pro seniors
Advocacy. Empowerment. Justice.

# *Small Estates*

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

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

## What Is Ohio's Statute of Descent And Distribution?

Ohio's statute of descent and distribution sets out how a decedent's property is distributed if there is no will. Among others, it establishes the following distributions:

1) If the decedent was married with one or more children, all of whom are children of both the decedent and the surviving spouse, then the surviving spouse receives the entire estate;
2) If the decedent was married with one child who is not the natural or adopted child of the surviving spouse, then the surviving spouse receives the first $20,000, plus half of the remaining estate;
3) If the decedent was married with several children, the surviving spouse receives the first $60,000, if the spouse is the natural or adoptive parent of one of the children. If the surviving spouse is not the natural or adoptive parent of any of the children, the spouse receives the first $20,000. The surviving spouse in either case will also receive 1/3 of the remaining estate;
4) If the decedent was married with no children, then the spouse receives all;
5) if the decedent had no surviving spouse, then all the property is distributed to the decedent's children equally.

## Can I Disinherit My Spouse Or Children?

If you don't have a will, your spouse will receive a share of your estate. If you have a will, you can disinherit your children and your spouse. However, if your spouse is omitted from your will or if your spouse 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 the statute of descent and distribution, i.e., as if you had no will. This can include an election to receive the home in some situations. However, the surviving spouse cannot receive more than 1/2 of the estate. If, however, two or more of your children, or their children, survive, the surviving spouse cannot receive more than 1/3 of your estate.

## What Is Probate?

Probate is the court procedure that must be followed in order to distribute property the decedent owned at death not covered by some other contract. Property which is covered by a contract, known as non-probate property (e.g. property held joint with right of survivorship, transfer on death property, insurance proceeds, etc.) passes directly to the beneficiary named in the contract upon the decedent's death outside of the probate estate. The decedent's death outside of the probate estate.

## 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's statute of descent and distribution. With certain exceptions, your heirs at law, as set out in Ohio's statutes cannot receive land or personal property until the probate court orders its transfer.

## 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:

1) spouse;
2) next of kin; or
3) another suitable Ohio resident.

If probate court enters an order relieving the estate from administration, the court may appoint a "commissioner" to convey estate property.

## What Are The Duties Of The Administrator?

The administrator must:

1) inventory and establish the value of all property owned by the deceased within 3 months of being appointed;
2) collect the assets;
3) pay all valid debts owed by the decedent at the time of death;
4) file Federal or Ohio Estate Tax return if required (no Ohio estate tax return shall be filed for estates of decedents dying on or after 1/1/2013);
5) file decedent's final Federal Income Tax;
6) file Federal and Ohio Estate Income Tax;
7) distribute estate property to beneficiaries under decedent's will;
8) complete the administration within 6 months of appointment; and
9) file a final account within 30 days after completing the administration of the estate;

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

Yes, if you held land or personal property titled "joint with right of survivorship", "transfer on death" (TOD) or "payable on death (POD)"; or if the property is in an intervivos (living) trust.

## 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 affidavit or deed is recorded by filing the following with the county recorder:

1) decedent's death certificate;
2) death certificates for any non-surviving beneficiaries; and
3) 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 not transferrable outside of probate, then the property is a probate asset and 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.

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

Title to one or more automobile, truck or motorcycle, with a total value of $65,000 or less, may be transferred to a spouse without the consent of probate court. In addition, any motor vehicle, watercraft, or outboard motor titled joint with right of survivorship or "transfer on death", transfers outside of the probate estate.

## Are Abbreviated Probate Procedures Available For Small Estates?

Yes. Release from Administration applies if either:

1) the estate assets are $35,000 or less, or
2) the assets of the estate are $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 will, is survived by a spouse who is entitled to receive all assets of decedent's estate.

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 any,
2) a certified copy of the death certificate,
3) the funeral bill or the paid receipt,
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.

*Pro Seniors helps older Ohioans solve legal and long-term care problems and fight Medicare fraud. Our Legal Helpline provides free legal information and advice for Ohio residents aged 60 and older.*

*This fact sheet provides general information, not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Helpline or consult an attorney in elder law.*

*©2023 Pro Seniors, Inc. All Rights Reserved.*
*PRO SENIORS® is a registered trademark of Pro Seniors, Inc*
*Form #LFS043d*

*800-488-6070 | www.proseniors.org*