# INSTRUCTIONS FOR ANCILLARY ADMINISTRATION OF AN ESTATE
# ALL FORM MUST BE TYPEWRITTEN

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.

Please review the Ancillary Administration packet. The clerks are not attorneys and therefore cannot answer legal questions, assist you in completing the forms, or deciding which forms apply to your situation. Not all forms are included in this packet; please refer to our website for individual forms.

**The documents that you file *must* be typewritten, legible, *and* completed in their entirety.** For your convenience, 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.

**All names and addresses must be complete - P.O. boxes are not permitted.**

***EFFECTIVE JULY 1, 2009***

**Rules 44-47 of the Rules of Superintendence for the Courts of Ohio require that when submitting case document to the Court for filing, the party shall omit personal identifiers from the document and submit those personal identifiers on a separate form. This includes Social Security numbers (except the last four digits) and any financial account numbers.**

Rather than listing the personal identifiers on the forms, you must complete form BCPC 45(D) and attach it to any case document that would normally contain such numbers. If you have an original Will that contains Social Security or account numbers, do not alter the document. The Court will make a copy and redact those numbers from the copy of the Will.

**Failure to comply with this rule could result in your application being delayed, denied, or your filings being returned to you.**

**Not all assets of a decedent must pass through Probate.** As fiduciary, it is your responsibility to determine what the asset(s) are and the value of those asset(s). The type and/or amount of the asset(s) will determine which type of estate you must file.

**Once you have determined what assets must pass through Probate, you will need to determine the date of death value for those assets:**

- **Bank Accounts** - Use the date of death balance. If the account is a checking account, be sure you deduct the amount of any outstanding checks.
- **Stocks & Bonds** - Use the closing value for the date of death. If the person died over the weekend, use the opening value for Monday morning.
- **Real Estate -** You must use an appraiser named on the Approved Appraiser List. You may obtain the list by downloading it from this website.
- **Motor Vehicles** - Use either the blue book value or have a local dealership write out an appraisal for you.
- **Business/Partnership** - You must have it appraised using an appraiser named on the Approved Court Appraiser list. You may obtain the list by downloading it from this website.

Certain assets of the decedent may be transferred by contract, such as joint and survivorship property, payable on death (POD) accounts, transfer on death (TOD) property, and life insurance or retirement benefits with named beneficiaries. These are non-probate and therefore may not have to be included in the estate administration. If you have questions about an asset, you will need to consult with an attorney of your choosing.

**Property that must be included in probate and property that is subject to estate taxes are two different matters. Even if property is not required to be included in probate, it may still be subject to federal and/or Ohio estate taxes. To determine this, you would need to consult with an attorney of your choosing.**

If the decedent was a recipient of Social Security, railroad benefits, or any other pension plan, you must notify the agency or entity directly.

**O.R.C. §2129 covers Ancillary Administration**

**R.C. §2129.04** states "When a non-resident decedent leaves property in Ohio, ancillary administration proceedings may be had upon application of any interested person in any county in Ohio in which is located property of the decedent, or in which a debtor of such decedent resides. Such applicant may or may not be a creditor of the estate. The ancillary administration first granted shall extend to all the estate of the deceased within the state, and shall exclude the jurisdiction of any other court."

**R.C. §2129.02** states in part "When letters of administration or letters testamentary have been granted in any state other than this state, in any territory or possession of the United States, or in any foreign country, as to the estate of a deceased resident of that state, territory, possession, or country, and when no ancillary administration proceedings have been commenced in this state, the person to whom the letters of appointment were granted may file an authenticated copy of them in the probate court of any county of this state in which is located real estate of the decedent."

**A deposit of $200.00 is required at the time of filing.** Please confirm the amount with the clerk since filing fees may have changed subsequent to the publication of this instruction sheet. This fee must be paid in exact cash, check or money order made payable to Butler County Probate Court.

