

## INSTRUCTIONS TO ADMIT A LOST, SPOILIATED, OR DESTROYED WILL TO PROBATE

These instructions are intended as a guideline only and should not be relied upon as a comprehensive list of fiduciary duties in the administration of a decedent's estate.

These instructions are being provided as a public service of the Butler County Probate Court, and are intended as a guideline only. Depending on the circumstances of each case, additional steps may be required that are not listed below.

The documents that you file *must* be typewritten, legible AND completed in their entirety (Forms on our web site may be filled in prior to printing). Illegible or incomplete documents may be refused for filing or if filed, could result in your application being denied, delayed or dismissed.

A deposit is required at the time of filing, please contact the court to determine the amount. This fee must be paid in cash, check or money order payable to Butler County Probate Court. **After the application is filed, your filing fees will not be refunded.**

Pursuant to R. C. 2107.26, when an original Will is lost, spoliated, or destroyed prior to or after the death of a decedent, the Probate Court shall admit the Will if the proponent of the Will establishes by clear and convincing evidence the contents of the Will and that the Will was executed with the formalities required at the time of execution by the jurisdiction in which it was executed.

Probate Court *requires* that a hearing be held on all Applications for Admission to Probate of Lost, Spoliated, or Destroyed Wills.

The following are necessary at the initial filing:

1. Classification Form (BCPC 412)
  - After reading and understanding form 412, please sign.
2. Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC form 470)
  - All names and addresses must be complete; P.O. boxes are not permitted for the next of kin or applicant's addresses.
  - Complete all fields except Entry Setting Hearing, the clerk will complete this.
3. Copy of Last Will and Testament of decedent.
4. Deposit for court costs - please contact the Court to determine the amount due.

After obtaining the hearing date from the clerk **the applicant** is required to issue Notice of Hearing on the Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC form 472). Ohio Revised Code does not allow for notice of hearing to be waived. The applicant must issue the notice by certified mail to the surviving spouse of the testator, to all persons who would be entitled to inherit from the testator under Chapter 2105 of the Revised Code if the testator had died intestate, 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 or 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.

Pursuant to R.C. 2107.27, the proponents and opponents of the Will shall 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.

The following are necessary at the hearing:

1. Notice of Hearing on Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC form 472) with proof of service (green cards) attached.
2. Entry Admitting Lost, Spoliated, or Destroyed Will to Probate (BCPC form 473).

**Legal Practice in the Probate Court is restricted by law to attorneys who are licensed by the Supreme Court of Ohio. If an individual wishes to handle his or her own case, that person may attempt to do so, however due to the complexity of the law and desire to avoid costly errors, most individuals who have matters before the Court are represented by an attorney.**

**Court employees including the Judge and Magistrate are prohibited by statute from giving you legal advice which includes selection and preparation of documents.**