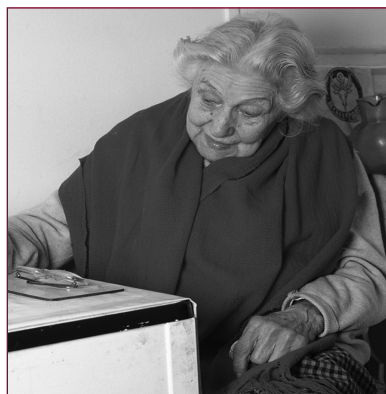




THE SUPREME COURT *of* OHIO

PROBATE BENCH CARDS



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INTRODUCTION

PROBATE BENCH CARDS

Ohio's probate bench cards were developed to support judicial officers in their duty to provide comprehensive and timely judicial action in probate cases.

The Honorable Kathleen L. Giesler, president of the Ohio Association of Probate Judges, initiated this project on behalf of the judges in Ohio, and in particular those judges with both probate and juvenile jurisdictions. The probate bench cards were a collaborative between the Ohio Association of Probate Judges and the Supreme Court of Ohio.

The court wishes to extend special recognition and tremendous gratitude to: David M. Farmer, chief magistrate, Montgomery County Probate Court; Bill Fisher, chief deputy clerk (retired), Licking County Probate Court; Honorable Kathleen L. Giesler, Ottawa County Probate and Juvenile Court; John R. Homolak, court administrator/magistrate, Cuyahoga County Probate Court; Samuel A. Peppers III, partner, Dinsmore & Shohl LLP; Paul D. Rattermann, chief magistrate/administrator, Hamilton County Probate Court; Tricia Rosengarten, chief deputy clerk, Shelby County Probate Court; and Roseanne Hilow, magistrate, Cuyahoga County Probate Court.

Any comments or questions about the probate bench cards should be directed to:

The Supreme Court of Ohio
Families & the Courts Section
65 South Front Street
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DECEDENT'S ESTATE

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FILINGS

1. Original Will
2. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
3. SPF 2.0: Application to Probate Will
4. SPF 2.1: Waiver of Notice of Probate of Will
5. SPF 2.2: Notice of Probate of Will
6. SPF 2.3: Entry Admitting Will to Probate
7. SPF 2.4: Certificate of Service of Notice of Probate of Will

VENUE [R.C. 2107.11]

1. Testator domiciled in Ohio at time of death
2. Testator not domiciled in Ohio at the time of death, but filed in Ohio county where real or personal property of testator is located, provided the will has not been admitted to probate in Ohio or another state.

ADMISSION

1. If it appears from the face of the will or there is testimony that will was executed in compliance with Ohio law. [R.C. 2107.18]
2. Will declared valid during testator's lifetime. [R.C. 2107.084]
3. Will admitted by prior judgment. [R.C. 2107.18]
4. Interlocutory Order [R.C. 2107.181]

NOTICE/SERVICE [R.C. 2107.19]

1. Notice of admission of will to be given within 2 weeks of admission of will by:
[R.C. 2107.19(A)(4)]
 - a. Applicant for admission of will
 - b. Fiduciary for estate
 - c. Applicant for release from administration
 - d. An interested person
 - e. Attorney for any of the above
2. Notice of admission of will to be served upon all next of kin, legatees and devisees. [R.C. 2107.32; Civ.R. 73(E)] (SPF 2.2)

3. Notice may be waived. [R.C. 2107.19(A)(2)] (SPF 2.0 and 2.1)
4. Notice not required as to persons whose names or places of residence are unknown and cannot with reasonable diligence be ascertained. [R.C. 2107.19(B)]
5. Certificate of giving notice filed 2 months after appointment of fiduciary or if no fiduciary has been appointed 2 months after admission of will to probate unless the court grants an extension of time. [R.C. 2107.19(A)(4)]

LOST, SPOILIATED, OR DESTROYED WILL

1. Standard of Proof: Clear and convincing evidence [R.C. 2107.26(A)]
2. Findings:
 - a. The will was executed as required by the jurisdiction in which it was executed. [R.C. 2107.26(A)(1)]
 - b. The contents of the will. [R.C. 2107.26(A)(2)]
 - c. No person opposing admission establishes by a preponderance of the evidence that will was revoked. [R.C. 2107.26(B)]
3. Notice (by certified mail) upon:
 - a. Surviving spouse
 - b. All next of kin
 - c. All legatees and devisees
 - d. All legatees and devisees in most recent will prior to lost, spoliated, or destroyed will.

OTHER CONSIDERATIONS

1. Treatment of Will Not Properly Executed [R.C. 2107.24]
2. Oral Wills [R.C. 2107.60]
3. Probate of Later Wills [R.C. 2107.22]
4. Recording of Wills [(R.C. 2107.21)]
5. Search Wills on Deposit [Sup.R. 59]



FILINGS

1. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
2. SPF 4.0: Application For Authority
3. SPF 4.2: Fiduciary Bond
4. SPF 4.3: Waiver of Right to Administer
5. SPF 4.4: Notice and Citation of Hearing
6. SPF 4.5: Entry Appointing Fiduciary
7. Acceptance [R.C. 2109.02]

TYPES OF FIDUCIARIES

1. Intestate:
 - a. Administrator
 - b. Special Administrator
 - c. Administrator De Bonis Non
 - d. Ancillary Administrator.
2. Testate:
 - a. Executor
 - b. Ancillary Executor
 - c. Administrator With Will Annexed.

VENUE

1. County of residence if death intestate [R.C. 2113.01]
2. County of domicile if testate [R.C. 2107.11]

NOTICE [R.C. 2113.07]

1. Notice and citation of hearing to be served upon all persons who have priority to administer the estate. [Civ.R. 73], Form 4.4
2. Minors who would have been entitled to administer estate, but for their minority must be served with notice unless notice is waived. [Civ.R. 4.2]
3. If a minor was nominated as executor another fiduciary may administer the estate until the minor reaches the age of majority at which time the former minor may be appointed. [R.C. 2113.13]

PRIORITY OF APPOINTMENT

1. Intestate [R.C. 2113.06]
 - a. Surviving spouse who resides in Ohio.
 - b. Next of kin who resides in Ohio.
 - c. Other suitable person who resides in Ohio.
 - d. Priority may be waived.
 - e. See SPF 4.3 - Priority may be lost by neglect in filing. [R.C. 2113.06]
2. Testate [R.C. 2113.05]
 - a. Person nominated in will.
 - b. If no nominated executor is able or willing to serve to a legatee or devisee named in the will who would have been entitled to administer estate if the decedent had died intestate.
 - c. If none of above, to some other suitable person.

RESIDENCY REQUIREMENT

1. Intestate – resident of Ohio. [R.C. 2109.21(A)]
2. Testate – resident of Ohio, or non resident if related to decedent by affinity or consanguinity, or a person who resides in a state that authorizes the appointment of a nonresident. [R.C. 2109.21(B)(1)]

FIDUCIARY BOND

1. Required under R.C. 2019.04 unless:
 - a. Surviving spouse who is entitled to entire net proceeds. [R.C. 2109.07]
 - b. Administrator is sole next of kin and entitled to net estate. [R.C. 2109.07]
 - c. Bond waived by will. [R.C. 2109.04]
 - d. Bond not waived in will, but executor is the next-of-kin entitled to entire net proceeds. [R.C. 2109.09]
 - e. Fiduciary is sole distributee. [R.C. 2019.10]
 - f. Bond may be set by court if R.C. 2109.07 and 2109.09 do not apply.

2. Amount of bond shall be no less than double the probable value of personal property and annual real estate rental income [R.C. 2109.04]
3. Deposit in lieu of bond. [R.C. 2109.13]

ENTRY (SPF 4.5)

The applicant must be found to:

1. Meet residence, priority, and bonding requirements.
2. Be suitable, competent, and accepts appointment. [R.C. 2113.05 and R.C. 2113.06]
3. An administrator shall give written notice of appointment to all next-of-kin who were not served with notice of appointment or waived notice. [Sup.R. 60(B)]

SPECIAL ADMINISTRATOR [R.C.2113.15]

1. Ex parte appointment if there is a delay in granting letters of authority.
2. Special administrator to collect and preserve assets of the decedent's estate until executor or administrator appointed.
3. Creditor claims may be presented to the special administrator. [R.C. 2113.17]

RIGHTS OF SURVIVING SPOUSE

FILINGS

1. SPF 7.1: Application for Family Allowance Allowance
2. SPF 7.2: Application for Apportionment of Family
3. SPF 8.0: Citation to Surviving Spouse to Exercise Elective Rights
4. SPF 8.1: Election of Surviving Spouse to Take Under Will
5. SPF 8.2: Election of Surviving Spouse to Take Against Will
6. SPF 8.3: Summary of General Rights of Surviving Spouse
7. SPF 8.4: Certificate of Service and Notice of Citation to Surviving Spouse to Exercise Elective Rights

SERVICE

1. Citation to surviving spouse served after the appointment of fiduciary, both testate and intestate, by the court. [R.C. 2106.01(A)]; [Civ.R. 73]
2. Service of Citation may be waived. [R.C. 2106.01(A)]

TIME FRAMES [R.C. 2106.01(E)]

1. The surviving spouse must exercise all rights within five months of the appointment of fiduciary, unless otherwise provided by statute. [R.C. 2106.25]
2. The time period may be extended upon motion and good cause shown.

