INSTRUCTIONS FOR RELEASE OF ADMINISTRATION

ALL FORMS 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 Release of 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.

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.

Not all assets of a decedent must pass through Probate. As fiduciary, it is your responsibility to determine 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 listed on the Approved Appraiser List. You may obtain the list by downloading it from this website. In a Release of Administration, the Court will accept the Auditor's Valuation (property tax bill, a report printed by the Auditor's office, or a property transfer card from the Auditor's office) in place of an appraisal if no estate tax return is required.
- **Motor Vehicles** - Either use 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 listed on the Court-approved appraiser list. You may obtain the list by downloading it from this web site.

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.

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, PLEASE BE ADVISED THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF 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.

EFFECTIVE JULY 1, 2009 **Rules 44-47 of the Rules of Superintendence for the Courts of Ohio require that when submitting a 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. *NO ACCOUNT NUMBERS SHOULD BE LISTED ON ANY PROBATE FORMS.***

Rather than listing the personal identifiers on the forms, you must complete BCPC 45D 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 personal identifiers from the copy.

Failure to comply with this rule could result in your application being delayed and your documents being returned to you for correction.

Be sure you have read Local Rule 75.1(H) and complied with all requirements before you begin this process.

A release from administration may be filed if one of the following applies:

- The assets are $15,000 or less and decedent died on or after January 1, 1976.
- The assets are $25,000 or less and decedent died on or after October 20, 1987.
- The assets are $35,000 or less and decedent died on or after November 9, 1984.

- The assets are $50,000 or less; *the surviving spouse is entitled to all of the assets* and the decedent died on or after April 16, 1993.
- The assets are $85,000 or less; *the surviving spouse is entitled to all of the assets* and the decedent died on or after September 14, 1993.
- The assets are $100,000 or less; *the surviving spouse is entitled to all of the assets* and the decedent died on or after March 18, 1999.

In addition to the required forms for a Release of Administration, you must present the following with the initial filings:

- ✓ If the decedent created a Will, the original and one copy of the Will.
- ✓ A copy of the paid funeral bill or a copy of the signed contract showing who is responsible for payment of the funeral bill.
- ✓ Court Costs - Please contact 513/887-3298 to confirm the amount of Court costs due. This fee must be paid in cash, check, or money order. Credit and/or Debit cards are not accepted.

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

Pursuant to R.C. § 2113.03(B), the Court may order that service be perfected by publication. Publication for three weeks *is required* where the next of kin's names and or addresses are unknown. If there are any next of kin whose addresses are unknown to the applicant, it is recommended that a Full Administration be filed.

Circumstances that may prevent a Release from Administration:

- Will Contest.
- Surviving Spouse Elects to take under R.C. § 2105.06 instead of under the Will.
- Purchase by Surviving Spouse of Property.
- Sale of Decedent's Property to Pay Debts.
- Action to Construe the Will.
- Declaratory Judgment Action.
- Will Contains a Lapsed legacy or Devise.

Required forms:

(ITEMS ONE AND TWO ARE REQUIRED IN ALL RELEASES OF ADMINISTRATION)

1. Surviving Spouse, Next of Kin, 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 Probate Form 1.0) shall be filed with each Application to Relieve Estate from Administration (Form 5.0). In estates in which an Application to Probate Will (Form 2.0) has been filed with an accompanying Form 1.0, it will not be necessary to file a second Form 1.0.
- On 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 left a Will).
- Specify *complete* addresses of all listed.
- Specify *Date of Birth* for ***all*** Minors.
- Applicant must sign at bottom of page.

2. 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.

(PROBATE OF WILL - IF DECEDENT DIED LEAVING NO WILL, SKIP ITEMS #2 - #6):

3. Application to Probate Will (Form 2.0)

[R.C. 2107.11, 2107.18, 2107.19]

- Complete information and sign.

4. Original and one copy of the Last Will and Testament of the deceased person

5. Entry Admitting Will (Form 2.3)

[R.C. 2107.18]

- Fill in name of decedent only.
- The Court may admit the Will to probate if it is an original and appears that it complies with the law in force at the time of the execution of the Will.

6. Waiver of Notice of Probate of Will (Form 2.1)

[R.C. 2107.19 (A) (2)]

Notice of Probate of Will (Form 2.2)

[R.C. 2107.19 (A) (1)]

- All parties listed on the front and back of form 1.0 are entitled to be notified of the probate of the Will.
- Notice of the Probate of Will cannot be mailed until after the Will has been admitted.
- Notice shall be issued within two weeks of the admission of the Will to probate.
- Notice shall be issued in the manner provided by Civil Rule 73(E) and proof of service (green cards); if by certified mail, must be filed with the Court along with a copy of the notice that was issued.
- A minor age 15 may be served notice in care of a parent or guardian.
- A minor age 16-17 must be served notice personally.
- A parent or guardian of a minor age 14 and under may waive notice for the minor.
- A waiver may be signed by individuals over the age of 18 who are not under legal disability.

