

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

[R.C. 2107.26 – 2107.28]

These instructions are being provided as a public service of the Butler County Probate Court, and 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. 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 the Entry Setting Hearing, the clerk will complete this.
3. Copy of Last Will and Testament of decedent.
4. Surviving Spouse, Legatees and Devisees (Form 1.0)  
[R.C. 2105.06]
  - A fully completed list of the Surviving Spouse, Children, Next of Kin, Legatees, and Devisees (Standard Form 1.0) shall be filed with each Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC Form 470)
  - On the front of form, list ***all*** next of kin (those persons who are or would be entitled to inherit if decedent had died without leaving a Will), on back (page 2) of form, list all persons named in Will who will inherit. If decedent died intestate (without a Will, leave page 2 blank)
  - Specify complete street addresses of all listed, no P.O boxes are permitted.
  - Specify Date of Birth for ***all*** Minors
  - Applicant must sign at bottom of page 2
5. Deposit for court costs - please contact the Court to determine the amount due.

After obtaining the hearing date from the clerk ***the applicant or their attorney*** is required to issue Notice of Hearing on the Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC form 472). R.C. 2107.27 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 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 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. (If witnesses reside outside Butler County or are unable to attend, the Court may waive their appearance upon a Motion being filed with the Court at least 7 (seven) days prior to the day the hearing is scheduled)

The following are required 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. Copy of Will
3. Entry Admitting Lost, Spoliated, or Destroyed Will to Probate (BCPC form 473), a second copy of the Will must be attached to the Entry Admitting.

After the Will has been Admitted to Probate, you will need to proceed with filing the documents necessary to complete the administration of the Estate.

**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.**

**PROBATE COURT OF BUTLER COUNTY, OHIO**

**ESTATE OF \_\_\_\_\_, DECEASED**

**CASE NO. \_\_\_\_\_**

**APPLICATION FOR ADMISSION TO PROBATE  
LOST, SPOLIATED, OR DESTROYED WILL**

[RC §2107.26, and §2107.27]

Applicant states that decedent died on \_\_\_\_\_

Decedent's domicile was \_\_\_\_\_  
Street Address

\_\_\_\_\_  
City or Village, or Township if unincorporated area County

\_\_\_\_\_  
Post Office State Zip Code

Applicant further states that on or about \_\_\_\_\_, \_\_\_\_\_

signed his/her Last Will and Testament, which Will was duly attested and subscribed by \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_ in the presence

of \_\_\_\_\_ . Applicant further states that the Will was in existence

and unrevoked at the time of the death of the testator, and either before or after the testator's death the Will

has become lost, spoliated, or destroyed and cannot be found, although a strict search has been made for the

Will, and that any facts known to the applicant as to how the Will became lost, spoliated, or destroyed are as

follows:

**[ATTACH ADDITIONAL SHEETS IF NECESSARY]**

A copy of the lost, spoliated, or destroyed Will is attached.

The applicant asks that the Will be established and admitted to probate pursuant to the provisions of sections §2107.26 and §2107.27 of the Revised Code.

\_\_\_\_\_  
Attorney for Applicant

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number (include area code)

\_\_\_\_\_  
Phone Number (include area code)

\_\_\_\_\_  
Attorney Registration No.

**CASE NO.** \_\_\_\_\_

**Applicant states that the following list of persons are the testator's surviving spouse, if any, and all persons who would be entitled to inherit from the testator under Chapter 2105. of the Revised Code if the testator had died intestate, all legatees and devisees that are named in the Will, and all legatees and devisees that are named in the most recent Will prior to the lost, spoliated, or destroyed Will that are 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.**

Name	Residence Address	Relationship to Decedent	Birth date of Minor

[ATTACH ADDITIONAL SHEETS IF NECESSARY]

**ENTRY SETTING HEARING AND ORDERING NOTICE**

The Court sets \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_ .M., as the date and time for hearing the Application to Admit Lost, Spoliated or Destroyed Will to Probate

Written notice of the hearing on this application, unless waived, shall be issued by certified mail by the applicant 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 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 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. (See R.C. §2107.27)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Probate Judge

# PROBATE COURT OF BUTLER COUNTY, OHIO

ESTATE OF \_\_\_\_\_, DECEASED

CASE NO. \_\_\_\_\_

## SURVIVING SPOUSE, CHILDREN, NEXT OF KIN, LEGATEES AND DEVISEES [R.C. 2105.06, 2106.13, 2107.19]

**[Use with those applications or filings requiring some or all of the information  
in this form, for notice or other purpose. Update as required.]**

The following are decedent's known surviving spouse, children, and the lineal descendants of deceased children. If none, the following are decedent's next of kin who are or would be entitled to inherit under the statutes of descent and distribution.

