



Final Analysis

Aida S. Montano

Legislative Service Commission

Am. H.B. 265

126th General Assembly

(As Passed by the General Assembly)

Reps. Seitz, T. Patton, Fende, Wagoner, McGregor, Fessler, D. Evans, C. Evans, Gilb, Core, Harwood, Walcher, Cassell, Martin, Buehrer, Willamowski, Barrett, Collier, Oelslager, Daniels, Brown, Raga, Schneider, Combs, Hartnett, Reidelbach, Gibbs, Sayre, Latta, Dolan, DeGeeter, Blessing, Miller, Coley, Allen, Book, Bubp, Hughes, Seaver, Setzer, J. Stewart, Taylor, Webster

Sens. Amstutz, Cates, Harris, Kearney

Effective date: July 20, 2006

ACT SUMMARY

- Provides a procedure for a probate court to treat a document as a will notwithstanding its noncompliance with the statutory formalities for executing wills.
- Allows the executor of a will to recover court costs and attorney's fees from the attorney, if any, responsible for the execution of a document that purports to be a will if the probate court holds a hearing and finds that the proponent of the document as a purported will has established by clear and convincing evidence that (1) the decedent prepared the document or caused the document to be prepared, (2) the decedent signed the document and intended the document to constitute the decedent's will, and (3) two or more witnesses saw the decedent sign the document.

CONTENT AND OPERATION

Procedure if document purported to be a will is not executed in compliance with the statutory procedures for executing a will

Under continuing law, except oral wills, every last will and testament must be in writing, but may be handwritten or typewritten. The will must be signed at the end by the party making it, or by some other person in that party's presence and at that party's express direction. Two or more competent witnesses who saw

the testator subscribe, or heard the testator acknowledge the testator's signature, must attest and subscribe the will in the presence of the party making the will. (R.C. 2107.03--not in the act.)

The act provides a procedure for a probate court to treat a document as a will even when it does not comply with statutory requirements. If a document that is executed that purports to be a will is not executed in compliance with the requirements of R.C. 2107.03 (see preceding paragraph), that document must be treated as if it had been executed as a will in compliance with the requirements of that section if a probate court, after holding a hearing, finds that the proponent of the document as a purported will has established, by clear and convincing evidence, all of the following (R.C. 2107.24(A)):

- (1) The decedent prepared the document or caused the document to be prepared.
- (2) The decedent signed the document and intended the document to constitute the decedent's will.
- (3) Two or more witnesses saw the decedent sign the document.

Under the act, if the probate court holds a hearing and finds that the proponent of the document as a purported will has established by clear and convincing evidence the requirements in (1), (2), and (3), above, the executor may file an action in the probate court to recover court costs and attorney's fees from the attorney, if any, responsible for the execution of the document (R.C. 2107.24(B)).

Notice of application to admit a will to probate court

Under continuing law, when an application is made to the probate court to admit to probate a will that has been lost, spoliated, or destroyed, the party seeking to prove the will is required to give a written notice by certified mail to the surviving spouse of the testator, to all persons who would be entitled to inherit from the testator if the testator had died intestate, to all legatees and devisees that are named in the will, and to all legatees and devisees that are named in the most recent will prior to the lost, spoliated, or destroyed will that is known to the applicant. The act applies this provision to a document that was not executed in compliance with the requirements for making a will but that is treated as a will under the act, as described above in "**Procedure if document purported to be a will is not executed in compliance with the statutory procedures for executing a will.**" It provides that when an application is made to the probate court to admit to probate a document that was not executed in compliance with the requirements for making a will but is treated as a will, the party seeking to prove the will must give



written notice by certified mail to the surviving spouse of the testator, to all persons who would be entitled to inherit from the testator if the testator had died intestate, to all legatees and devisees that are named in the will, and to all legatees and devisees that are named in the most recent will prior to the document that is treated as a will if the most recent will is known to the applicant. (R.C. 2107.27(A).)

Continuing law also provides that, in the cases described above in the explanation of continuing law, the proponents and opponents of the will must cause the witnesses to the will, and any other witnesses that have relevant and material knowledge about the will, to appear before the court to testify. If upon that testimony the court finds that the requirements for a lost, spoliated, or destroyed will have been met, the probate court must find and establish the contents of the will as near as can be ascertained. The contents of the will are then effectual for all purposes as if the original will had been admitted to probate and record. The act applies this provision to a document that was not executed in compliance with the requirements for making a will but that is treated as a will under the act, as described above in "Procedure if document purported to be a will is not executed in compliance with the statutory procedures for executing a will," and provides that the contents of that will are as effectual for all purposes as if the document treated as a will had satisfied all of the requirements for making a will and had been admitted to probate and record. (R.C. 2107.27(B) and (C).)

HISTORY

ACTION	DATE
Introduced	05-18-05
Reported, H. Judiciary	06-21-05
Passed House (91-7)	06-21-05
Reported, S. Judiciary on Civil Justice	03-09-06
Passed Senate (33-0)	03-14-06
House concurred in Senate amendments (88-6)	03-21-06