ELECTIONS

1. To take under the will (or taking no action). (SPF 8.1)
2. To take against the will. (SPF 8.2) [R.C. 2106.06]



Definition of net estate or acceleration of remainder interest under R.C. 2106.01 (D). Further, if spouse is under a legal disability, [R.C. 2103.02] the court must make an election after appointing some suitable person to ascertain the value of the provision made for the surviving spouse by the testator as against the value of the rights of the surviving spouse in the estate of the testator. [R.C. 2106.08]

PROCEDURE (to take under R.C. 2105.06) [R.C. 2106.06]

1. Hearing scheduled, upon request.
2. Election must be made in person before a judge or magistrate.
3. Judicial officer shall explain the will, the rights under the will, and the rights of the spouse in the event of refusal to take under the will.

RIGHTS [under R.C. 2106.06]

1. To receive one-half of the net estate or one-third of net estate, if two or more of the decedent's children or their lineal descendants survive. [R.C. 2106.01(C)]
2. To receive the mansion house or remain rent free for one year. If the property is sold before the year runs, then the spouse shall be paid fair rental value. [R.C. 2106.10 and 2106.15]
 - a. Election must be made at or before the filing of the final account. [R.C. 2106.10(B)]
 - b. The mansion house includes decedent's title to the land and may include household goods and certain farmland. [R.C. 2106.10(F)]
3. To receive an allowance for support of up to \$40,000. [R.C. 2106.13(A)]
 - a. Allowance may be apportioned between surviving spouse and minor children not born of the decedent or between decedents' minor children if no surviving spouse. [R.C. 2106.13(A)] SPF 7.2 is filed within 5 months of appointment. [R.C. 2106.13(D)]

- b. Allowance is reduced by value of up to two automobiles (that were not otherwise transferred due to joint ownership) elected by the surviving spouse. [R.C. 2106.13 and 2106.18]
- 4. To purchase property at appraised values [R.C. 2106.16]
 - a. May purchase the decedent's interest in the mansion house and land where house is located, adjacent farmland, and household goods. [R.C. 2106.16(A)]
 - i. A complaint ("petition") must be filed to purchase real property, and a motion ("application") must be filed to purchase personal property. [R.C. 2106.16(B)]
 - b. May purchase the decedent's interest in other probate property that does not exceed one-third of the gross value of the appraised estate. [R.C. 2106.16(B)]
- 5. To receive up to two automobiles, unless specifically bequeathed otherwise in the will [R.C. 2106.18]
 - a. Value shall not exceed \$40,000
 - b. "Automobile" includes a motorcycle and a truck, if truck was used as a method of conveyance by the deceased spouse or family.
- 6. To receive one watercraft and one outboard motor. [R.C. 2106.19]
- 7. To be reimbursed from estate for payment of decedent's funeral and burial expenses, subject to creditor's rights. [R.C. 2106.20]
- 8. To set aside Antenuptial or Separation Agreement [R.C. 2106.22]
 - a. Action to set aside or to declare validity of the agreement must be filed within 4 months of the fiduciary's appointment.

FILINGS

1. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
2. SPF 3.0: Appointment of Appraiser and Entry
3. SPF 6.0: Inventory and Appraisal
4. SPF 6.1: Schedule of Assets
5. SPF 6.2: Waiver of Notice of Hearing on Inventory
6. SPF 6.3: Notice of Hearing on Inventory

TIME FRAME

Three months from appointment of fiduciary.
[R.C. 2115.02]

PROBATE ASSETS

1. Real property in Ohio requires the full legal description for real property and is valued on the date of death. [R.C. 2115.02]
2. Tangible and intangible personal property that is to be administered that comes into the possession of the fiduciary. [R.C. 2115.02 and 2115.09]

APPRAISER

1. Suitable disinterested appraiser may be appointed to assist the fiduciary to value property that does not have a readily ascertainable value. [R.C. 2115.02] (SPF 3.0) [Sup. R. 61(B)]
 - a. Exception: County Auditor's value may be used for real property. [R.C. 2115.06]
2. Appraiser may be compensated in an amount that is approved by the fiduciary and the Court. [R.C. 2115.06]; [Sup.R. 61(A)]

NOTICE

1. Taking of Inventory:
 - a. Not less than 5 days prior notice of the taking of the Inventory must be served on the surviving spouse. [R.C. 2115.04]

- b. Proof of service of notice to be filed with Inventory.
- c. Notice may be waived. (SPF 6.0)

HEARING

1. Inventory shall be set for hearing for approval. [R.C. 2115.16]
2. Notice of hearing may be served on any person interested in the estate. (SPF 6.3) The probate court may order notice of hearing on its own or on the motion of an interested party. Notice may be waived. (SPF 6.2)
3. Exceptions:
 - a. To the approval of the Inventory may be filed within five days of the hearing. Exceptions must be served upon the fiduciary and counsel.
 - b. Will be set for hearing and may be set for a pre-trial hearing under Sup.R. 78(E).

ENTRY

The probate court shall enter its order to approve the Inventory. [R.C. 2115.16]



The appraisement of real property on an approved Inventory is conclusive for all purposes. The probate court may order real property reappraised. [R.C. 2115.17]

FIDUCIARY BOND

Court may determine if the fiduciary bond is sufficient upon the filing of an Inventory and may require additional bond. [R.C. 2109.06]

FAILURE TO FILE OR APPEAR [R.C. 2115.03 and 2109.24]

Citation:

1. File or appear
2. If fails to file:
 - a. Removal
 - b. Denial of fiduciary and attorney fees
 - c. Extension to file
 - d. \$100 assessment and \$25.00 court costs
 - e. Contempt of court

NEWLY DISCOVERED ASSETS

A report of assets discovered after the Inventory may be filed. [R.C. 2113.69]

ANCILLARY ADMINISTRATION FILINGS

1. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
2. SPF 4.0: Application for Authority
3. SPF 4.1: Supplemental Application for Ancillary Administration
4. SPF 4.2: Fiduciary Bond
5. SPF 4.3: Waiver of Right to Administer
6. SPF 4.4: Notice of Citation of Hearing
7. SPF 4.5: Entry Appointing Fiduciary; Letters of Authority
8. Acceptance [R.C. 7109.32]

VENUE [R. C. 2129.04]

1. Ohio county where nonresident decedent leaves property, or
2. Where a debtor of the decedent lives.

APPOINTMENT

1. Ancillary executor if named in will [R.C. 2129.08]
2. Ancillary administrator if resident of county [R.C. 2129.08]
3. Residency requirements may apply under R.C. 2109.21.
4. Fiduciary bond requirements may apply under R.C. 2109.04.
5. Upon appointment of ancillary administration, the procedure is the same as the administration of estate of resident decedent, unless noted differently by statute. [R.C. 2129.10]

FOREIGN RECORDS

1. Authenticated copies of a will and administration admitted of any other county, state or territory, may be admitted in the probate court where property is situated.

2. Probate of foreign will [R.C. 2129.07]
 - a. extracounty or extrastate administration [R.C. 2129.01]
 - b. any state or territory of the United States [R.C. 2129.05]
 - c. country other than the United States or territories of the United States may set forth in R.C. 2129.07 to R.C. 2129.30. [R.C. 2129.06]

DUTIES OF ANCILLARY FIDUCIARY

1. Address claims [R.C. 2129.02]
2. Sell real and personal property [R.C. 2129.13]
3. Provide to domiciliary administrator, within five months of appointment, a certificate showing assets and liabilities
 - a. If administrator is unknown, then to the next of kin and court having jurisdiction of non-resident estate [R.C. 2129.15]
4. Distribute personal property and real estate proceeds to:
 - a. domiciliary administrator; or
 - b. persons entitled to receive [R.C. 2129.23]

OTHER CONSIDERATIONS

1. Request for sale by foreign executor [R.C. 2129.25]
2. Sale by domicile fiduciary [R.C. 2129.14]
3. Trusts created by foreign wills [R.C. 2129.27]
4. Appointment by trustee under foreign will [R.C. 2129.30]
5. Transcript to be filed [R.C. 2129.17]
6. Determination of heirship [R.C. 2129.18]



FILINGS

1. SPF 7.0
2. Insolvency (SPF 24.0 through 24.6)

PRESENTMENT [R.C. 2117.06]

1. To the fiduciary after appointment and before filing of the final account [R.C. 2117.06 (A) (1)]. A copy may be filed with the probate court. [2117.06(A)(1)(b)]
2. Most claims are subject to presentment within six months of decedent's death [R.C. 2117.06 (B)]
 - a. Except as provided in R.C. 2117.061
3. Medicaid Estate Recovery claims are due to be presented within ninety days of service of SPF 7.0 or one year after decedent's death, whichever is later.
4. The probate court may not close the administration of an estate until claims filed with the court are resolved. [R.C. 2117.06 (I)]

ALLOWANCE/REJECTION [R.C. 2117.06 (D) and 2117.11]

1. Fiduciary may require authentication of claim. [R.C. 2117.08]
2. Fiduciary may reject a claim in whole or in part with notice to creditor pursuant to Civ.R. 73. Notice by mail effective upon delivery of mail.
 - a. If a claim has been filed with the court the fiduciary shall file a copy of a rejection of the claim with the court. [Sup.R 62 (A)]
3. An heir may file to request that the fiduciary be required to reject a creditor's claim. A bond may be required. Upon posting of the required bond, the fiduciary shall reject the claim. [R.C. 2117.13]
4. The creditor has two months from the rejection of a claim to file suit or the claim is barred. [R.C. 2117.12]

COMPROMISE [R.C. 2117.05]

Court may approve the compromise and settlement of a claim after hearing and notice to persons who would be adversely affected.