**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.**

**IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, YOU ARE EXPECTED TO BE ABLE TO READ, UNDERSTAND, AND FOLLOW THE OHIO REVISED CODE, RULES OF SUPERINTENDENCE, LOCAL RULES OF THIS COURT, AND THE OHIO RULES OF CIVIL PROCEDURE. PLEASE BE ADVISED THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE BUTLER COUNTY PROBATE COURT FROM PROVIDING YOU WITH LEGAL ADVICE OR ASSISTING YOU IN THE SELECTION OR PREPARATION OF LEGAL FORMS. IF YOU NEED ADDITIONAL ASSISTANCE, YOU WILL NEED TO CONTACT AN ATTORNEY OF YOUR CHOOSING.**

**Required forms:**

## (ADMIT AUTHENTICATED RECORD OF PROCEEDINGS)

1. **Application to Admit Authenticated Record of Extracounty (or Extrastate) Administration Proceedings to Record (BCPC 447)**
   - Pursuant to R.C. § 2129.08, "an authenticated copy of the Will of the decedent, along with a complete exemplification of the record of the grant of the domiciliary letters of appointment" must be attached to the Application for filing. The Court recommends that the applicant check with the attorney retained to perform the title exam of the real estate to verify what, if any, additional documents he/she will require.
2. **Entry Admitting Authenticated Record of Extracounty (or Extrastate) Administration Proceedings to Record (BCPC 448)**
   - If filings are in order, the Judge or Magistrate will approve admission of the authenticated copies.

## (APPOINTMENT OF FIDUCIARY)

3. **Application for Authority to Administer Estate (Form 4.0)**
   [R.C. 2113.07, 2129.08]
   - Local Court Rule 60.2(A) requires that all applicants seeking to be appointed as executor or administrator of a decedent's estate must complete all portions of the Application for Authority to Administer Estate, including the portion of the form that requires a statement by the applicant of the "estimated value of the estate." Failure to fully complete Standard Probate Form ("Form") 4.0, including the portion of the form that requires a statement by the applicant of the "estimated value of the estate," will be deemed an incomplete filing and may be rejected by the Clerk, or if filed, may later be stricken from the Court's record without hearing.
   ***NOTE**: A notation on the portion of Form 4.0 that requires a statement by the applicant of the "estimated value of the estate," such as "to be determined," or "unknown" or some similar phrase or term, shall be deemed to constitute an incomplete filing.*
   - If applicant owes money to the estate or is owed money from the estate, the applicant must report this. *Any claim that the applicant has against the estate must be filed within three months of the appointment*. If the claim is greater than $500, a hearing is required.
   - The applicant must be a resident of Butler County unless he/she is named as executor in the Will.
4. **Supplemental Application for Ancillary Administration (Form 4.1)**
   - This form must be filed with the Application for Authority to Administer Estate (Form 4.0).
5. **Statement of Permanent Address (BCPC 721)**
   [RC 2109.21(F)]
   - Every fiduciary must complete and sign a Statement of Permanent Address and notify the Court of any changes.
   - Failure to comply could result in your removal as fiduciary.
6. **Fiduciary's Bond (Form 4.2)**
   [R.C. 2109.04, 2109.07, 2109.09]
   - A bond is required by all fiduciaries, including a surviving spouse, unless the decedent's Will requests that no bond be required, the applicant is a trust company duly qualified in Ohio, or the applicant is the decedent's spouse or next of kin and entitled to the entire net proceeds of the estate.
   - The applicant and the surety must sign the form ***prior*** to filing with the Court.
   - The bond shall be in a penal sum not less than double the probable value of the personal property and the annual real estate rentals.
7. **Waiver of Right to Administer Estate (Form 4.3)**
   [R.C. 2113.07]

- The surviving spouse and all next of kin (front of Form 1.0) who reside in the state of Ohio with an equal or greater right to administer the estate may sign a waiver of right to administer, unless the applicant is named to serve in the Will. If unable or unwilling to obtain the waivers, a hearing will be scheduled.