Name	Residence Address	Relationship to Decedent	Birthdate of Minor
		Surviving Spouse	

**[Check whichever of the following is applicable]**

- The surviving spouse is the natural or adoptive parent of all of the decedent's children.
- The surviving spouse is the natural or adoptive parent of at least one, but not all of the decedent's children.
- The surviving spouse is not the natural or adoptive parent of any of the decedent's children.
- There are minor children of the decedent who are not the children of the surviving spouse.
- There are minor children of the decedent and no surviving spouse.

**CASE NO.** \_\_\_\_\_

The following are the vested beneficiaries named in the decedent's will:

Name	Residence Address	Birthdate of minor

**[Check whichever of the following is applicable]**

- This will contains a charitable trust or a bequest or devise to a charitable trust, subject to R.C. 109.23 to 109.41.
- The will is not subject to R.C. 109.23 to 109.41 relating to charitable trusts.

\_\_\_\_\_ Date

\_\_\_\_\_ Applicant (or give other title)  
\_\_\_\_\_

**PROBATE COURT OF BUTLER COUNTY, OHIO**

ESTATE OF \_\_\_\_\_, DECEASED

CASE NO. \_\_\_\_\_

**NOTICE OF HEARING ON APPLICATION FOR ADMISSION TO  
PROBATE OF LOST, SPOLIATED, OR DESTROYED WILL**

[R.C. 2107.26 and 2107.27]

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby notified that an Application has been filed in the Probate Court of Butler County, Ohio asking the Court to establish and admit to Probate the Lost, Spoliated, or Destroyed Will of the above name decedent who died on \_\_\_\_\_

This notice is given to you as the surviving spouse of the testator, or a person who would be entitled to inherit from the testator under Chapter 2105. of the Revised Code if the testator had died intestate, a legatee or devisee that is named in the Will, or 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 (See R.C. 2107.27).

The hearing on the application will be held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ in this Court.

The Court is located at the Butler County Courthouse, 101 High Street, 2nd Floor, Hamilton, OH 45011

If you know of any reason why the above application should not be granted, you should appear at the hearing and inform the court.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant for the Admission of this Will to Probate

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip Code

**PROBATE COURT OF BUTLER COUNTY, OHIO**

**ESTATE OF \_\_\_\_\_, DECEASED**

**CASE NO. \_\_\_\_\_**

**ENTRY ADMITTING LOST, SPOLIATED, OR DESTROYED  
WILL TO PROBATE**

This day this cause came to be heard on the application of \_\_\_\_\_  
to establish and to admit to probate the Last Will and Testament of \_\_\_\_\_,  
and the same was submitted to the Court.

Whereupon, the Court finds that:

1. \_\_\_\_\_, deceased, at the time of his death was domiciled in this County;
2. All persons who are entitled by law to notice of this proceeding have been duly notified thereof in accordance with the law and the former order of this Court or have waived such notice;
3. The decedent did on or about \_\_\_\_\_, duly execute his Last Will and Testament in the mode provided by law;
4. The same was unrevoked at the death of \_\_\_\_\_;
5. It became lost or spoliated subsequent to the death of the testator before the death of the testator but without his/her having knowledge of such loss;
6. The Court finds that the contents of the Will are as set forth in Exhibit 1 attached hereto;

IT IS THEREFORE ORDERED THAT:

- A. The Last Will and Testament of \_\_\_\_\_ as set forth in Exhibit 1 is hereby established.
- B. Said Last Will and Testament of \_\_\_\_\_ is admitted to probate and ordered recorded.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Probate Judge