FIDUCIARY [R.C. 2117.01 and 2117.02]

1. Fiduciary must file claim with the court within three months of appointment.
2. Hearing required for claim of \$500.00 or more. Fiduciary is to serve notice of hearing, 20 days prior to hearing, on all heirs and creditors ordered by the court.
3. An appeal may be filed of any final order or judgment. [R.C. 2117.04]

INSOLVENT ESTATE [R.C. 2117.15, 2117.17, and 2117.25]

1. Fiduciary may file representation of insolvency if it appears the estate is insolvent. [R.C. 2117.15] (SPF 24.0)
2. The court after notice and hearing that the estate is insolvent and approve the actions of the fiduciary to accept and reject and to assign a priority of the payment. [R.C. 2117.17] See SPF 24.0, SPF 24.1, SPF 24.2, SPF 24.3, SPF 24.4, SPF 24.5 and SPF 24.6.
3. Priority for payment of claims is set forth in R.C. 2117.25.

OTHER CONSIDERATIONS

1. Contingent Claims [R.C. 2117.37]
2. Claims Against Co-Debtors [R.C. 2117.42]



VENUE [R.C. 2127.09]

1. County in which the executor, administrator, or guardian was appointed.
2. County where real estate located.

DECEDENT ESTATE COMPLAINT [R.C. 2127.10]

1. Basis for Sale: [R.C. 2127.02 to 2127.04]
 - a. To pay debts [R.C. 2127.02]
 - b. To pay legacies [R.C.2127.03]
 - c. Other circumstances [R.C. 2127.04]
2. Necessary Parties: [R.C. 2127.12]
 - a. Surviving spouse
 - b. All persons entitled to inherit
 - c. Mortgage and lienholders
 - d. All persons holding title
 - e. All other persons who have interest

GUARDIANSHIP COMPLAINT [R.C. 2127.10]

1. Basis for Sale: [R.C. 2127.05]
 - a. Education of the ward
 - b. Support of the ward
 - c. Payment of debts
 - d. Discharge liens
 - e. Avoid waste
 - f. Better investment
 - g. Benefit the ward
 - h. Lay out in town lots [R.C. 2127.21]
2. Necessary Parties: [R.C. 2127.13]
 - a. The ward
 - b. The ward's spouse
 - c. The ward's next of kin residing in Ohio
 - d. All lienholders
 - e. All other persons who have interest

BOTH COMPLAINTS [R.C. 2127.10]

1. Legal description
2. Statement of value



- Request to hire and pay realtor and/or auctioneer. [R.C. 2127.28]
- Serve the county treasurer.

REAL PROPERTY SUBJECT TO SALE

1. Legal or equitable interests in real property including mineral rights. [R.C. 2127.07]
2. Undivided fractional or entire interest may be sold. [R.C. 2127.08]

SERVICE [R.C. 2127.14]

1. Defendants must be served with summons and complaint per Civ.R. 4.
2. Competent persons may waive service and consent to the sale. If all parties consent to the sale, an order of sale may be issued.

GUARDIAN AD LITEM

Upon motion, the court will appoint a Guardian ad litem to represent the interest of the minor or incompetent and to file an answer. [R.C. 2111.23]; [Civ.R. 17(B)]

EVIDENCE OF TITLE

Evidence of title, to a date subsequent to the filing of the complaint, is required to be filed prior to the issuance of an order of sale, subject to local rules.

[Sup.R. 65(A)]

ENTRY FINDING SALE NECESSARY

1. Court may grant the relief if all necessary parties are properly before the court. [R.C. 2127.18]
2. Court may determine equities among parties and priorities of liens. [R.C. 2127.18]
3. Order should find and include the following:
 - a. All parties properly before the court.
 - b. Allegation in Complaint is true.
 - c. Proper basis to bring land sale action under Chapter 2127. [R.C. 2127.02 to 2127.05]
 - d. Requirement of title evidence has been met. [Sup.R. 65(A)]
 - e. Appraisalment of property or is appraisalment dispensed with. [R.C. 2127.22]
 - f. Need for additional bond. [R.C. 2127.27]
 - g. Approval of realty commissions.
 - h. Order of sale to be issued or deferred for appraisalment. [R.C. 2127.29]

APPRAISEMENT [R.C. 2127.22]

1. If real property was appraised in the Inventory of the fiduciary the court may approve the use of the appraised value for the real property set forth in the Inventory.
2. The court may order an appraisalment if the real property was not appraised in the Inventory or if the court determines that a new appraisal should be ordered. Oath of Appraiser is required. [R.C. 2127.23] The court shall set the compensation for the appraiser. [R.C. 2127.25]

3. Upon the return and approval of the appraisalment the appraised value shall be the appraised value of the real property.

ADDITIONAL BOND [R.C. 2127.27]

Upon approval of the appraisalment the court shall require the executor, administrator, or guardian to post additional bond, unless testator has waived.

ORDER OF SALE [R.C. 2127.29]

1. The court will issue an order of public or private sale that sets forth terms of sale. [R.C. 2127.34]
2. A private sale order requires the real property to be sold for the appraised value. [R.C. 2127.33] Order of private sale shall be returned and if returned unsold the court may order the real property sold at public sale [R.C. 2127.32] or the court may fix the price for sale or order the real property reappraised. [R.C. 2127.33]
3. The real property may be sold at public sale for not less than two-thirds of the appraised value if improved or for not less than one-half of appraised value if property is not improved. [R.C. 2127.33] Real property sold at public sale must be sold at a fixed place, day, and hour ordered by the court. Notice of the time and place of sale shall be advertised at least three successive weeks in a newspaper of general circulation in the county where the real property is situated. [R.C. 2127.32]
4. Sup.R. 65(B) requires the Plaintiff to give notice of the place and time of sale to all defendants at least three week prior to the sale. The Plaintiff is required to file a certificate of service with the court prior to the sale.

CONFIRMATION OF SALE [R.C. 2127.35]

1. Upon return of the order of sale, and upon motion, the court may confirm the sale if the court finds that the sale in all respects has been legally made.
2. The order to confirm the sale will authorize the Plaintiff to issue a fiduciary deed, and may order distribution of sale proceeds and release of liens under R.C. 2127.19 and R.C. 2127.38.
3. The entry confirming sale shall include the gross amount of the sale proceeds and include a copy of the proposed closing statement itemizing all proposed disbursements. [Sup.R. 65(C)]
4. Property may be sold subject to a mortgage with consent of the mortgagee. [R.C. 2127.20] Sale is free of dower. Payment for dower interest shall be ordered unless waived. [R.C. 2127.16]
5. Costs of certificate of title or policy of title insurance may be allowed by the court. [R.C. 2127.28] Real estate commissions may be allowed after notice to all parties in interest. [R.C. 2127.28] The executor, administrator, or guardian may be allowed fiduciary fees and reasonable attorney fees. [R.C. 2127.37 and 2127.38]

OTHER CONSIDERATIONS

1. Summary Proceeding - market value of real property is less than \$3,000.00 [R.C. 2127.11]
2. Objection to Sale [R.C. 2127.31 and 2127.17]; [Sup.R. 65(D)]



FILINGS

1. SPF 13.0: Fiduciary's Account
2. SPF 13.1: Receipts and Disbursements
3. SPF 13.3: Assets Remaining in Fiduciary's Hands Entry Approving and Settling Account
4. SPF 13.4: Waiver of Partial Account
5. SPF 13.5: Notice of Hearing on Account
6. SPF 13.6: Certificate of Termination
7. SPF 13.7: Waiver of Notice of Hearing on Account
8. SPF 13.8: Application to Extend Administration
9. SPF 13.9: Certificate of Service of Account to Heirs or Beneficiaries
10. SPF 13.10: Notice to Extend Administration
11. Status Report [Sup.R. 78(C)]

TYPES [R.C. 2109.30]

1. Partial Accounting
 - a. Each partial accounting may be waived by written consent of all the legatees, devisees, or heirs, as long as none of them are under a disability, and filed in lieu of a partial accounting otherwise required. [R.C. 2109.301(A)]
 - b. Status report filed for estates that remain open after a period of 13 months from appointment of fiduciary and annually thereafter. [Sup.R. 78(C)]
2. Final Accounting
 - a. Final Distributive
 - b. Final Non-Distributive
3. Certificate of Termination – fiduciary is sole legatee, devisee and heir [R.C. 2109.301(B)(2)] (SPF 13.6)

TIME FRAMES [R.C. 2109.301]

1. Final Accounting
 - a. Six (6) months after appointment of fiduciary, [R.C. 2109.301(B)(1)] exceptions:
 - i. An Ohio estate tax return must be filed. [R.C. 2109.301(B)(1)(a)]
 - ii. A proceeding contesting the validity of the decedent's will pursuant to R.C. 2107.71 has been commenced. [R.C. 2109.301(B)(1)(b)]
 - iii. The surviving spouse has filed an election to take against the will. [RC 3109.301(B)(1)(c)]
 - iv. The administrator or executor is a party in a civil action. [R.C. 2109.301(B)(1)(d)]
 - v. The estate is insolvent. [R.C. 2109.301(B)(1)(e)]
 - vi. For other reasons set forth by the administrator or executor, subject to court approval, it would be detrimental to the estate and its beneficiaries or heirs to file a final and distributive account. [R.C. 2109.301(B)(1)(f)]