**8. Fiduciary Acceptance (BCPC 423)**

[2109.02]

- Please review and sign; the fiduciary will be held accountable.

**9. Entry Appointing Fiduciary; Letters of Authority (Form 4.5)**

[R.C. 2113.05, 2113.06]

- Complete form in duplicate.
- The court clerk will forward the letters of authority to the Judge or Magistrate for signature. Upon obtaining a signature, the Court will mail to you a certified copy of the Letters of Authority.

## (ELECTION OF SPOUSE)

**10. Waiver of Service to Surviving Spouse of the Citation to Elect (Form 8.6)**

[2106.01(A)]

- If the date of death is on or after 01/01/2002, the surviving spouse has the right to waive service of the Citation to Elect. If the surviving spouse chooses to sign the Waiver, the attorney/applicant must give them a copy of the Summary of General Rights of Surviving Spouse (Form 8.3).
- The Waiver of Service to Surviving Spouse of the Citation to Elect must be filed at the time of the Entry Appointing Fiduciary; Letters of Authority (Form 4.5) or a Citation to Elect will be issued to the surviving spouse by certified mail.

**11. Citation to Surviving Spouse to Exercise Elective Rights (Form 8.0)**
**Summary of General Rights of Surviving Spouse (Form 8.3)**

[2129.07(C), 2106.01 & 2106.02]

- If the surviving spouse chooses not to sign the Waiver of Service to Surviving Spouse, the Court will issue a Citation to Elect (Form 8.0) with a Summary of General Rights of Surviving Spouse (Form 8.3) by certified mail to the Surviving Spouse after the fiduciary is appointed.
- A notice that the citation was issued by the Court shall be sent by regular mail to the attorney of record and to the fiduciary of the estate if they are not the surviving spouse.

**12. Election of Surviving Spouse to Take Under the Will**

[2129.07(C) and 2106.01 to 2106.08]

- Election by the spouse to take under the Will may be made at any time after the death of the decedent but no later than six months after the authenticated copy of the Will is filed.

**13. Election of Surviving Spouse to Take Against the Will**

[2129.07(C) and 2106.01 to 2106.08]

- Election by the spouse to take under the Will may be made at any time after the death of the decedent, but no later than six months after the authenticated copy of the Will is filed.
- Election of Surviving Spouse to Take Against the Will **must** be signed in the presence of the Judge or Magistrate. If a surviving spouse intends to take against the Will, they will need to call the Court and make an appointment.

## (INVENTORY AND APPRAISEMENT)

**14. Appointment of Appraiser (Form 3.0)**

[2115.06]

- If there are assets in the estate whose values are not readily ascertainable, an appraisal of that property must be completed by a person who is on the Court-approved appraiser list. The list of Court-approved appraisers is available on our website.
- The appraiser appointed must sign the inventory form Form 6.0.

**15. Inventory and Appraisal (Form 6.0)**
**Schedule of Assets (Form 6.1)**

[2115.02 & 2115.09]

