  
facility or home has not been issued letters testamentary or 9006  
letters of administration concerning the resident's estate. 9007

(C) If funeral or burial expenses for a resident of an adult 9008  
care facility or home who has died have not been paid and the only 9009  
resource the resident had that could be used to pay for the 9010  
expenses is the money in the resident's personal needs allowance 9011  
account, or all other resources of the resident are inadequate to 9012  
pay the full cost of the expenses, the money in the resident's 9013  
personal needs allowance account shall be used to pay for the 9014  
expenses rather than being transferred to the department of job 9015  
and family services pursuant to division (B) of this section. 9016

(D) If, not later than sixty days after a resident of an 9017  
adult care facility or home dies, letters testamentary or letters 9018

of administration are issued, or an application for release from 9019  
administration is filed under section 2113.03 of the Revised Code, 9020  
concerning the resident's estate, the owner or operator of the 9021  
facility or home shall transfer the money in the resident's 9022  
personal needs allowance account to the administrator, executor, 9023  
commissioner, or person who filed the application for release from 9024  
administration. 9025

(E) The transfer or use of money in a resident's personal 9026  
needs allowance account in accordance with division (B), (C), or 9027  
(D) of this section discharges and releases the adult care 9028  
facility or home, and the owner or operator of the facility or 9029  
home, from any claim for the money from any source. 9030

(F) If, sixty-one or more days after a resident of an adult 9031  
care facility or home dies, letters testamentary or letters of 9032  
administration are issued, or an application for release from 9033  
administration under section 2113.03 of the Revised Code is filed, 9034  
concerning the resident's estate, the department of job and family 9035  
services shall transfer the funds to the administrator, executor, 9036  
commissioner, or person who filed the application, unless the 9037  
department is entitled to recover the money under the medicaid 9038  
estate recovery program instituted under section 5111.11 of the 9039  
Revised Code. 9040

**Section 2.** That existing sections 2101.01, 2101.02, 2101.021, 9041  
2101.03, 2101.04, 2101.06, 2101.07, 2101.08, 2101.09, 2101.10, 9042  
2101.11, 2101.13, 2101.15, 2101.16, 2101.162, 2101.19, 2101.20, 9043  
2101.22, 2101.23, 2101.24, 2101.27, 2101.30, 2101.34, 2101.37, 9044  
2101.38, 2101.41, 2101.43, 2103.01, 2105.051, 2105.06, 2105.09, 9045  
2105.10, 2105.11, 2105.13, 2105.14, 2105.15, 2105.16, 2105.19, 9046  
2106.01, 2106.08, 2106.11, 2107.01, 2107.02, 2107.03, 2107.04, 9047  
2107.05, 2107.07, 2107.08, 2107.081, 2107.082, 2107.083, 2107.084, 9048  
2107.085, 2107.09, 2107.10, 2107.11, 2107.15, 2107.17, 2107.18, 9049