SERVICE/NOTICE OF HEARING [R.C. 2109.33]

1. Fiduciary serves final account and notice of hearing pursuant to the Ohio Rules of Civil Procedure upon any person interested in the estate, including creditors, as the court may direct or by local rule to all heirs in an intestate estate and to all residuary beneficiaries in a testate estate.
2. Notice of hearing shall be served at least 15 days prior to hearing on account or may be waived.
3. Written exceptions filed 5 days before hearing. [R.C. 2109.33] (SPF 13.5)

FAILURE TO FILE OR APPEAR [R.C. 2109.31]

1. Failure to file:
 - a. Citation issued
 - i. Court may issue at own instance
 - ii. Court shall issue upon application of interested party
2. After citation, possible sanctions for the continued failure to file include:
 - a. Removal
 - b. Denial of all or part of fiduciary fees
 - c. Extension to file
 - d. \$100.00 assessment and \$25.00 court costs
 - e. Contempt of court

OTHER CONSIDERATIONS

1. Motion to Vacate after Account approved. [R.C. 2109.35]
2. Court shall not close the estate until a claim is allowed or rejected. [R.C. 2117.06(I)]
3. Court shall not approve final account until:
 - a. 3 months have passed since the death of decedent [R.C. 2109.32(B)(3)(a)]
 - b. Surviving spouse has filed an election or time for making the election has expired. [R.C. 2109.32(B)(3)(b)]
4. If land has been sold, a copy of the closing statement has been attached. [Sup.R. 64(B)]
5. Final or distributive account shall not be approved until all court costs have been paid. [Sup.R. 64(E)]

FILINGS

1. SPF 14.0: Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims. A Statement of Facts and other supporting documents should be attached pursuant to [SupR. 70](#).
2. SPF 14.0 (*Bottom*) or Local Form: Entry Setting Hearing and Ordering Notice
3. SPF 14.1: Waiver and Consent Wrongful Death and Survival Claims
4. SPF 14.2: Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims
5. SPF 14.3: Report of Distribution of Wrongful Death and Survival Claims
6. SPF 14.3 (*Bottom*) or Local Form: Entry Approving Report of Distribution

JURISDICTION & VENUE

A personal representative appointed by a probate court may settle with a defendant in a wrongful death case with the consent of the court making the appointment. [\[R.C. 2125.02\(C\)\]](#)

NOTE

The underlying civil action is not filed in the probate court. However, the approval of a settlement of the case is heard in the probate court which appointed the fiduciary.

TIME FRAME

A civil action for wrongful death shall be commenced within two (2) years after the decedent's death, subject to certain statutory exceptions. [\[R.C. 2125.02\(D\)\]](#) There is no time frame for filing of an application to approve a wrongful death settlement. However, the existence of a wrongful death action is grounds to extend the administration of the decedent's estate beyond 6 months. [\[R.C. 2109.301\(B\)\(1\)\(d\)\]](#); (SPF 13.10)

NOTICE/SERVICE

1. Notice of the hearing should be served upon those persons rebuttably presumed to have suffered damages as a result of the wrongful death, i.e. the surviving spouse, children and parents of the deceased. [\[R.C. 2125.02\(A\)\(1\)\]](#) Other "relatives" who suffered damages should also be given notice (e.g. siblings or grandparents). [\[R.C. 2125.02\(A\)\(1\)\]](#)

NOTE

The persons listed as next of kin on SPF 1.0 are not necessarily the only persons to be served notice of an application to approve a wrongful death settlement.

2. Notice should be served pursuant to [Civ.R. 73\(E\)](#).
3. Notice may be waived. (SPF 14.1)

HEARING

1. The court must consider whether to approve the proffered settlement. [\[R.C. 2125.02\(C\)\]](#); [\[Sup.R. 70\]](#) Compensatory damages on a wrongful death claim include loss of support, loss of services, loss of society, loss of inheritance and mental anguish. [\[R.C. 2125.02\(B\)\]](#)
2. The court must consider whether the claim is entirely for wrongful death (e.g. the decedent died instantly in a car crash) or for a survival claim (e.g. the decedent was injured but died from an unrelated illness) or a hybrid of both (e.g. decedent was injured and died as result of the injuries one month later). Payment on the wrongful death component is not included in the probate estate of the decedent. Payment on the survival claim component is part of the probate estate.

3. The court shall adjust the share of each beneficiary in an equitable manner, taking into consideration the injury and loss each beneficiary suffered due to the death as well as taking the age and condition of each beneficiary into account. [R.C. 2125.03(A)(1)] However, if all beneficiaries are adult, competent, and on the same plane of consanguinity, they may adjust the shares among themselves without court involvement. [R.C. 2125.03(A)(1)]
4. The burden of proof to approve the amount of the settlement is upon the personal representative. Each beneficiary of the wrongful death action has the burden to prove the injury and loss they suffered as a result of the wrongful death.
5. The standard of proof is by preponderance of the evidence.
6. The statute expressly allows for the award of funeral and burial expenses incurred as a result of the wrongful death. [R.C. 2125.02(A)(2)]. No other claim or debt is expressly authorized to be paid from the wrongful death settlement proceeds.

MINORS

1. If the decedent was a minor, a parent who abandoned the minor can be ordered by the court not to recover any damages from the wrongful death action. The personal representative or other wrongful death beneficiary may file the motion. [R.C. 2125.02(A)(1) and (E)(1)]
2. If a minor is a beneficiary of the wrongful death action as defined in R.C. 2125.02(G)(4), a Guardian ad litem should be appointed to represent the interest of the minor in the proceedings if the personal representative is the minor's surviving parent or who otherwise has a conflict with the minor's interest.
3. The court may create a trust for any beneficiary of the wrongful death action who is under 25 years of age. [R.C. 2125.03(A)(2)] The trustee of such a trust shall be approved by each adult beneficiary and by the guardian of each minor beneficiary before being appointed. [R.C. 2125.03(A)(2)]

OTHER CONSIDERATIONS

Removal of Executor or Administrator [R.C. 2113.18(B)]

FILINGS

1. Receipt, contract, or written declaration to verify payment or obligation to pay funeral and burial expenses.
2. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
3. SPF 5.10: Summary Release From Administration
4. SPF 5.11: Entry Granting Summary Release From Administration
5. SPF 12.0: Application for Certificate of Transfer
6. SPF 12.1: Certificate of Transfer



Death Certificate and/or Obituary

APPLICANT [R.C. 2113.031]

Surviving Spouse:

1. The value of the probate assets does not exceed \$40,000.00 for the allowance for support under [R.C. 2106.13\(B\)](#) (SPF 5.10) and an amount not to exceed \$5,000.00 for funeral and burial expenses; and
2. The surviving spouse is entitled to receive the entire allowance for support and has paid or is obligated in writing to pay the decedent's funeral and burial expenses not to exceed \$5,000.00 or the funeral and burial expenses have been prepaid.

Other Persons:

1. The value of probate assets does not exceed the lesser of \$5,000.00 or the funeral and burial expenses.
2. The applicant paid or is obligated in writing to pay the funeral and burial expenses.

APPLICATION (SPF 5.10)

1. Must describe all known assets and be signed and acknowledged in the presence of a notary or the deputy clerk of probate court.



Check records of the county recorder's and/or auditor's office.

ENTRY (SPF 5.11)

1. Probate Court shall order a summary release from administration if:
 - a. The applicant satisfies statutory requirements of [R.C. 2113.031](#)
 - b. There are no pending proceedings to administer the decedent's estate or to relieve the decedent's estate from administration under [R.C. 2113.03](#), and
 - c. The SPF 5.10 filed by the applicant lists all known assets of the decedent.

CERTIFICATE OF TRANSFER (SPF 12.0 and 12.1)

1. The surviving spouse may elect to receive the mansion house under [R.C. 2106.10](#) in a summary release.
2. The applicant shall file an Application for Certificate of Transfer (SPF 12.0) if an interest in real property is listed on SPF 5.10.
3. The probate court is required to issue a Certificate of Transfer (SPF 12.1) within five days of the filing of the Application for Certificate of Transfer (SPF 12.0) under [R.C. 2113.61\(C\)](#).



FILINGS

1. SPF 1.0: Surviving Spouse, Children, Next of Kin, Legatees and Devisees
2. SPF 2.0: Application To Probate Will
3. SPF 2.3: Entry Admitting Will to Probate
4. SPF 3.0: Appointment of Appraiser
5. SPF 5.0: Application to Relieve Estate from Administration
6. SPF 5.1: Assets and Liabilities of Estate to be Relieved from Administration
7. SPF 5.2: Waiver of Notice of Application to Relieve Estate from Administration
8. SPF 5.3: Notice of Application to Relieve Estate from Administration
9. SPF 5.4: Publication of Notice
10. SPF 5.6: Entry Relieving Estate from Administration
11. SPF 7.0: Notice of Administrator of Estate Recovery Program
12. SPF 7.2: Application for Apportionment of Family Allowance
13. SPF 11.0: Consent to Power to Sell Real Estate
14. SPF 12.0: Application for Certificate of Transfer
15. SPF 12.1: Certificate of Transfer

APPLICANT [R.C. 2113.03]

Surviving Spouse:

1. The value of the probate assets are \$100,000.00 or less for death on or after March 18, 1999 (SPF 5.0) and:
 - a. The surviving spouse is entitled to all assets of the estate by the terms of a valid will; or
 - b. The surviving spouse is entitled to receive all assets of the estate for the allowance for support under R.C. 2106.13(B) and/or for inheritance under R.C. 2105.06, and the marriage was solemnized in a manner consistent with R.C. 3101.