- The Inventory & Appraisal is due within three months of the date of appointment. Failure to file the Inventory and Appraisal within three months may result in the attorney and applicant being cited to appear and show cause.
- Include only assets located in Ohio on the Inventory & Schedule of Assets. All other probate assets should be listed in the original administration.
- Notice of Surviving Spouse of Taking of Inventory [R.C. 2115.04] states "Not less than five days previous thereto, a written notice stating the time and place of making the inventory required by § 2115.02 of the Revised Code, must be served by the executor or administrator on the surviving spouse, but such notice may be waived in writing by such surviving spouse." The Waiver of Notice by Spouse (of taking Inventory) is located on back of Form 6.0.
- The Schedule of Assets (Form 6.1) must be completed and filed at the same time as the Inventory and Appraisal (Form 6.0).
- Fiduciary must list grand total values in the Ohio estate on the Inventory & Appraisal (6.0) and have an appraisal completed for assets whose values are not readily ascertainable.
- The name and address of appraiser(s) shall be typed or printed underneath each appraiser's signature on the Appraiser's Certificate. In lieu of the appraiser's certificate, a copy of the actual appraisal signed by the appraiser(s) may be attached attached to the Inventory and Appraisal (Form 6.0).
- Unless otherwise ordered by the Court, in estates wherein the fiduciary determines, in good faith, that the total fair market value of all the decedent's household goods goods and furniture is less than $6,000.00, the decedent's household goods and furniture may be considered assets the value of which is readily ascertainable, and which need not be appraised. In the event that an interested party objects to the determination and files an exception to the inventory pursuant to R.C. 2115.16, the fiduciary shall obtain a formal appraisal of decedent's household goods and furniture prior to the hearing on such exceptions.
- All real estate must be appraised by a Court-approved appraiser. The list of Court-approved appraisers is located on our website (Form 3.0 must be filed).
- The street address, auditor's parcel number, and legal description of all decedent's real property located in Ohio, (subject to Probate proceedings) must be included on the Schedule of Assets (Form 6.1).
- The Court requires that, in place of personal identifiers on the Schedule of Assets, the applicant or attorney replace those identifiers with non-identifiers and complete BCPC 45D (Confidential Disclosure of Personal Identifiers).
- Bond previously posted must be increased to double the amount of the personalty and any annual real estate rentals.
- Although not required, it is recommended that if there is any question of conflict within the estate (i.e. children from previous marriage), that Waivers of Notice of Hearing on Inventory (Form 6.2) be obtained or Notice of Hearing on Inventory (Form 6.3) be served on all interested parties no less than five (5) days prior to the hearing. After obtaining service, an "Affidavit of Service" shall be filed.

**16. Confidential Disclosure of Personal Identifiers (BCPC 45(D))**

[Rules 44-47 of the Rules of Superintendence for the Courts of Ohio]

- ***EFFECTIVE JULY 1, 2009***

Rules 44-47 of the Rules of Superintendence require that all personal identifiers be omitted from any document being filed with the Court (this includes the Schedule of Assets). Personal Identifiers include Social Security Numbers, or **any** financial account numbers.

- Anytime a document is filed with the Court that would normally contain identifying numbers, such as account numbers, policy numbers, or Social Security numbers,

those personal identifiers must be omitted from the document and disclosed on BCPC 45D.

## (REAL ESTATE)

**17. Statement of Counsel Concerning Examination of Record Title (BCPC 462)**

[B.C.L.R. 61.1 (C)]

- **An attorney must examine the record title** and complete the form in its entirety.
- Not later than the date on which the Inventory (Form 6.0) and the corresponding Schedule of Assets (Form 6.1) are due to be filed, counsel for the estate, or if there is no counsel for the estate, then counsel employed by the fiduciary to examine record title to each parcel of real property in the estate, shall file with the Court a fully completed "Statement of Counsel Concerning Examination of Record Title" (BCPC 462).

**18. Consent to Power to Sell Real Estate (Form 11.0)**

[R.C. 2129.13 & 2127.011]

- In addition to the other methods provided by law or in the Will and unless expressly prohibited by the Will, an executor or administrator may sell at public or private sale any parcel of real estate belonging to the estate if all the following conditions are met:
  - (1) The surviving spouse, all of the legatees and devisees in the case of testate estates, or all the heirs in the case of intestate estates give written consent to a power of sale for a particular parcel of real estate or to a power of sale for all the real estate belonging to the estate.
  - (2) The real estate must be sold for at least eighty per cent (80%) of the appraised value, as set forth in an approved inventory.
  - (3) A consent to sell real estate is not effective if the surviving spouse, any legatee, devisee, or heir is a minor or incompetent person. No person may give the consent of a minor.
- If the surviving spouse, legatee, devisee, or heir is a minor or incompetent person, an action for authority to sell real estate must be commenced. R.C. 2127.10.
- Each consent to power of sale provided for in this section shall be filed in the Probate Court.

