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.