Other Persons:

1. The value of probate assets are \$35,000.00 or less for deaths on or after November 9, 1994 (SPF 5.0).

APPLICATION (SPF 5.0)

1. Must state if the decedent died testate or intestate. If testate, pleadings to probate the will may be required. [R.C. 2113.03(F)]
2. Must state that the value of the probate assets meet the requirements for a release for the date of death as noted on SPF 5.0.
3. The probate court may order notice to be given to the surviving spouse and heirs at law, and order notice to all interested parties by publication. (SPF 5.2, 5.3, and 5.4)

ASSETS (SPF 5.1)

1. The applicant is required to describe and to value the probate assets on SPF 5.1.
2. An approved appraiser may be used to value assets that do not have a readily ascertainable value, and be paid as provided for under R.C. 2115.06.
3. The applicant is required to list all known debts of the decedent on the SPF 5.1.
4. The applicant is required to file and to serve SPF 7.0 on the Administrator of the Medicaid Estate Recovery Program if the decedent was age 55 or older or was a permanently institutionalized individual who was receiving Medicaid assistance. [R.C. 2117.061]
5. If the allowance for support must be apportioned under R.C. 2106.13 the applicant shall file SPF 7.2 and obtain an order for the probate court.

ENTRY (SPF 5.6)

1. Probate Court shall order the estate relieved from administration if:
 - a. The assets meet the statutory requirements of [R.C. 2113.031](#); and
 - b. Required notice has been given. [\[R.C. 2113.03\(B\)\]](#)

CERTIFICATE OF TRANSFER (SPF 12.0 and 12.1)

1. Surviving spouse may elect to receive the mansion house under [R.C. 2106.10\(D\)](#) in a release from administration.
2. The applicant shall file an Application for Certificate of Transfer (SPF 12.0) if an interest in real property is listed on SPF 5.1. [\[R.C. 2113.61\]](#)
3. The probate court is required to issue a Certificate of Transfer (SPF 12.1) within five days of the filing of the Application for Certificate of Transfer under [R.C. 2113.61\(C\)](#).

APPOINTMENT OF COMMISSIONER

[\[R.C. 2113.03\(E\)\]](#)

1. The probate court may appoint a commissioner to receive the assets, to sell personal property assets, to pay the debts and expenses and to distribute the assets as authorized.
2. The commissioner may be authorized by the filing of consents to a power of sale of real property (SPF 11.0) under [R.C. 2127.011](#) or to sell the decedent's interest in real property.
3. The commissioner may be ordered to file a Commissioner's Report within 60 days of his or her appointment to verify that the commissioner has performed his or her duties. (SPF 5.6)

ADOPTION

- Adoption

ADOPTION



FILINGS

1. Form 18.0: Petition for Adoption of Minor
2. Form 18.1: Judgment Entry Setting Hearing
3. Form 18.2: Notice of Hearing on Petition for Adoption
4. Form 18.3: Consent to Adoption
5. Form 18.4: Judgment Entry Finding Consent Not Required
6. Form 18.5: Interlocutory Order of Adoption
7. Form 18.6: Final Decree of Adoption (After Interlocutory Order)
8. Form 18.7: Final Decree of Adoption (Without Interlocutory Order)
9. Form 18.8: Adoption Certificate for Parents
10. Form 18.9: Petitioner's Account
11. Vital Statistics - Certificate of Adoption (HEA 2757)
12. Form 19.0: Petition for Adoption of Adult
13. Form 19.1: Final Order of Adult Adoption
14. Form 19.2: Petition to Recognize Foreign Adoption
15. Form 19.3: Order for Ohio Birth Record for Foreign Born Child

WHO MAY BE ADOPTED [R.C. 3107.02]

- A minor, or
- A non-objecting adult if:
 1. totally or permanently disabled
 2. mentally retarded (as defined in R.C. 5123.01)
 3. established child-foster caregiver, kinship caregiver or child-stepparent relationship while a minor and consents
 4. on 18th birthday was in permanent custody or in Planned Permanent Living Arrangement of a children's services agency and consents or
 5. adult is child of spouse of petitioner and consents
 - o Became 18 between filing of petition and court decision and consents in writing.

WHO MAY ADOPT [R.C. 3107.03]

- Husband and wife together
- Unmarried adult
- Unmarried minor parent of adoptee or
- Married adult without joining spouse if:
 1. stepparent adoption
 2. legally separated pursuant to R.C. 3103.06 or 3105.17
 3. spouse fails to join because of a prolonged, unexplained absence, unavailability, or other reasonable circumstances.

VENUE [R.C. 3107.04]

- Petition for adoption filed in the county where:
 1. adoptee was born or resides
 2. petitioner resides
 3. parent of adoptee resides
 4. petitioner is stationed for military service or
 5. agency having permanent custody is located.

PLACEMENT [R.C. 5103.15 and 5103.16]

- Persons having custody of child may enter into written agreement with agency certified by Department of Job & Family Services to give custody of child to the agency or may place/receive child for adoption or intent to adopt if all of the following criteria are met:
 1. Parent[s] have applied to and appeared before probate court, where they reside or where person seeking to adopt resides, for approval of placement and signed/filed written statement they are aware of right to contest decree of adoption [R.C. 5103.16(D)(1)]
 2. Court ordered independent home study per R.C. 3107.031 and after completion, court determined placement in best interest of child [R.C. 5103.16(D)(2)]
 3. Court approved of record the proposed placement. [R.C. 5103.16(D)(3)]

4. Suitability of placement of foreign children for adoption determined by probate court; look to compliance with laws of the country in which the child resides and release in accordance with the “Immigration and Nationality Act” 8 U.S.C. 101 (b)(1)(F). [R.C. 5103.16(D)(3)]

**Does not apply to adoption by stepparent, grandparent, grandparent’s husband or wife, a legal custodian or a guardian.*

INTERSTATE COMPACT [R.C. 5103.20]

- Form 100A – signed by Compact Director from sending state and receiving state
- Form 100B – report on placement status/compact termination
- Forms can be found at Interstate Compact on the Placement of Children (ICPC) website: [http://glossary.adoption.com/interstate-compact-on-the-placement-of-children-\(icpc\).html](http://glossary.adoption.com/interstate-compact-on-the-placement-of-children-(icpc).html)

PETITION FOR ADOPTION [R.C. 3107.05]

- Must contain:
 1. date and place of birth of adoptee
 2. name of adoptee, if known
 3. new name to be used
 4. date of placement and name of person placing minor
 5. petitioner’s full name, age, place and duration of residence
 6. petitioner’s marital status (date and place of marriage)
 7. relationship of petitioner to adoptee, if any
 8. petitioner’s resources
 9. account of property of adoptee;
 10. name and address, if known, of the person whose consent is required, but has not consented, and facts explaining lack of consent.
- Must also have certified copy of adoptee’s birth certificate and ordinary copy of required consents.

CONSENT REQUIRED BY: [R.C. 3107.06]

- Mother of the minor;
- Father, if:
 1. minor was conceived while mother and father were married
 2. minor was adopted by father or
 3. paternity was established in a court proceeding
- Putative father of minor if he:
 1. is alleged to be the father [R.C. 3111]
 2. signed birth certificate
 3. made statement before notary public acknowledging child as his
 4. filed an objection with adoption agency prior to placement, or with welfare department or court within 30 days of filing petition
- Any person or agency having permanent custody or court order to consent;
- Minor if more than 12 years old, unless court determines consent is not required.

CONSENT NOT REQUIRED BY: [R.C. 3107.07]

- Parent who has not communicated with the minor or provided support for 1 year
- Putative father who didn’t file objections, is not the father, willfully abandoned or didn’t support child, or willfully abandoned the mother during pregnancy
- Parent whose right to consent was relinquished or terminated
- Legal guardian who failed to respond to request for consent within 30 days or who is withholding consent unreasonably
- The spouse of the adoptee if consent cannot be attained because of prolonged unexplained absence, unavailability, incapacity, or circumstances that make it impossible or unreasonably difficult to obtain the consent or refusal of the spouse.

- Does not include all situations under R.C. 3107.07(F) speaks to consent of convicted rapist where adoptee conceived by rape and R.C. 3107.07(J) considers consent of the parent/guardian located in a foreign county.)

EXECUTION OF CONSENT [R.C. 3107.08]

- Consent to adoption may be executed 72 hours after the birth of the minor by:
 1. person to be adopted, in the presence of the court
 2. parent of person to be adopted
 3. executive head or other authorized representative of an agency
 4. any other person, in the presence of the court or an authorized person or
 5. a juvenile court, by appropriate order.

WITHDRAWAL OF CONSENT [R.C. 3107.084]

- Can be withdrawn prior to entry of interlocutory order or final order.
 - o Hearing to determine best interest of the child with notice to petitioner, person seeking withdrawal, and placing agency.
- Cannot be withdrawn after entry of interlocutory order or final order.

