

## **What is Estate Administration?**

When an individual dies, certain assets of the decedent (non-probate) may be transferred by contract, such as joint and survivorship property or payable on death accounts. Other assets (probate) may be transferred through proceedings in Probate Court. Most persons die owning both probate and non-probate assets, all of which generally require some type of documentation to complete the transfer. There are advantages and disadvantages in using non-probate or probate proceedings. It is prudent to consult an attorney to determine the best manner in which to hold one's assets.

It is the Probate Court's responsibility to ensure the probate assets are collected, maintained, and distributed among the decedent's heirs, beneficiaries, and/or creditors according to the direction of the decedent as expressed through a will and if there is no will, through the laws of Ohio. This process is known as the administration of a decedent's estate.

## **What Are the Duties of The Fiduciary?**

The fiduciary, whether an Executor or an Administrator, may be an individual or a bank having trust powers.

The fiduciary's duties are:

- 1) To determine the names, ages, and degree of relationship of heirs;
- 2) To take possession of, and conserve all of the real and personal property of the decedent;
- 3) To have all property appraised where the value is not readily ascertainable;
- 4) To file with the Probate Court, within three months of the appointment, an Inventory of all the assets held in the name of the decedent;
- 5) To receive and determine the validity of all claims against the decedent's estate;
- 6) To timely file all tax returns and to pay income and estate taxes, if any;
- 7) To make distribution of the estate's assets to the proper beneficiaries, and
- 8) To file an account with the Probate Court of all receipts and disbursements made by the fiduciary

## **Does A Fiduciary Need an Attorney?**

Due to the complexity of the law and the legal process that is involved in estate administration, the Probate Court strongly recommends that all fiduciaries seek legal counsel. Good legal advice and guidance can expedite the probate process, prevent costly errors, and insure that the fiduciary is not cited by the Probate Court for failure to properly perform his or her duties, or be sued by beneficiaries for malfeasance.

## **How Are Attorney Fees Determined?**

There is no minimum or maximum attorney fee for the administration of an estate. The fee is primarily a matter between the fiduciary, the attorney, and others affected by the fee. If the parties do not agree, the reasonableness of the fee is determined by the Probate Court.

Unless the Probate Court first authorizes it, attorney fees are not permitted to be paid until the attorney has prepared the final account for filing. Most counties in Ohio, including Mercer County, provide a reasonable fee calculation sheet.

## **How Are Fiduciary Fees Determined?**

Ohio law sets forth fees that are permitted for a fiduciary of an estate. The statutory fees are:  
4% of the first \$100,000 of personal property and proceeds of real property sold;  
3% of the next \$300,000;  
2% of the balance;  
1% on the value of real property not sold;  
1% of all property that is not subject to probate administration and that is includable for purposes of computing the Ohio estate tax, except joint and survivorship property. The fiduciary may waive the fee. When a fee is taken it must be included on the fiduciary's personal income tax return as income.

## **How Long Should It Take to Administer an Estate?**

The majority of estates should be finalized within 6 months of the date of the appointment of the fiduciary. However, where there are family, creditor or tax disputes or other similar litigation, the estate administration may take longer to conclude.

## **What Are the Steps in A Full Administration?**

All estates are not alike, and can differ for a number of reasons. An estate may be Testate (with a Will) or Intestate (without a Will). The nature, and ownership of assets can vary and so too does the procedure for transferring those assets. Next of kin vary and so do very important notice requirements. Sometimes the fiduciary must address issues of spousal rights or even issues of insolvency where the estate's debts exceed the estate's assets.

Because of these differences each estate is treated differently. As a general matter, the basic steps of administering an estate pursuant to Ohio law are as follows:

- 1) Application for authority to admit the Will to probate, if one exists, and for authority to administer the estate;
- 2) Appointment of a fiduciary;
- 3) Gathering assets and obtaining appraisals as required; Filing an Inventory in a timely manner;

- 4) Determining debts, the sufficiency of assets and the payment of creditors;
- 5) Timely filing of income tax returns, the Ohio Estate Tax return and the payment of taxes, if any;
- 6) Distribution of assets to beneficiaries;
- 7) Closing the estate by timely filing a final account or certificate of termination.