7. Certificate of Service of Probate of Will (Form 2.4)

[R.C. 2107.19 (A)(3)]

- Form is filed after all waivers and/or certified mail notices of probate of Will have been obtained.
- For dates of death prior to 1/1/2002, the Certificate must be filed within 120 days of the appointment of Executor.
- For dates of death on or after 1/1/2002 the Certificate must be filed within two months of the Will being admitted to Probate. Failure to file the Certificate may result

in the attorney and applicant being cited to appear and show cause.

(IF DECEDENT DIED WITHOUT LEAVING A WILL – BEGIN HERE)

8. Application to Relieve Estate from Administration (Form 5.0)

[R.C. 2113.03]

- Form 1.0, Surviving Spouse, Next of Kin, Legatees, and Devisees and Form BCPC 721 Statement of Permanent Address must be attached to the application unless previously filed with the Probate of the Will.

9. Assets and Liabilities (Form 5.1)

[R.C. 2113.03]

- The Assets and Liabilities form ***must*** be filed at the time of filing the Application to Relieve Estate from Administration.
- On the *front* of form, list all assets of the estate; on *back* (page 2) of form, list all debts owed by the estate, including the funeral bill. ***Do not include any identifying bank account, credit card, loan, or policy numbers on the assets and liabilities form.*** *Instead, you must complete BCPC 45D and attach it to the Assets and Liabilities.*

Note: Pursuant to Local Rule 71.1(H), "If assets being relieved from administration are used to pay counsel fees for services rendered in such estates, then the counsel fees shall be listed as an estate debt on the back of the Schedule of Assets and Liabilities . . . ."

- The value of an estate that is not composed entirely of money, stocks, bonds, or other property the value of which is readily ascertainable shall be determined by an appraiser selected by the applicant, subject to the approval of the Court. The appraiser's valuation of the property shall be reported to the Court in the application to relieve the estate from administration. The appraiser shall be paid in accordance with § 2115.06 of the Revised Code.
- If there are assets that need to be appraised, whether it be tangible personal property or real property, an Appointment of Appraiser form (Form 3.0) must be filed with the Court. The appraiser appointed must be on the Court-approved list of appraisers available on this website.
- If there is Real Estate, proof of an Auditor's Valuation (property tax bill, a report printed by the Auditor's office, or a property transfer card from Auditor's office) will be accepted in place of an appraisal in a Release of Administration.
- **For all estates with Real Estate as a probate asset:**

A Statement of Counsel Concerning Examination of Record Title (BCPC 462) is required to be filed.

Note: An attorney must examine the record title and certify that the owner's name, interest shown on the assets and liabilities, and the legal description are correct. The full legal description does not need to be shown on Form 5.1, but the parcel number must be referenced.

- If the assets are insufficient to pay creditors in full, you must file a **Proposed Distribution in an Application To Relieve Estate From Administration where Assets are Insufficient to Pay Creditors In Full (BCPC 465).**
- A copy of the **paid funeral bill or a copy of the signed contract** showing who is responsible for payment of the funeral bill ***must*** be attached to the Assets and Liabilities form.

10. Confidential Disclosure of Personal Identifiers (BCPC 45(D))

[Rule 45(D) of the Rules of Superintendence for the Courts of Ohio]

- This form is to be attached to all filings that would normally contain personal identifiers, such as a Social Security number, account number, fiduciary phone number, credit card, loan, or policy numbers.
- When completing this form, you must list the full identifying number, the abbreviation that you used on the Court document (*i.e.* Savings Account "A"), the Name/Institution Associated with the identifying number, and the form number that it would normally be listed on.

- Failure to complete and file this form could result in your documents being returned to you for correction.

11. Waiver of Notice of Application to Relieve Estate from Administration (Form 5.2) Notice of Application to Relieve Estate from Administration (Form 5.3)

- All parties (surviving spouse and heirs at law) are entitled to be notified of the application to relieve the estate from administration unless notices are waived or the Court determines that notice is not necessary.
- You must obtain a **Waiver of Notice of the Application to Relieve from each individual (Form 5.2)** who is over the age of 18 and not under disability, or a hearing may be necessary. You, as applicant, will be required to send by certified mail a **Notice of Application to Relieve Estate from Administration (Form 5.3)** to each individual who did not sign a waiver.
- The Court may order that service be completed by publication. If the addresses of any next of kin are unknown, then a full administration should be filed. If you choose to file a release and publication is required, you must use Form 5.4 and it must be published three consecutive times in a newspaper within Butler County (Hamilton Journal, Middletown Journal, or Oxford Press).
- If the assets are insufficient to pay creditors in full, you will also be required to send a notice of hearing to each creditor or other interested party using Form **BCPC 466 (Notice of Insufficient Assets to Pay Creditors in Full)** by certified mail, and the applicant must bring proof of service (green cards) to the hearing. This service may be waived by the Court if the assets of the estate are insufficient to pay the entire allowance for support required to be paid pursuant to R.C. 2106.13.
- At the time of the hearing, you will be required to present certified mail returns (green cards) with a copy of the notice that was sent to each individual, creditor, or other interested party together with an Affidavit stating that certified mail was completed.
- Certified mail notices cannot be sent until the Application to Relieve Estate from Administration has been filed and a hearing has been scheduled.