PRELIMINARY ESTIMATES AND FINAL ACCOUNTING [R.C. 3107.055]

- Petitioners file preliminary estimate not later than the time adoption petition is filed.
- Itemized, attested final accounting of all disbursements made in connection with adoption, including charges of attorney/agency, filed no later than 10 days before final hearing; final decree not issued until at least 10 days after final accounting filed.
- Permissible disbursements found in R.C. 3107.055; court may reduce or prohibit.
- No accounting for stepparent adoptions.

HEARING AND NOTICE [R.C. 3107.11]

- After petition, court sets hearing any time more than 30 days after placement.
- At least 20 days' notice of hearing given to:
 1. anyone whose consent is required but who has not consented
 2. person whose consent is dispensed with but who hasn't consented; and
 3. anyone having temporary or permanent custody of child.

ASSESSMENT [R.C. 3107.12]

- Before court issues final decree or finalizes interlocutory order, assessor must conduct a prefinalization assessment of minor/petitioner; written report at least 20 days before final hearing (stepparent adoption assessment optional).
- Assessment includes:
 1. adjustment to placement
 2. needs of minor and petitioner
 3. physical, mental, and developmental condition of the minor
 4. minor's biological family background
 5. reasons for placement
 6. attitude of minor toward adoption;
 7. if the minor is an Indian Child how placement complies with Indian Child Welfare Act of 1978
 8. psychological history, including prior abuse
 9. if applicable, forms and documents required under R.C. 3107.052, 3107.10, and 3107.101.
 10. Social and medical history of biological parents.

HOME STUDY [R.C. 3107.031]

- Except for foster children in the home for at least 6 months, written report of assessment filed with court at least 10 days before petition for adoption is heard.

- Assessor qualifications under [R.C. 3107.014](#). Must be employed by, appointed by or under contract with a court, public children services agency, private child placing agency or private noncustodial agency. Individual must be a:
 1. licensed professional counselor, social worker or marriage and family therapist
 2. licensed psychologist
 3. student working to earn a four year, post-secondary degree or higher in a social or behavior science, who conducts assessor's duties under the supervision of a licensed professional counselor, social worker, marriage and family therapist, psychologist (as of July 1, 2009, a student is eligible only if the supervising professional counselor, social worker, marriage and family therapist or psychologist has completed training in accordance with rules adopted under [R.C. 3107.015](#))
 4. civil service employee engaging in social work without a license under [R.C. 4757](#).
 5. former employee of a public children services agency who, while employed, conducted the duties of an assessor.

EFFECT OF FINAL DECREE [\[R.C. 3107.15\]](#)

- Decree relieves biological or other legal parents of parental rights and responsibilities, except with respect to spouse of petitioner.

APPEAL [\[R.C. 3107.16\]](#)

- After 1 year, the order cannot be questioned, even for fraud, unless:
 1. petitioner has not taken custody of minor
 2. stepparent adoption would not have been granted but for fraud of the petitioner stepparent or spouse or
 3. in an adult adoption, the adult has no knowledge of the order within a 1-year period.

CERTIFICATE OF ADOPTION [\[R.C. 3107.19\]](#)

- Clerk or adoptive parents may forward copy of Certificate of Adoption to Bureau of Vital Statistics within 30 days of final order.

RELEASE OF IDENTIFYING INFORMATION

- Adopted prior to 1964, file an Affidavit of Adopted Person (Form HEA3011) [\[R.C. 3107.38\]](#)
- Adopted 1964 through 1996 [\[R.C. 3107.38 through 3107.39\]](#)
 1. No Petition for release of identifying information may be filed at probate court or Ohio Department of Health (ODH) between March 20, 2014 and March 19, 2015.
 2. From March 20, 2014 to March 19, 2015, the Department of Health will develop a process to transfer previously filed releases to the adoption file.
 3. During this time period, birth parents can complete a Redaction Form, Contact Preference Form, Social/Medical History Form (or a corrected/expanded Social/Medical History Form) and an Application of Release of Adopted Name.
- All forms referenced are available on the ODH website.
 1. Redaction Form allows birth parent to state he/she does not want name released with the adoptee's original birth certificate. Names will be redacted if file is released. Form good for 1 year and must complete updated Social/Medical History Form for Redaction Form to be accepted. [\[R.C. 3107.391\]](#)
 2. Contact Preference Form allows birth parent to state how he/she would like to be contacted if adoption file is released (direct contact; contact through an intermediary; no contact at all). Form is not enforceable – only meant to be advisory. [\[R.C. 3107.39\]](#)
 3. Application for Release of Adopted Name allows biological parents and siblings to ask for child's adopted name.

- Effective March 20, 2015, adoptee 18 or older and any lineal descendants will be able to file an Application for Adoption File and Authorization for Release of Adopted Name.
 1. Application for Adoption File
 - a. \$20 filing fee
 - b. 2 forms of identification
 - c. Lineal descendants will have to show lineal relationship between them and the adoptee.
 2. Authorization for Release of Adopted Name
 - a. Filed by adoptee, 18 years or older
 - b. Allows ODH to release the adopted name to birth parents or siblings, if they have filed an Application for Release of Adopted Name.
- Request for the adoption file by adoptee or lineal descendants to receive contents of adoption file (final decree of adoption/certificate of adoption; original birth record; any releases previously filed; social/medical history form; contact preference form, if any; redaction form, if any; application for release of adopted name)
- Contact person: Rena Boler; rena.boler@odh.ohio.gov; 614.466.253



Adopted after 1996:

- If adoptee is between ages of 18 and 21, adoptive parent(s) may request adoption file. [R.C. 3107.47]
- If adoptee is 21 or older, the records are open to the adoptee. [R.C. 3107.47]

- o Biological parents/siblings may submit an authorization of release of identifying information and can withdraw release at any time. [R.C. 3107.40 repealed, effective March 20, 2015]
- Adopted after 1996 or if between ages of 18 and 21, adoptive parent may request adoption file. [R.C. 3107.47]
- If adoptee is 21 or older, the records are open to the adoptee. [R.C. 3107.4]

- Regardless of date of adoption, and upon request to the court, the Social/Medical History Form maintained by the court may be inspected by the adoptive parents during the minority of adopted person, or only by the adopted person once he/she reaches the age of majority

OPEN ADOPTIONS

- Profiles of prospective adoptive parents may be shown to birth parent. [R.C. 3107.61]
- Does not provide for birth parent to maintain parental authority or control. [R.C. 3107.065(A)(1)]

REFINALIZATION OF FOREIGN ADOPTION

[R.C. 3107.18(A) and (B)]

- Child born in foreign country is placed with adoptive parent(s) in this state for purpose of adoption and if adoption was previously finalized in country of child's birth, adoptive parents may file petition in probate court in their county of residence requesting court issue a final decree of adoption or interlocutory order of adoption pursuant to R.C. 3107.14
- Proof of finalization of adoption outside U.S. is prima-facie evidence of consent of parties who are required to give consent even if foreign decree or certificate of adoption was issued with respect to only one of two adoptive parents who seek to adopt child in this state.
- Visa IH-4 or IR-4
- Cases where adoption completed prior to adoptive parents seeing the child, often by use of proxy or power of attorney
- Ohio recognizes the adoption of child, with or without citizenship attaching. Ohio gives full faith and credit to a foreign decree for child legally residing in the state
- Upon completion of adoption, couple must file with Bureau of Citizenship and Immigration Services to obtain citizenship for the child

- IH-4 Visa if child was adopted from a Hague country and the adoption was finalized in the United States or an IR-4 Visa if the child was adopted from a non-Hague country and the adoption was finalized in the United States
- Need all of above information

REGISTRATION OF FOREIGN BIRTH RECORD [R.C. 3107.18(C)]

- Person who has adopted child pursuant to decree or certificate of adoption recognized in this state that was issued outside the U.S. can request the court of county in which person resides to order the department of health to issue a foreign birth record for the adoptive person under R.C. 3705.12(A)(4)
 - o Court may specify change of name for child and if physician recommended a revision of birth date, a revised birth date
 - o Court shall send to department of health: order and copy of foreign adoption decree or certificate of adoption and, if not in English, a certified translation
- Visa IH-3 or IR-3
- Each adoptive parent personally observed child prior to adoption finalization and child is less than 16 years old
- Child becomes citizen upon going through customs in U.S. airport
- IH-3 Visa if child was adopted from a Hague country and the adoption was finalized in that country or an IR-3 Visa if the child was adopted from a non-Hague country and the adoption was finalized in that country
- Foreign Adoption Decree Translation
- Foreign Birth Certificate Translation
- Documentation regarding immigration status

**See www.USCIS.gov (US Citizenship & Immigration Services).*

PUTATIVE FATHER REGISTRY [R.C. 3107.064]

- Court shall not issue final decree or finalize interlocutory order unless, pursuant to R.C. 3107.063, a certified document from the Ohio Department of Job & Family Services is filed, which must be dated 31 or more days after date of minor's birth.
- This document not required if any of following apply:
 1. Mother was married at time minor was conceived or born
 2. Parent placing minor for adoption previously adopted the minor
 3. Prior to date petition is filed, a man has been determined to have a parent and child relationship with minor by court pursuant to R.C. 3111.01 to 3111.18, by court proceeding in another state, administrative agency proceeding pursuant to R.C. 3111.38 to 3111.54, or administrative agency proceeding in another state
 4. Minor's father acknowledged paternity of minor or
 5. Public children services agency has permanent custody of minor pursuant to R.C. 2151 or R.C. 5103.15(B) after both parents lost or surrendered parental rights, privileges and responsibilities over minor.