## **What Property Must Be Appraised?**

Property must be appraised if the value is not readily ascertainable. Examples of such property would be real estate, motor vehicles, household furniture, closely held corporations, and partnerships. The appraiser must be suitable, qualified and disinterested.

## **What If There Is No Will?**

If the decedent had no Will, the estate is generally administered in a similar manner as if a Will had been probated. In completing the estate administration, the decedent's property is distributed according to the Statute of Descent and Distribution. If the next of kin are unknown, the filing of a civil action to determine heirship may be required.

## **Must A Will Be Presented to The Court?**

A Will should be presented to the Probate Court as soon as practical after the death of the decedent. A person who withholds a Will intentionally, negligently, or without reasonable cause may lose their right to inherit. An action may be filed to require the production of the Will any time after the death of the decedent, and failure to produce a Will upon Court Order may result in a fine and/or incarceration through contempt proceedings.

## **What If the Will Is Unclear?**

If the Will is unclear, a civil action to construe the Will may be filed in the Probate Court. The Probate Court will hold a hearing to determine the intent of the Testator, who made the Will.

## **May A Person Object to The Will?**

Any interested party may file a civil action to contest the validity of a Will. That party must establish, by clear and convincing evidence, that the Testator was mentally incompetent to write a Will or was subject to undue influence in the preparation of the Will. A Will contest must be filed within 3 months after the filing of a Certificate that all interested parties were given notice or waived notice of the admission of the Will to probate.

### What Costs are Involved in Probating an Estate?

The costs involved in probating an estate are court costs, executor or administrator fees, attorney fees, and taxes.

Court costs are established by statute. The total costs for administering an estate will vary depending on the type of actions and pleadings that are filed. To open an estate there is an initial minimum deposit required.

### May Items Be Removed from A Safe Deposit Box?

The contents of a safe deposit box may be released to a properly authorized representative of the estate. A deed to a burial lot and insurance policies may be released to the proper parties.

### What Is a Release from Administration?

For dates of death on or after March 18, 1999, if the decedent's creditors will not be prejudiced and the probate estate consists of property of a gross value of \$35,000, or less, the estate may be released from administration. When the surviving spouse is the sole beneficiary, and the probate estate consists of property of a gross value of \$100,000, or less, the estate may be released from administration.

A release from administration is less complicated and may be completed more quickly than a full administration. If the estate asset is real property, however, you should consult with an attorney to avoid any costly errors.



**Dear Mercer County Residents:**

My promise is to fulfill the Probate Court duties efficiently and effectively. If you have questions or desire for more information on Probate Court matters, please feel free to contact my office. I sincerely hope your experience with my Court will be pleasant

**Matthew L. Gilmore, Judge**

### **ABOUT THIS PAMPHLET**

This publication is designed as a service to the public to provide an understanding of the duties and procedures of the Probate Court in Ohio in reference to estate administration.

This pamphlet should not be considered as a legal reference. If you have any legal questions dealing with Estate Administration, an attorney should be consulted.

# ESTATE ADMINISTRATION



**Judge**

**Matthew L. Gilmore**

**Mercer County Court of Common Pleas  
Probate Division**

### **Hours**

Monday 8:30 a.m. –12:00 p.m. / 1:00 p.m. – 5:00 p.m.  
Tuesday-Friday 8:30 a.m. –12:00 p.m. / 1:00 p.m. – 4:00 p.m.

### **Marriage License Hours**

Monday 8:30a.m. – 11:30a.m. / 1:00p.m. – 4:30 p.m.  
Tuesday-Friday 8:30a.m. – 11:30a.m. / 1:00p.m. – 3:30 p.m.

### **Phone Numbers**

Probate Court: 419-586-8779  
Juvenile Court: 419-586-1249  
Juv. Probation: 419-586-7238