**19. Application for Certificate of Transfer (Form 12.0)**

[R.C. 2113.61]

- The administrator or executor may file an Application for Certificate of Transfer of Real Estate at anytime ***after*** the Inventory & Appraisal (Form 6.0), Schedule of Assets (Form 6.1), and Statement of Counsel Concerning Examination of Record Title (BCPC 462) is filed.
- Form must be completed in its entirety and the Certificate of Transfer (Form 12.1) must accompany the Application.
- Real property sold by an executor or administrator or land registered under Chapters 5309. and 5310. are excepted from the application requirement.

**20. Certificate of Transfer (Form 12.1)**

[R.C. 2113.61]

- Must be accompanied by the Application for Certificate of Transfer of Real Estate (Form 12.0).
- List each beneficiary's name, address, and the fractional interest that the beneficiary is receiving from the decedent's estate. When completing the backside of the form, you must include the legal description in its entirety.

## (ESTATE TAX RETURN)

**21. Ohio Estate Tax Form 22**

[R.C. 5731.23]

- Obtain tax forms and instructions at the Ohio Dep't of Taxation website: http://dw.ohio.gov/tax/dynamicforms/.

- Tax forms must be filed in duplicate with original signatures. One copy will stay with the Probate Court and one copy must be taken to the Auditor's office.
- If taxes are owed, you will need to complete and file in duplicate Ohio Estate Tax Form 5.
- If date of death is between 1/1/2001 and 12/31/2001 and gross estate is under $200,000, an actual return is not required to be filed. An Form 22 Certificate of Estate Tax Payment and Real Property Disclosure are filed instead with the Probate Court only (Form 22 is available on our website).
- If date of death is on or after 1/1/2002 and the gross estate is under $338,333, an actual return is not required to be filed. An Form 22 Certificate of Estate Tax Payment and Real Property Disclosure are filed instead with Probate Court only.

## (ATTORNEY FEES)

**22. Attorney Fees**

[B.C.L.R. 71.1]

- Consent to pay attorney fees may be obtained by counsel, but an **Application and Entry is still required in all ancillary administration estates.**
- Counsel rendering services to an estate shall maintain an itemized statement of the services performed, the date the services were performed, the time spent in rendering the services, and if the fee arrangement with the estate is based on an hourly rate, the hourly rate charged. Time increments should be kept in one-tenth (0.1) of an hour.

## (ACCOUNTING)

Every administrator and executor, **within six months after appointment**, shall render a final and distributive account of the administrator's or executor's administration of the estate unless one or more of the following circumstances apply:

- An Ohio estate tax return must be filed for the estate.
- A proceeding contesting the validity of the decedent's Will pursuant to § 2107.71 of the Revised Code has been commenced.
- The surviving spouse has filed an election to take against the Will.
- The administrator or executor is a party in a civil action.
- The estate is insolvent.
- For other reasons set forth by the administrator or executor, subject to Court approval.

**23. Certificate of Termination (Form 13.6)**

[R.C. 2109.30.1(B)(2)]

- Court Costs will be due at the time of filing a certificate of termination.
- In estates of decedents in which the sole legatee, devisee, or heir is also the administrator or executor of the estate, the administrator or executor may file a certificate of termination.

**24. Fiduciary's Account (Form 13.0)**
**Receipts and Disbursements (Form 13.1)**

[R.C. 2109.30, 2109.301 and 2109.32]

- Court Costs will be due at the time of filing an Account. An account ***shall not*** be approved until all Court costs have been paid.
- An account showing complete administration before distribution of assets shall be designated "final account." An account filed subsequent to the final account and showing distribution of assets shall be designated "account of distribution." An account showing complete administration and distribution of assets shall be designated "final and distributive account."
- A "final and distributive account" is due within six months of the date of appointment unless a statutory reason allows for an extension.
- The fiduciary of every decedent's estate shall file a written status report whenever a partial account is filed. If an estate is not fully administered within two years, the

matter will be referred to a magistrate to determine whether Court intervention is necessary.