GUARDIANSHIP

- Guardianship
- Emergency Guardianship



FILINGS

1. SPF 15.0: Next of Kin of Proposed Ward
2. SPF 15.01: Judgment Entry Setting Hearing on Application for Appointment of Guardian
3. SPF 15.1: Waiver of Notice and Consent
4. SPF 15.2: Fiduciary's Acceptance – Guardian
5. SPF 15.3: Guardian's Bond
6. SPF 15.4: Letter of Guardianship
7. SPF 15.5: Guardian's Inventory
8. SPF 15.9: Oath of Guardian
9. SPF 17.1: Statement of Expert Evaluation
10. SPF 17.7: Guardian's Report
11. SPF 17.8: Court Investigator's Report on Proposed Guardianship

JURISDICTION & VENUE [R.C. 2111.02(A)]

Proposed ward has residence in this county.

NOTICE/SERVICE [R.C. 2111.04]

Notice provided to the ward, next of kin, and other interested persons.

PROPOSED WARD'S RIGHTS [R.C. 2111.02(C)(7)]

1. The right to be represented by independent counsel of the proposed ward's choice.
2. The right to have a friend or family member of proposed ward's choice present.
3. The right to have evidence of an independent expert evaluation introduced.
4. If the proposed ward is indigent, upon the proposed ward's request:
 - a. The right to have counsel and an independent expert evaluator appointed at court expense; and
 - b. If the appointment of a guardian is appealed, the right to have counsel appointed and necessary transcripts prepared at court expense.

HEARING REQUIREMENTS [R.C. 2111.02(C)]

1. Requirements:
 - a. Prior to the appointment of a guardian or limited guardian under division R.C. 2111.02(A) or (B)(1) of this section, the court shall conduct a hearing on the matter of the appointment.
 - b. Any proposed guardian shall appear at the hearing.
 - c. All appointed guardians of the estate shall swear under oath that the guardian:
 - i. will fulfill the duties of a guardian; and [R.C. 2111.13]
 - ii. in addition, guardians of the estate shall swear under oath that the guardian has made and will continue to make diligent efforts to find and report all assets belonging to the estate of the ward in a true inventory in accordance with R.C. 2111.14 and will faithfully and completely file timely and accurate reports and accountings.
 - d. If the hearing is conducted by a magistrate, the procedures set forth in Civ.R. 53 shall be followed.
 - e. The burden of proving incompetency shall be on the applicant for appointment as guardian and shall be by clear and convincing evidence.
 - f. Upon request of any interested party, a recording or record of the hearing shall be made.
2. Is the proposed ward incompetent? [R.C. 2111.01(D) and 2111.02(C)(3)]
 - a. Expert evaluation [R.C. 2111.031; Sup.R. 66(A)]
 - b. Investigator's report [R.C. 2111.041]
 - c. Other interested parties
 - d. Other evidence

3. Are there less restrictive alternatives? [R.C. 2111.02(C)(5) and (6)]
 - a. The court may deny a guardianship based upon a finding that a less restrictive alternative to guardianship such as the following exists:
 - i. Durable General Power of Attorney;
 - ii. Health-Care Power of Attorney;
 - iii. Living Will; or
 - iv. Conservatorship. [R.C. 2111.021]
4. Is the applicant a suitable person/agency to serve as guardian? [R.C. 2111.02(C)(1)]
 - a. Residency [R.C. 2109.21(C)]
 - b. Prior criminal record [R.C. 2111.03]
 - c. Civil background check
 - d. Caseload of guardianships of the guardian.

PRIOR TO THE MONITORING HEARING

1. Notice of the hearing shall be sent at least 7 days prior to the: [R.C. 2111.04]
 - a. ward;
 - b. next of kin; and
 - c. other interested persons.
2. Is the most recent guardian's report timely and has it been reviewed? [R.C. 2111.49(A) and (B)]; [Sup.R. 78]
3. Is the most recent Statement of Expert Evaluation within 3 months prior to the date of the report and has it been reviewed? [R.C. 2111.49(A)(1)(i)]
4. Is a Guardian ad litem required? [R.C. 2111.23]; [Sup.R. 65(D)]
5. Is an updated investigation required? [R.C. 2111.49(A)(2)]
6. Should the ward be present? Is the ward able to be present? [R.C. 2111.49(B) and (C)]

7. Are there any unique logistical concerns for the case (security considerations, court interpreter, mobility accommodations, participant separation)?
8. What triggered the need for a hearing (nature of complaint received by the court, changing guardian's status, change in the ward's capacity, or family conflicts)? [R.C. 2111.49]

MONITORING HEARING

1. Address any issues raised by the Statement of Expert Evaluation (change in diagnosis) [R.C. 2111.49(A)(1)(e)]
2. Address any issues raised by the guardian's report. [R.C. 2111.49]
 - a. Is the guardian still living in the county?

In re Guardianship of Santrucek, 120 Ohio St.3d 67, 2008-Ohio-4915, 896 N.E.2d 683; In re Guardianship of Replogle, 164 Ohio App.3d 54, 2005-Ohio-5530, 841 N.E.2d 330 (2d Dist.); State ex rel. Florence v. Zitter, 106 Ohio St.3d 87, 2005-Ohio-3804, 831 N.E.2d 1003.
 - b. Has there been any legal proceedings involving either the ward or the guardian? If living at home, has there been any legal proceedings involving anyone living in the home? [R.C. 2111.17, 2111.18, 2111.181, and 2111.19]; [Sup.R. 65(D), 68, and 69]
3. If not living with the ward, address the frequency, nature and duration of guardian contact with the ward. [R.C. 2111.49(A)(d)]
4. Inquire if there any significant celebratory or special events that have occurred since the last report.
5. Inquire if there are any changes in the status of guardian: [R.C. 2111.49]
 - a. Change of living arrangement:
 - i. Guardian must provide current address in guardian's report; and [R.C. 2111.49(A)(1)(b)]
 - ii. Residency requirement of guardian. [R.C. 2109.21(C)]

- b. Health
 - c. Functioning
 - d. Parenting issues
 - e. Employment
 - i. Conflict of interest for person providing services to a ward to serve as guardian of ward. [R.C. 5123.93]
 - f. Criminal record
 - g. If a public guardian, inquire into the current caseload size.
 - i. Guardian's report shall include number of times guardian has visited with Ward during the period. [R.C. 2111.49(A)(1)(d)]
7. Is there a change in the ward's financial status (inheritance, lump-sum Social Security payment, lottery winnings, or other)?
- a. Duties of guardian of estate [R.C. 2111.14]
 - b. Investment powers [R.C. 2109.37]
 - c. Deposit of funds [R.C. 2109.41]
8. Are any of the following necessary?
- a. Funeral arrangements:
 - i. *Simpson v. Holmes*, 106 Ohio St. 437, 140 N.E. 395 (1922): legal effect of the guardianship ends upon the death of a ward.
 - ii. *State ex rel. Beedle v. Kiracofe*, 176 Ohio St. 149, 194 N.E.2d 61 (1964): a guardian has the power after the ward's death to make a proper accounting and settlement of any acts taken in regard to the ward's assets.
 - iii. Consent for autopsy. [R.C. 2111.13(D) and (F)]
 - iv. Disposition of ward's remains. [R.C. 2111.13(E) and (F)]
 - b. Guardianship plan
 - c. Financial management plan
 - d. An inventory of all important legal documents:

- i. Duties of guardian of estate; and [R.C. 2111.14]
 - ii. Evidence to support inventory, and verification of inventory. [R.C. 2111.141]
- e. Establishment of a will
 - f. Other (land sale)
 - i. Completion of real property contracts. [R.C. 2111.19]
9. Closing
- a. Should a follow-up review be set?
 - i. Hearings for guardianship. [R.C. 2111.49(C)]
 - b. Review the duties of the guardian. (report due dates)
 - i. Probate court powers of guardianship [R.C. 2111.50]
 - ii. Guardian's report and court intervention [R.C. 2111.49]
 - iii. Duties of guardian of person [R.C. 2111.13]
 - iv. Duties of guardian of estate [R.C. 2111.14]
 - c. Inform the guardian that they may be required to have contact with the court investigator.
 - i. Duties of guardian of person [R.C. 2111.13]
 - ii. Court intervention in guardianship [R.C. 2111.49(A)(2)]
 - iii. Investigating circumstances of alleged incompetent. [R.C. 2111.041]
 - d. Remind participants that at any time a monitoring hearing can be set by the court or at the request of the guardian or other interested person. [R.C. 2111.49(C)]

ADDITIONAL REVIEW ITEMS FOR GUARDIAN OF THE ESTATE

- 1. Should the representative payee status be changed to guardian of the estate, from guardian of the estate, or bifurcated?
 - a. Appointment of guardian [R.C. 2111.02]
 - b. Duties of guardian of person and estate [R.C. 2111.15]

- c. Probate court powers of guardianship [R.C. 2111.50]
- 2. Is the posted bond adequate and maintained?
 - a. Bond [R.C. 2109.04]
 - b. Bond conditions – guardians [R.C. 2109.12]
 - c. New or additional bond [R.C. 2109.06]
- 3. Has a separate bank account been established accessible only by the guardian?
 - a. Deposit of funds [R.C. 2109.41]
- 4. Address issues, if any, arising from the annual account (unauthorized expenditures, lack of receipts)
 - a. Verification of inventory [R.C. 2111.141]

OTHER CONSIDERATIONS

1. Master Commissioners – appointment, bond, and duties [R.C. 2101.06]
2. Jurisdiction of probate court [R.C. 2101.24]
3. Removal of fiduciary [R.C. 2109.24]
4. Appointment of guardian [R.C. 2111.02]
5. Court intervention in guardianship [R.C. 2111.49(B)]
6. Probate court powers of guardianship [R.C. 2111.50]
7. Jurisdiction and other states [R.C. 2112.]