12. Notice to Administrator of Estate Recovery Program (Form 7.0)

[R.C. 2117.061]

- If the decedent was fifty-five (55) years of age or older at the time of death, the person responsible for an estate shall determine whether the decedent was a recipient of medical assistance under Chapter 5111 of the Revised Code. If the decedent was a recipient, the person responsible for the estate shall give notice to that effect to the administrator of the estate recovery program within thirty (30) days of the filing of an application for release from administration (the "person responsible for the estate" includes the commissioner or person who filed the application for release from administration shall determine whether the decedent was a recipient of medical assistance under R.C. Chapter 5111.
- Upon receiving notice, the administrator shall present a claim for estate recovery (for payments made to the decedent) to the person responsible for the estate no later than 90 days after the date on which the notice is received by the administrator or one (1) year after the decedent's death, whichever is later.
- The Court cannot grant an Entry Relieving the Estate from Administration unless the amount owed to the estate recovery program, if any, is listed on the Assets and Liabilities (Form 5.1).

13. 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.
- The Entry Relieving Estate from Administration (Form 5.6) will not be approved until such time as 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, files with the Court a fully completed "Statement of Counsel Concerning Examination of Record Title" (BCPC 462).

14. Entry Relieving Estate From Administration (Form 5.6)

- Complete form (fill in name of decedent, check appropriate boxes, make any required explanations, and attach any necessary forms).
- If there is real estate, a Statement of Counsel Concerning Examination of Record Title (BCPC 462) must be filed prior to the Entry Relieving being granted.
- If distribution in the Will differs from statute of descent and distribution, and proof of service of notice of the probate of the Will has not been filed for all next of kin and parties named in the Will, the time period for contesting the Will must expire prior to the Court granting the Entry Relieving.
- If a Commissioner is appointed, the **Report of Distribution (BCPC 429)** must be filed within sixty days of the Entry Relieving Estate from Administration being granted.
- All debts listed on Assets and Liabilities must be listed on the Entry Relieving Estate.

(REAL ESTATE)

15. Application for Certificate of Transfer (Form 12.0)

[R.C. 2113.61]

- Complete form ***only*** if there is real estate included on Form 5.1, there is a surviving Spouse, and decedent *did not* leave a Will.

16. Certificate of Transfer (Form 12.1)

[R.C. 2113.61]

- Complete only if there is real estate included on Form 5.1.
- List each beneficiary's name, address, and the fractional interest that the beneficiary is receiving from the decedent's estate.
- Complete back of form (page 2) including entire legal description and parcel number.
- This form must be prepared in duplicate.

(MOTOR VEHICLE)

17. Application and Entry Transfer of Motor Vehicle (BCPC 414)

- Complete form only if there is a motor vehicle listed on Form 5.1 that is not an automobile selected by the surviving spouse under R.C. 2106.18.
- Complete form in duplicate if there is a motor vehicle or any other title to personal property that must be transferred such as a boat or mobile home.

(REPORT OF DISTRIBUTION)

18. Report of Distribution (BCPC 429)

- If a commissioner is appointed, he/she must file the Report of Distribution within sixty days of the date of the Entry Relieving Estate from Administration.

(ESTATE TAX RETURN)

19. Ohio Estate Tax Return

- [R.C. 5731.23]
- Obtain tax forms and instructions at the Ohio Dep't of Taxation website: dw.ohio.gov/tax/dynamicforms/
- Forms must be filed in duplicate with original signatures – one set will stay with Probate Court and you must take the other set to 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, a return is not required to be filed. A Form 22 Certificate of Estate Tax Payment and Real Property Disclosure is filed instead with Probate Court only (Form 22 is available on our website).
- If date of death is on or after 1/1/2002 and gross estate is under $338,333 a return is not required to be filed. A Form 22 Certificate of Estate Tax Payment and Real Property Disclosure is filed instead with the Probate Court only.

Additional Information and Statutory References:

- If the Magistrate approves the Entry Relieving the Estate from Administration, all filings will then be returned to the file clerk who will timestamp and issue a certified copy of the Entry Relieving Estate from Administration.
- If real estate was included and the Magistrate approved the Certificate of Transfer, the clerk will certify the duplicate copy for you and you will then need to take this to the Auditor's office on the 3rd Floor of the Administration Building, 130 High Street Hamilton, OH to obtain a conveyance form prior to taking it to the Recorder's Office.
- If a motor vehicle was included and the Magistrate approved the Application to Transfer Motor Vehicle, the clerk will certify the duplicate copy for you and you will need to take this with a copy of the title to the Clerk of Court's office located on the 5th floor of the Government Services Center, 315 High St. Hamilton, OH.
- 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 a motor vehicle or boat, you will need to take a certified copy of the Transfer of Motor Vehicle (BCPC 414) to the Clerk of Court's Title Division with the title.

If the commissioner or applicant for a release of administration learns of the existence of newly discovered assets after the filing of the Entry Relieving, the commissioner or applicant shall file an Amended Assets and Liabilities (Form 5.1) and an Amended Entry Relieving Estate from Administration (Form 5.6).

The Court is located at:

Butler County Probate Court
101 High Street, Second Floor
Hamilton, OH 45011