

BUTLER COUNTY PROBATE COURT

Procedure For: APPROVAL OF ESTATE ACCOUNTS

Standard Probate Form Number: 13.0

Date Last Reviewed: 2/5/2018

BEFORE BEGINNING:

- Check if there are any exceptions.
- If there are exceptions filed, the account cannot be approved. Stop and go to the calendar, change the “A” to a “J” and move the task to the date the exceptions have been set for hearing on the Judge’s docket.
- If no exceptions, continue with the procedures.

Check Dates

- Is it 3 months or more since the death of the decedent?¹
- Is it 3 months or more since form 2.4 (Certificate of Service of Notice of Probate of Will) was filed?²
- If there is a surviving spouse, is it 5 months after the letters of authority, for the executor or administrator (form 4.5), were filed?³

Fiduciary’s Account (Form 13.0)

- ❖ **FIX WITH INTERNAL NOTE – DO NOT DENY**
Is one of the boxes checked, on page 1, stating the type of account? If a partial account, is the accounting period stated? Make a note of which type of account is checked (need to know this for approval).
- Make sure amounts match the Receipts and Disbursements (Form 13.1).
- Did the fiduciary (executor or administrator) sign as “fiduciary” on page 2?⁴ When 2 or more fiduciaries render an account, the court may allow the account to be signed by one of them.

¹ R.C. 2109.32(B)(3)(a)

² The time for the filing of a civil action contesting the validity of a will (will contest) must have passed before the final and distributive account may be approved. Pursuant to R.C. 2107.76, the will contest must be commenced (i.e., filed) no more than 3 months after the filing of form 2.4 (certificate of service of notice of probate of will which is required under R.C. 2107.19).

³ Pursuant to R.C. 2109.32(B)(3)(b), the probate court shall not approve the final account of any executor or administrator until the surviving spouse has filed an election to take under or against the will, or the time for making the election has expired. Pursuant to R.C. 2106.01(E), the surviving spouse shall not make the election later than 5 months after the initial appointment of an administrator or executor of the estate.

- Make note of the date the account was filed.

Receipts and Disbursements (Form 13.1)

- Allowance for Support.*⁵ Administrator or Executor **shall** pay the allowance for support (\$40,000) to the surviving spouse. This amount can be lowered if vehicles are selected by the surviving spouse (see form 6.0). Check form 1.0 to determine if surviving spouse is not the natural or adoptive parent of the decedent's children if there is no Will. If the mansion house was transferred to the surviving spouse, the allowance may have been paid as part of that transfer.
- Claims against the Estate.* Any claim against the estate must be paid and stated as a disbursement. Proof of payment or discharge of the claim must be filed. Claims not presented within 6 months after the date of death of the decedent are forever barred.⁶
- Medicaid Recovery.* If form 7.0 was filed, Notice to Administrator to Estate Recovery Program, determine whether the time for presenting a claim is still open. If yes, a disbursement to Job and Family Services must be stated on the account or a statement from the Attorney General's office (or designee) must be filed that no debt is owed. If the time for presentation of a claim has closed, no further action is needed.⁷
- Minors.* Were there any disbursements made to a minor, and not made pursuant to the Transfer to Minors Act? If so, a guardianship for the estate of the minor, if the amount disbursed is more than \$25,000, must be opened.⁸
- FIX WITH INTERNAL NOTE – DO NOT DENY Motor Vehicles.** All motor vehicles stated on the inventory must have been transferred. Form 414 must have been filed and approved for each vehicle. The executor or administrator, with the approval of the probate court, may transfer title to an automobile owned by decedent to the surviving spouse who purchases it from the estate,⁹ to a distributee (heir by statute) or a purchaser.¹⁰ In some circumstances, the executor or administrator may transfer title to an automobile owned by the decedent without the approval of the probate court.¹¹

⁴ R.C. 2109.303

⁵ R.C. 2106.13

⁶ R.C. 2117.06(C)

⁷ Medicaid estate recovery claims may be presented not later than 90 days after the date on which the Medicaid estate recovery reporting form (form 7.0) is received or one year after the decedent's death, whichever is later. R.C. 2117.061(E)

⁸ Under the Transfers to Minors Act money, securities, proceeds of insurance or other benefit plans, or any other kind of property can be transferred to a custodian to be held until the minor reaches the age of 21 years or dies. Transfers are irrevocable and a guardianship is not necessary. See R.C. 5814.01 to 5814.09.