- The account must include an itemized statement of all receipts of the fiduciary during the accounting period and all of the disbursements and distributions made. ***DO NOT*** include any identifying numbers on the receipts and disbursements form; instead, complete for BCPC 45D (Confidential Disclosure of Personal Identifiers).
- 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 disbursements.
- For estates of decedents whose death occurs on or after January 1, 2002, no vouchers or canceled checks are required to be submitted with the account, but compliance with the provisions of R.C. § 2109.301 will be required.
- All corporate fiduciaries shall file a recapitulation of its accounts in conformity with Form 13.0, or as otherwise directed by the Court.
- All fiduciary accounts are scheduled for hearing, the hearing will be scheduled not less than thirty (30) days after the date of filing.

**25. Certificate of Service of Account to Heirs or Beneficiaries (Form 13.9)**

[R.C. 2109.32]

- An administrator or executor shall file with the Probate Court a certificate of service of account prior to or simultaneously with the filing of the account.
- An administrator or executor filing an account pursuant to § 2109.301 of the Revised Code shall provide, at the time of filing the account, a copy of the account to each heir of an intestate estate or to each beneficiary of a testate estate. An administrator or executor is not required to provide a copy of the account to any of the following:
    - An heir or a beneficiary whose residence is unknown;
    - A beneficiary of a specific bequest or devise who has received his or her distribution and for which a receipt has been filed or exhibited with the Court.
- Receipts for distributive shares signed by persons holding 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.

**NOTE:** The Probate Court will not approve the final account or discharge the bondsman until all of the following have occurred:

(a) Three months have passed since the death of the decedent.
(b) The surviving spouse has filed an election to take under or against the will, or the time for making the election has expired.
(c) The Inventory and Appraisal is approved.
(d) The time allowed for a Will Contest has passed.
(e) All Court costs are paid.
(f) All claims presented against the estate are paid (proof of payment must be presented to the Court), a release of claim is filed, or a rejection of claim is filed.

**Notice to Attorneys:** Pursuant to Sup. R 78 (D), *the Court may issue a citation to the attorney of record for a fiduciary who is delinquent in the filing of an inventory or account to show cause why the attorney should not be barred from being appointed in any new proceeding before the Court or serving as attorney of record in any new estate, guardianship or trust until all of the delinquent pleadings are filed.*

**Additional Information and Statutory References:**

- If you are transferring a mobile home, you will need to take a certified copy of the Transfer of Motor Vehicle (BCPC 414) to the Treasurer's Office with a completed "Mobile Home Processing Document in Lieu of Title" form, which is available from the Butler County Auditor's Office, 130 High Street, Hamilton, OH.

- If you are transferring Real Estate, you will need to take a certified copy of the Certificate of Transfer (Form 12.1) to the Auditor's Office and obtain a conveyance form prior to taking it to the Recorder's Office.

If an administrator or executor learns of the existence of newly discovered assets after the filing of the final account or otherwise comes into possession of assets belonging to the estate after the filing of the final account, the executor or administrator shall file a supplemental final account with respect to the disposition of the assets and shall provide a copy of the supplemental final account to each heir of an intestate estate or to each beneficiary of a testate estate, as provided in division (B)(1) of this section and subject to the exceptions specified in divisions (B)(1)(a) and (b) of this section.

**Exceptions to Inventory [R.C. 2115.16] or Account [R.C. 2109.33]:**

Any person interested in an estate or trust may file exceptions to an inventory or account.
All exceptions shall be specific and typewritten. The Exceptions shall be filed not less than five days prior to the hearing on the inventory or account, and the person filing the exceptions shall be responsible for furnishing a copy of the exceptions to the attorney and fiduciary of the estate.