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 website 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.

At the time of filing an Application to Admit a Lost, Spoliated, or Destroyed Will, a deposit in the $200.00 is required. This fee must be paid in cash, check, or money order made payable to the Butler County Probate Court.

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 BCPC 412, please sign.
2. Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC 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 (FORM 1.0) shall be filed with each Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC 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 persons 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 in the amount of $200.00.

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 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 seven (7) days prior to the day the hearing is scheduled.

The following forms are required to be completed in their entirety and presented 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 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
JOHN M. HOLCOMB, JUDGE

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

☐ The applicant shall give written notice of the hearing on this application 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. (See R.C. §2107.27)

_____ _____

Date Probate Judge

PROBATE COURT OF BUTLER COUNTY, OHIO
JOHN M. HOLCOMB, JUDGE

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
JOHN M. HOLCOMB, JUDGE

ESTATE OF _____, DECEASED

CASE NO. _____

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

[R.C. 2107.26–2107.27]

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-named 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 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
JOHN M. HOLCOMB, JUDGE

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;
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