



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

Small Estates

1. 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. [\[1\]](#)

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 surviving 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 surviving spouse receives the first \$20,000, plus half of the remaining estate;
- (c) married with several children: 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, 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 (no surviving spouse): all to children equally. [\[2\]](#)

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. If you have a will, you can disinherit your children and your spouse. However, if your spouse is omitted from your will or disagrees with its provisions, s/he can instead choose to elect against the will. [\[3\]](#) This means that s/he can choose to take that part of the estate s/he would have received under intestacy law, i.e., as if you had no will. This can include an election to receive the home in some situations.

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, insurance proceeds, etc.) passes directly to the named beneficiary upon the decedent's death outside of the probate estate. [\[4\]](#)

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. [\[5\]](#) With certain exceptions, designated beneficiaries under Ohio intestacy law cannot receive land or personal property until the probate court approves its transfer. [\[6\]](#)

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. [\[7\]](#) [\[8\]](#)

If probate court enters an order relieving the estate from administration, the court may appoint a "commissioner" to convey estate property. [\[9\]](#)

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; [\[10\]](#)
- (b) render a final account within 30 days after the administration of the estate; [\[11\]](#)
- (c) collect assets and complete administration within 6 months of appointment; [\[12\]](#)
- (d) pay all valid debts owed by the decedent at the time of death; [\[13\]](#)
- (e) 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); [\[14\]](#)
- (f) file decedent's Federal Income Tax; [\[15\]](#)
- (g) file Federal and Ohio Estate Income Tax; and [\[16\]](#)
- (h) may distribute estate property to beneficiaries under decedent's will. [\[17\]](#)

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 (including decedent's interest in the home) within one month after the estate inventory is approved; [\[18\]](#)
- (b) creditors must file claims within 6 months after the death of the decedent; [\[19\]](#)
- (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; [\[20\]](#)
- (d) Federal and Ohio estate tax returns must be filed, if required, within nine months of death; and [\[21\]](#)
- (e) Federal and Ohio income and estate income tax returns must be filed by the 15th day of the fourth month following the end of the taxable year. [\[22\]](#)

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 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. [\[23\]](#)

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 affidavit or 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 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. [\[24\]](#)

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

A bank may transfer an amount up to 75% of the total value of the deposit without the written consent of the tax commissioner for decedents dying before 1/1/2013. Written permission of the tax commissioner is not required if decedent died on or after 1/1/2013. [\[25\]](#)

12. 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. [\[26\]](#) 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. [\[27\]](#)

13. Are Abbreviated Probate Procedures Available For Small Estates?

Yes. Release from Administration applies if either:

- 1) the assets of the estate 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 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.

[\[28\]](#)

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) the funeral bill or the paid receipt,
- 4) applicable filing fee, and
- 5) auto title, bank account and stock certificate information, if applicable. [\[29\]](#)

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 decedent died on or after 1/1/2013. [30]

© Copyright 2017

Pro Seniors' Legal Hotline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

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.

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

Copyright © 2017 by:

Pro Seniors, Inc.
7162 Reading Rd.
Suite 1150
Cincinnati, Ohio 45237

Switchboard: 513.345.4160
Clients Toll-free: 800.488.6070
Fax: 513.621.5613
TDD: 513.345.4160

E-mail: proseniors@proseniors.org

Web Site: www.proseniors.org

Endnotes: [Click the endnote number "[1]" to return to the text]

[1] [Ohio Revised Code § 2105.06 - Statute of descent and distribution](#);
see also [O.R.C. Chapter 2107 - Wills](#)

[2] [O.R.C. § 2105.06 - Statute of descent and distribution](#)

- [3] [O.R.C. § 2106.01 - Election by surviving spouse](#)
- [4] [O.R.C. § 2101.24 - Jurisdiction of probate court](#)
- [5] [O.R.C. § 2105.06 - Statute of descent and distribution](#)
- [6] [O.R.C. § 2113.61 - Application for certificate of transfer of real property](#)
- [7] [O.R.C. § 2019.21\(A\) - Residence qualifications of fiduciary](#)
- [8] [O.R.C. § 2113.06 - To whom letters of administration shall be granted](#)
- [9] [O.R.C. § 2113.03\(E\) - Court may order estate released from administration](#)
- [10] [O.R.C. § 2115.02 - Inventory - separate schedule](#)
- [11] [O.R.C. § 2109.301 - Administrator or executor rendering account](#)
- [12] [O.R.C. § 2113.25 - Time frame for collection of assets and administration of estate; extensions](#)
- [13] [O.R.C. § 2117.25 - Order in which debts to be paid](#)
- [14] [26 U.S. Code § 6018 - Estate tax returns;](#)
and [O.R.C. § 5731.21 - Filing estate tax return](#)
- [15] [IRS Form 1040](#) (Individual Federal Income Tax Return)
- [16] [IRS Form 1041](#) (Federal Income Tax Return for Estates and Trusts);
[Form IT-1041-E](#) (Ohio Fiduciary Income Tax Return)
- [17] [O.R.C. § 2113.53 - Distribution of assets of estate](#)
- [18] [O.R.C. § 2106.16\(A\) - Purchase of property by surviving spouse](#)
- [19] [O.R.C. § 2117.06 - Presentation and allowance of creditor's claims - pending action against decedent](#)
- [20] [O.R.C. § 2117.061 - Notice of receipt of medicaid benefits to administrator of estate recovery program](#)
- [21] [O.R.C. § 5731.23 - Tax due and payable 9 months after date of death - interest;](#)
and [I.R.C. 6075\(a\) - Time for filing estate and gift tax returns](#)
- [22] [O.R.C. § 5747.08\(G\) - Filing income tax return;](#) and [I.R.C. 6072\(a\) - Time for filing income tax returns](#)

- [23] [O.R.C. § 5302.17 - Survivorship deed form;](#)
[O.R.C. § 5302.22 - Transfer on death deed form;](#) and
[O.R.C. § 5301.255 - Memorandum of trust recording](#)
See generally,
<http://avoidforeclosureohio.org/PreForeclosure/WhenaHomeownerDies.aspx>

- [24] [O.R.C. § 2113.61 - Application for certificate of transfer of real property](#)

- [25] [O.R.C. § 5731.39 - Written consent of tax commissioner to transfer of assets](#)

- [26] [O.R.C. § 2106.18 - Transfer of automobile titles](#)

- [27] [O.R.C. § 2131.13 - Transfer-on-Death of Motor Vehicle, Watercraft, or Outboard Motor Statute](#)

- [28] [O.R.C. § 2113.03 - Court may order estate released from administration](#)

- [29] [O.R.C. § 2113.031 - Summary release from administration](#)

- [30] [O.R.C. § 5731.21\(A\)\(3\) - Filing estate tax return](#)