2107.20, 2107.21, 2107.22, 2107.29, 2107.32, 2107.34, 2107.35, 9050  
2107.36, 2107.38, 2107.46, 2107.47, 2107.49, 2107.50, 2107.501, 9051  
2107.51, 2107.52, 2107.53, 2107.54, 2107.55, 2107.56, 2107.58, 9052  
2107.59, 2107.60, 2107.61, 2107.65, 2107.71, 2107.73, 2107.75, 9053  
2108.51, 2109.02, 2109.021, 2109.03, 2109.04, 2109.05, 2109.06, 9054  
2109.07, 2109.09, 2109.10, 2109.11, 2109.12, 2109.14, 2109.17, 9055  
2109.19, 2109.20, 2109.21, 2109.22, 2109.24, 2109.25, 2109.26, 9056  
2109.302, 2109.303, 2109.32, 2109.33, 2109.34, 2109.35, 2109.36, 9057  
2109.361, 2109.37, 2109.371, 2109.372, 2109.38, 2109.39, 2109.40, 9058  
2109.42, 2109.43, 2109.44, 2109.45, 2109.46, 2109.47, 2109.48, 9059  
2109.49, 2109.50, 2109.51, 2109.52, 2109.53, 2109.54, 2109.55, 9060  
2109.56, 2109.57, 2109.58, 2109.59, 2109.60, 2109.61, 2109.62, 9061  
2111.02, 2111.021, 2111.031, 2111.04, 2111.041, 2111.06, 2111.07, 9062  
2111.09, 2111.091, 2111.12, 2111.131, 2111.14, 2111.141, 2111.16, 9063  
2111.17, 2111.181, 2111.19, 2111.20, 2111.21, 2111.22, 2111.25, 9064  
2111.26, 2111.27, 2111.28, 2111.29, 2111.30, 2111.31, 2111.33, 9065  
2111.34, 2111.35, 2111.36, 2111.37, 2111.38, 2111.39, 2111.40, 9066  
2111.41, 2111.44, 2111.46, 2111.48, 2111.50, 2113.01, 2113.03, 9067  
2113.04, 2113.05, 2113.06, 2113.07, 2113.12, 2113.13, 2113.14, 9068  
2113.15, 2113.16, 2113.18, 2113.19, 2113.20, 2113.21, 2113.22, 9069  
2113.25, 2113.30, 2113.31, 2113.311, 2113.33, 2113.34, 2113.35, 9070  
2113.36, 2113.39, 2113.40, 2113.41, 2113.45, 2113.46, 2113.48, 9071  
2113.49, 2113.50, 2113.51, 2113.52, 2113.54, 2113.58, 2113.61, 9072  
2113.62, 2113.67, 2113.68, 2113.69, 2113.70, 2113.72, 2113.73, 9073  
2113.74, 2113.75, 2113.81, 2113.82, 2113.85, 2113.86, 2113.87, 9074  
2113.88, 2115.02, 2115.03, 2115.06, 2115.09, 2115.10, 2115.11, 9075  
2115.12, 2115.16, 2115.17, 2117.01, 2117.02, 2117.03, 2117.04, 9076  
2117.08, 2117.09, 2117.10, 2117.13, 2117.15, 2117.17, 2117.18, 9077  
2117.30, 2117.31, 2117.34, 2117.35, 2117.36, 2117.37, 2117.41, 9078  
2117.42, 2119.01, 2119.02, 2119.03, 2119.04, 2119.05, 2121.01, 9079  
2121.02, 2121.05, 2121.06, 2121.08, 2121.09, 2123.02, 2123.03, 9080  
2123.05, 2123.06, 2127.011, 2127.02, 2127.04, 2127.05, 2127.06, 9081  
2127.07, 2127.08, 2127.09, 2127.10, 2127.11, 2127.12, 2127.13, 9082



2127.14, 2127.15, 2127.16, 2127.17, 2127.18, 2127.19, 2127.21, 9083  
2127.22, 2127.23, 2127.24, 2127.27, 2127.28, 2127.29, 2127.30, 9084  
2127.32, 2127.33, 2127.34, 2127.35, 2127.36, 2127.37, 2127.38, 9085  
2127.39, 2127.40, 2127.41, 2127.42, 2127.43, 2129.02, 2129.05, 9086  
2129.08, 2129.11, 2129.13, 2129.14, 2129.15, 2129.17, 2129.18, 9087  
2129.19, 2129.23, 2129.25, 2129.26, 2129.28, 2129.29, 2129.30, 9088  
2131.08, 2131.11, 2133.04, 2133.05, 2133.06, 2133.08, 2133.09, 9089  
2335.34, 3101.02, 3101.03, 3101.10, 3101.13, 3101.14, 3313.85, and 9090  
5111.113 and sections 2101.36, 2113.02, 2113.17, 2113.24, 2113.26, 9091  
2113.27, 2113.28, 2113.29, 2113.57, and 2113.63 of the Revised 9092  
Code are hereby repealed. 9093

**Section 3.** The provisions of this act that relate to the 9094  
estates of decedents apply to the estates of decedents who die on 9095  
or after the effective date of this act. 9096

**Section 4.** The General Assembly, applying the principle 9097  
stated in division (B) of section 1.52 of the Revised Code that 9098  
amendments are to be harmonized if reasonably capable of 9099  
simultaneous operation, finds that the following sections, 9100  
presented in this act as composites of the sections as amended by 9101  
the acts indicated, are the resulting versions of the sections in 9102  
effect prior to the effective date of the sections as presented in 9103  
this act: 9104

Section 2101.24 of the Revised Code as amended by both Sub. 9105  
H.B. 416 and Sub. H.B. 426 of the 126th General Assembly. 9106

Section 2109.44 of the Revised Code as amended by both Am. 9107  
Sub. H.B. 538 and Sub. S.B. 129 of the 121st General Assembly. 9108