⁹ R.C. 2106.16

¹⁰ R.C. 2106.18 (B)

¹¹ Pursuant to R.C. 2106.18(C), probate court approval is *not* required to transfer a motor vehicle to: 1.) legatee entitled to the automobile under the terms of the will, 2.) distributee, as a distribution in kind, made

- Personal Property Sold.* If there is no will, was form 9.0 (Application for Authority to Sell Personal Property) filed?¹²
- Power of Attorney.* Were any disbursements made to a person holding a power of attorney for an heir stated in the will? If so, a copy of the recorded power of attorney must be filed.¹³
- Real Estate Sold.* If the real estate was sold (i.e. proceeds from the sale of real estate are stated as a receipt), the account must show the gross amount of the proceeds from the sale and a copy of the closing statement itemizing all of the disbursements must be filed.¹⁴ Real estate must sell at the appraised value, as stated on the inventory or within 80% of the appraised value if Consent(s) to Power to Sell Real Estate (Form 11.0) has been filed and there is no will.
- Real Estate Transferred.* All real estate stated on the Inventory must have been transferred or sold. Form 12.0 and 12.1 must have been filed for each parcel of real estate transferred.
- Specific Bequests & Residuary.* All personal property that is specifically bequeathed and the residuary must have been disbursed as stated in the will. If disbursements are stated as “in kind” (i.e. residual property was transferred to a beneficiary instead of being sold and the cash transferred- must have all “in kind” items listed, or multiple 10.0 forms) was form 10.0, Application to Distribute in Kind filed?¹⁵ **Do not calculate the exact distribution of the residuary. Only look for blatant errors such as a distribution made to four beneficiaries when the will states distribution to five persons. If 13.9 and waivers filed, you do not need to verify distributions.**

Assets Remaining in Fiduciary’s Hands (Form 13.2)

- ❖ NOTE: Form 13.2 is only needed if one of the first two boxes (Partial Account or Final Account) is checked on Fiduciary’s Account (Form 13.0).

pursuant to R.C.2113.55 where all parties consent and no probate court approval is needed, or 3.) purchaser, if there is a power of sale under the will (see R.C. 2113.39).

¹² Pursuant to Sup. R. 63, an order of sale shall not be granted until the inventory is filed.

¹³ Pursuant to Sup. R. 64 (C), receipts for distributive shares signed by persons holding a power of attorney may be accepted, provided the power of attorney is recorded in the county in which the estate is being administered and a copy of the recorded power is attached to the account.

¹⁴ Sup. R. 64 (B) which became effective 4-8-04 states “If land has been sold during the accounting period, the account shall show the gross amount of the proceeds and include a copy of the closing statement itemizing all of the disbursement.”

¹⁵ R.C. 2113.55. A distribution in kind occurs when, rather than reducing the residual tangible property of the estate to cash, the tangible property, which is not specifically bequeathed, is itself distributed. Under R.C. 2113.55, the executor or administrator shall obtain approval of the probate court OR consent of all legatees or distributees before making a distribution in kind. In practice, the court prefers that the “consents” be obtained on form 10.0 but technically, the practitioner may draft his or her own consents and file those with the court.

- FIX WITH INTERNAL NOTE – DO NOT DENY** Was this form filed with a partial account or a final account (not a final and distributive account)? If it was filed in any other circumstances, it is an inappropriate filing.

Status Report (Form 463)

- A status report must be filed with a partial account or waivers of the filing of a partial account.
- For all estates that remain open for a period of 13 months from the appointment of the fiduciary, a status report must be filed yearly.¹⁶

Certificate of Service of Account to Heirs or Beneficiaries (Form 13.9) *This form is required.

- Prior to or simultaneous with the filing of an account, the administrator or executor shall provide a copy of the account to each heir of an intestate estate, or to each beneficiary, unless that heir's or beneficiary's address is unknown or unless that heir or beneficiary has received their distribution from the estate.¹⁷
- An administrator or executor filing an account (any account) shall file a certificate of service of account prior to or simultaneously with the filing of the account.¹⁸

Motion & Entry for Approval of Attorney Fees

- Upon motion by the attorney, the court must have entered an order approving the fees.
- The amount of fees approved, must be identical to those disbursed on form 13.1.¹⁹
- The court's local rules require that attorney fees be approved even if a certificate of termination is filed. However, by custom, the court has permitted attorneys to file form 13.6 without support for their fees.
- If the estate was insolvent, the attorney fees, as stated on the Schedule of Claims (form 431) are approved in the insolvency hearing. The amount of attorney's fees approved, should match those disbursed on form 13.1.

