



*Helping Older Persons With  
Legal & Long-Term Care  
Problems*

## ***Small Estates***

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### ***1. What If I Don't Have A Will When I Die?***

If you die without a will and own real property (land) or personal property (stocks, bank accounts, cars), your assets are distributed according to Ohio intestacy law.

### ***2. What Is Ohio Intestacy Law?***

Ohio's intestacy law establishes the following distributions:

(a) married with one or more children, all of whom are children of both the deceased spouse and the surviving spouse: the spouse receives the entire estate;

(b) married with one child of the deceased spouse who is not the natural or adopted child of the surviving spouse: the spouse receives the first \$20,000, plus half of the remaining estate;

(c) married with several children: spouse receives the first \$60,000, if the spouse is the natural or adoptive parent of one of the children. If the spouse is not the natural or adoptive parent of any of the children, then the spouse receives the first \$20,000, plus one-third of the remaining estate;

(d) married with no children: spouse receives all; and

(e) widowed: all to children equally.

### ***3. Can I Disinherit My Spouse Or Children?***

If you don't have a will, your spouse will receive a share of your estate. See paragraph 2 above. Even if you have a will, you cannot disinherit your spouse. If your spouse is omitted from your will or disagrees with its provisions, s/he can instead choose to elect against the will. This means that s/he can choose to take that part of the estate s/he would have received under intestacy law, the same as if you had died without a will.

#### ***4. What Is Probate?***

Probate is the court procedure that must be followed in order to distribute any probate property the decedent owned at death. Non-probate property (e.g. property held joint with right of survivorship, transfer on death property) passes directly to the named beneficiary upon the decedent's death outside of the probate estate.

#### ***5. Is Probate Required If I Die Without A Will?***

Yes, if you own property at the time of your death, it must be distributed under Ohio intestacy law. With certain exceptions, designated beneficiaries under Ohio intestacy law cannot receive land or personal property until the probate court approves its transfer.

#### ***6. Who Will Manage My Estate After My Death If I Don't Have A Will?***

If you have no will at the time of your death, probate court will appoint an Ohio resident as Administrator of your estate in the following order of preference:

- (a) spouse;
- (b) next of kin; or
- (c) another suitable Ohio resident.

If Release from Administration is used, the court appoints a "commissioner."

#### ***7. What Are The Duties Of The Administrator?***

The administrator must

- (a) inventory and establish the value of all property owned by the deceased within 3 months of being appointed;
- (b) render a final account within 6 but not later than 13 months after appointment;
- (c) collect assets and complete administration within 13 months of appointment;
- (d) pay all valid debts owed by the decedent at the time of death;
- (e) file Federal or Ohio Estate Tax return if required;
- (f) file decedent's Federal Income Tax;
- (g) file Federal and Ohio Estate Income Tax; and
- (h) distribute estate property after approval by the court.

## ***8. What Time Limits Apply To Probate If I Die Without A Will?***

Examples of applicable time limits include:

- (a) the surviving spouse may buy estate assets within one month after the estate inventory is approved;
- (b) creditors must file claims within 6 mo. after the death of the decedent;
- (c) Medicaid estate recovery claims must be filed no later than 90 days after receipt of the Medicaid estate recovery reporting form or 1 year after the decedent's death, whichever is later;
- (d) Federal and Ohio estate tax returns must be filed within nine months of death; and
- (e) Federal and Ohio income and estate income tax returns must be filed by the 15<sup>th</sup> day of the fourth month following the end of the taxable year.

## ***9. If I Die Without A Will, Can Any Of My Property Be Transferred Outside Of Probate?***

Yes, if you held land or personal property that was properly titled "joint with right of survivorship" or "transfer on death" or "payable on death"; or if you held property in an *intervivos* (living) trust.

## ***10. How Is The Transfer Of Land Handled After Death?***

This depends on how the property was titled. If real estate is held "joint with right of survivorship", an affidavit and the decedent's death certificate must be filed and recorded in the county where the land is located. The affidavit includes a legal description of the property, the date of death, and the names and addresses of the survivorship owner(s).

Land transferred under a Transfer on Death deed is recorded by filing the following with the county recorder:

- (a) decedent's death certificate;
- (b) death certificates for any non-surviving beneficiaries; and
- (c) an affidavit stating the names and address of the surviving and non-surviving beneficiaries, the date of the decedent's death and a legal description of the property.

If the property is a probate asset, the estate administrator must request that probate court issue a certificate of transfer for the real estate which must be filed with the county recorder in the Ohio county where the land is located.

### ***11. What Happens To Bank Accounts And Safe Deposit Boxes After Death?***

A bank may transfer an amount up to  $\frac{3}{4}$  of the total value of the deposit without the consent of the tax commissioner. The tax commissioner does not require a tax release or waiver for assets equal to or less than \$25,000 or for assets passing to a surviving spouse, regardless of the dollar amount. The tax commissioner does not require an inventory of a safe deposit box upon the death of the owner.

### ***12. Can An Automobile Be Transferred Without Probate Court's Consent?***

Title to two automobiles, boats, motorcycles, etc. (with a total value of \$40,000 or less) may be transferred to a spouse without the consent of probate court. In addition, any automobile titled jointly with right of survivorship, or with a "transfer on death" designation, also transfers outside of the probate estate.

### ***13. Are Abbreviated Probate Procedures Available For Small Estates?***

Yes. **Release from Administration** applies if either:

- 1) the assets of the estate is \$35,000 or less, or
- 2) the value of the assets of the estate is \$100,000 or less and either:
  - (a) the decedent devised or bequeathed all assets of the estate in a valid will to the surviving spouse; or
  - (b) the decedent died without a valid will and is survived by a spouse, and decedent's surviving spouse is entitled to receive all assets of decedent's estate under the intestacy statute, or by operation of law.

**Summary Release from Administration** applies if:

- 1) the applicant, who is not the surviving spouse paid, or is obligated in writing to pay decedent's funeral/burial expenses and the value of the assets of the decedent's estate is \$5,000 or less or
- 2) the applicant is the surviving spouse, decedent's funeral and burial have been prepaid or the surviving spouse has paid, or is obligated in writing to pay for them, the assets of the decedent's estate does not exceed \$45,000 and the surviving spouse is entitled to 100% of the family allowance.

A summary release from administration application should include:

- 1) the original will, if there is one,
- 2) a certified copy of the death certificate,
- 3) receipt for the paid funeral bill or funeral bill,
- 4) applicable filing fee, and
- 5) auto title, bank account and stock certificate information if applicable.

If the court grants summary release from administration, the court's order, along with a certified copy of the summary release application is sufficient authority for a financial institution, corporation, or other entity or person to transfer title to an asset in the decedent's estate to the applicant. An Ohio estate tax return does not need to be filed if the gross estate is less than \$338,333.

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In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

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