FILINGS

1. SPF 17.1: Statement of Expert Evaluation
2. SPF 17.1A: Supplement for Emergency Guardian of Person
3. SPF 15.4: Letters of Guardianship

VENUE

Filed in the county in which the ward resides or has legal settlement

GROUND S

1. Minor or incompetent has not been placed under guardianship pursuant to R.C. 2111.02(A)
2. An emergency exists; and
3. It is reasonably certain that immediate action is required to prevent significant injury to person or estate of minor or incompetent.

APPLICATION

1. Notice of emergency presented to court



There are no Standard Probate Forms for emergency guardianship proceedings other than noted above.

HEARING/NOTICE OF HEARING

1. Court may issue an emergency order ex parte

ORDER

1. Court may issue an order, ex parte, at any time after it receives notice of the emergency

2. Court may issue any order considered necessary to prevent injury to person or estate of minor or incompetent; or
3. Court may appoint an emergency guardian for maximum of 72 hours
4. Order shall be served upon incompetent or minor as soon as possible after issuance
 - a. Failure to serve order after issuance or prior to taking of any action under its authority does not invalidate the order or actions taken
5. Letters of appointment shall specify powers of an emergency guardian
 - a. Powers limited to those necessary to prevent injury to person or estate of minor or incompetent
6. Court shall enter upon the journal:
 - a. A record of case; and
 - b. Specific reasons for acting ex parte or without notice

EXTENSION

1. Extension may be granted by court:
 - a. For good cause shown; and
 - b. After notice to minor, or incompetent, and interested parties; and
 - c. After a hearing.
2. Extension may be granted for specific period, but not exceeding additional 30 days



MISCELLANEOUS

- Minor Settlements
- Name Change

MISCELLANEOUS



FILINGS

1. SPF 22.0: Application to Settle a Minor's Claim and Entry Setting Hearing
2. SPF 22.1: Waiver and Consent to Settle Minor's Claim
3. SPF 22.2: Entry Approving Settlement of a Minor's Claim
4. SPF 22.3: Verification of Receipt and Deposit
5. SPF 22.4: Report of Distribution and Entry of a Minor's Claim

APPLICATION

1. Brought by guardian of the estate or parent or the custodial parent if the court dispenses with the need for a guardian. [Sup.R. 68(A)]
2. Captioned in the name of the minor. [Sup.R. 68(A)]
3. Shall be accompanied by: [Sup.R. 68(B)]
 - a. A current statement of an examining physician stating the injuries sustained, the extent of recovery, and the permanency of any injuries.
 - b. The existence and amount of additional consideration being paid to persons other than the minor as a result of the incident causing injury.
 - c. The arrangement, if any, that has been made with respect to counsel fees (subject to court approval).

NOTICE

Noncustodial parents are entitled to 7 days notice. The notice may be waived. [Sup.R. 68(A)]

PRESENCE AT THE HEARING

Both the injured minor and the applicant are to be present at the hearing. [Sup.R. 68(C)]

The court has the ability to waive the appearance of the minor for good cause. [Sup.R. 76]

APPOINTMENT OF GUARDIAN

1. Either parent or the custodian of the minor can apply. The court does not favor co-guardians.
2. The guardianship and settlement applications can be heard at the same time.
 - a. Exception: If the minor is over the age of 14, then personal service on the minor for the appointment of his or her guardian is required. A minimum of 7 days notice is required and cannot be waived. [R.C. 2111.04(A)(1)(a)]
3. Guardians may be required to give a bond. [R.C. 2111.38]

ESTATE \$25,000 OR LESS

1. If the net proposed settlement of the claim is \$25,000 or less after payment of fees and expenses as allowed by the court, the court, upon application by any suitable person whom the court may authorize to receive and receipt for the settlement, may authorize without the appointment of a guardian. [R.C. 2111.18]
2. The court may authorize the delivery of monies in the following manner:
 - a. In a depository authorized to receive fiduciary funds, payable to the guardian when appointed, or to the ward when the ward attains majority; or
 - b. To the natural guardian of the minor, to the person by whom the minor is maintained, to the executive director of children services in the county, or to the minor's own self. [R.C. 2111.05]

ESTATE NOT MORE THAN \$10,000 [Sup.R. 67]

1. Each application shall indicate the amount of money or property to which the minor is entitled and to whom such money or property shall be paid or delivered.
2. The attorney representing the interests of the minor shall prepare an entry that orders the following:
 - a. The deposit of funds in a financial institution in the name of the minor;
 - b. Impounding the principal and interest;
 - c. Releasing the funds only upon an order of the court or to the minor at the age of majority.
3. The entry order shall be presented at the time the entry dispensing with appointment of a guardian or approving settlement is approved.
4. The attorney shall be responsible for depositing the funds and for providing the financial institution with a copy of the entry.
5. The attorney shall obtain a Verification of Receipt and Deposit (SPF 22.3) from the financial institution and file the form with the court within seven days from the issuance of the entry.

RELEASE

The court may authorize the person receiving the moneys to execute a complete release on account of the receipt. The payment shall be a complete and final discharge of that claim. [R.C. 2111.18]

WAIVER BY MINOR'S PARENTS

The parent(s) of the minor may waive all claims for damages on account of loss of service of the minor, and that claim may be included in the settlement. [R.C. 2111.18]

FILINGS

MINOR NAME CHANGE:

SPF 21.2: Application for Change of Name of Minor

SPF 21.2 (*On reverse side of SPF 21.2*): Judgment Entry

SPF 21.4: Consent to Change of Name

SPF 21.5: Notice of Hearing on Change of Name

SPF 21.3: Judgment Entry – Change of Name of Minor

ADULT NAME CHANGE:

SPF 21.0: Application for Change of Name of Adult

SPF 21.0 (*On reverse side of SPF 21.0*): Judgment Entry Setting Hearing/Ordering Notice

SPF 21.5: Notice of Hearing on Change of Name

SPF 21.1: Judgment Entry – Change of Name of Adult

VENUE

Application is filed in the county in which the person resides.

TIME FRAME

Applicant shall be a bona fide resident of that county for at least one year prior to the filing of the application.

APPLICATION

1. Made by person desiring change of name.
2. Made on behalf of a minor by either of minor's parents, legal guardian, or guardian ad litem.
3. Shall set forth cause for which change of name is sought.
4. Shall set forth requested new name.
5. Requires the applicant to state whether he/she has a duty to comply with **R.C. 2950.04** or **2950.041** because he/she was convicted

of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.

6. Requires the applicant to state whether he/she has pleaded guilty to, been convicted or, or been adjudicated a delinquent child for committing violation of **R.C. 2913.49** (identity fraud) unless the guilty plea, conviction, or adjudication has been reversed on appeal.

NOTICE OF HEARING

1. Once by publication in a newspaper of general circulation in the county at least thirty days before the hearing.
 - a. If applicant submits to the court satisfactory proof that publication of notice would jeopardize personal safety, then:
 - i. Court shall waive notice requirement.
 - ii. If Court orders change of name, Court shall order record of proceeding sealed and opened only by order of the court for good cause shown or at request of applicant for any reason.
2. Additional requirements for a minor:
 - a. Notice given to parent or parents not consenting by certified mail, return receipt requested, or:
 - i. If no known father of minor, notice given to person who mother of minor alleged to be father.
 - ii. If no father is alleged or either parent or address of either parent is unknown, notice by publication is sufficient as to father or parent.
 - iii. Any additional notice required may be waived in writing by any person entitled to the notice.



Question applicant/attorney if he/she has exhausted all means of locating a non-consenting parent, including contacting CSEA for a current address.

ENTRY

1. Court may order change of name:
 - a. Upon proof that proper notice was given or that notice was waived.
 - b. Upon proof that the facts in application show reasonable and proper cause.
 - i. For a minor’s name change, all factors relevant to the best interest of the child should also be considered.
2. Court shall NOT order change of name if:
 - a. Person applying or for whom application is made has a duty to comply with **R.C. 2950.04** or **2950.041** because was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.
 - b. Person applying or for whom application is made has pleaded guilty to, been convicted or, or been adjudicated a delinquent child for committing violation of **R.C. 2913.49** unless the guilty plea, conviction, or adjudication has been reversed on appeal.



Court has discretion to deny the application and reasons for denial should be stated on the record.
 Discretionary factors include:

- a. Potential for fraud
- b. Interferes with rights of other
- c. Allows the applicant to avoid a legal duty
- d. Change is contrary to strong public policy of Ohio

3. A certified copy of entry ordering change of name shall be sent to the Vital Statistics Office of the state of birth. **[R.C. 3705.13]**



It is the discretion of the court whether it will require applicant to perform this function or if court will do so, because the statute does not specify.)