¹⁶ Sup. R. 78(C).

¹⁷ R.C. 2109.32(B)(1)

¹⁸ R.C. 2109.32(B)(2)

¹⁹ Attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in the filing of accounts. Sup. R. 71 The fiduciary shall be subject to the citation process if the inventory, account and report is not timely filed. Sup. R. 78

Motion & Entry for Approval of Fiduciary Fees

- Upon motion by the fiduciary, the court must have entered an order approving the fees.
- The amount of fees approved, must be identical to those disbursed on form 13.1.

Trusts

- Does the will provide that a special needs or testamentary trust be opened?²⁰ Was the trust opened? – Check the viewer for a PT number.

Completion of Entry Approving and Settling Account (Form 13.3)

- Was the inventory approved? If an amended inventory was filed, was it approved and was the original entry of approval set aside?
- Partial account – check the first box and write the sequence number of the partial account (1st, 2nd, etc.)
- Final account (but not distributed) – check the second and fourth boxes.
- Account of Distribution – check the last box.
- Final and distributive account – check the third and fourth boxes.
- Supplemental final account – check the last box.
- DO NOT check the box discharging the fiduciary.²¹
- If bond was posted, check the box terminating the bond.²²
- DO NOT date the form, Katie will do this.
- Print, stamp, initial, and then put in Katie's box for her to check that court costs have been paid.²³
- On the task calendar, write the date, account approved, sent to Katie for costs, and your initials. Check the completed box and hit post.

Completion of a Case Note Due to Deficiencies (Form bc446C)

- Prepare a case note. Section A: ACCOUNT FILED ON [DATE] HAS NOT BEEN APPROVED. Section B: List, with particularity, the reasons why the inventory was not approved. Section C: Please copy this case note to [state atty. name and address if he or she does not have a mail box]. Section D: Please file the necessary corrections no later than [30 days from the date of the case note].

²⁰ An inter vivos trust, set up during the testator's life, is a non-probate asset.

²¹ Pursuant to R.C. 2109.32(A), unless otherwise ordered by the court, the fiduciary shall be discharged without further order 12 months following the approval of the final and distributive account.

²² Upon approval of the final and distributive account * * * the court may order the surety bond for the fiduciary terminated. R.C. 2109.32

²³ A final or distributive account shall not be approved until all court costs have been paid. Sup. R. 64(E)

- Change the “A” to “N” on the task list in the priority section and move the task to the due date stated on Section D of the case note.

INFORMATIONAL USE:

Different types of accounts

- Partial Account – an account for a stated period of time. A status report (Form 463 must be filed with a partial account).
- Final Account – an account showing complete administration before distribution of assets.
- Account of Distribution – an account filed after the “final account” showing distribution of assets.
- Final and Distributive Account – An account stating complete administration and distribution of assets. This is the most common account received in this court.

Waiver of Partial Account (Form 13.4)

- FIX WITH INTERNAL NOTE – DO NOT DENY**
- All legatees, devisees and heirs may waive the filing of a partial account by signing form 13.4. However, a party under legal disability (i.e. incompetent) may not sign a waiver.²⁴ Form 13.4 would be filed instead of the account itself.

Notice of Hearing on Account (Form 13.5) and Waiver of Notice of Hearing on Account (Form 13.7)

- Hearing on the account shall be no earlier than 30 days after the filing of the account.²⁵ A fiduciary may serve notice of the hearing upon any person who is interested in the estate or trust.²⁶ Notice shall be served at least 15 days prior to the hearing.²⁷
- Any person who is over the age of 18 years and who is competent may waive service of notice of the hearing on the account and consent to the approval of the account by signing and filing form 13.7. If form 13.7 is filed from all interested persons in the estate, the account may be approved without looking at the distribution to the heirs.
- We do not require Forms 13.5 or 13.7.** Attorneys may file some waivers but waivers from all parties listed on the next of kin form are not required.

²⁴ R.C. 2109.301(A)

²⁵ R.C. 2109.32(A)

²⁶ R.C. 2109.33

²⁷ R.C. 2109.33