

## **BEING THOROUGH TO CLOSE THE ESTATE WITHOUT A HITCH**

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### **A. ALTERNATIVE METHODS: KNOWING YOUR OPTIONS**

Probate Forms 13.0 and 13.1 are used to prepare the accounts for the estate. An accounting is an itemized statement of all receipts and disbursements and distributions that have occurred during a particular accounting period. It also includes an itemized statement of all assets held by the fiduciary at the end of the accounting period. It is a very detailed statement of the financial activities of the fiduciary during this period. It is intended to inform the probate court, the beneficiaries, creditors and other interested persons of the status of the estate and of the fiduciary's activities with regard to the estate.

**1. Release from Administration.** If the estate is eligible for a release from administration under Ohio Revised Code §2113.03, the court appointed commissioner will file a Report of Distribution. Form 5.9.

**2. Summary Release for Administration.** If the estate is eligible for a summary release from administration under Ohio Revised Code §2113.031, the Entry Granting Summary Release for Administration will close the estate. Form 5.11.

**3. Certificate of Termination.** If the Executor or Administrator of the estate is also the sole beneficiary of the estate, a Certificate of Termination may be filed to close an estate. Form 13.6. Ohio Revised Code §2109.301(B)(2).

**4. Full Administration.** If the estate does not qualify for any of the foregoing methods, there may be several different accounts. If the estate is not ready to be entirely closed, there may be a partial account required. Alternatively, there is the final account.

The general rule is that a final and distributive account must be filed within six months after appointment of the Executor or Administrator unless one of six exceptions applies. These exceptions include:

- (1) An Ohio Estate Tax Return must be filed for the estate;
- (2) A will contest under Ohio Revised Code §2107.71 has been commenced;
- (3) The surviving spouse has elected to take against the will;
- (4) The Executor or Administrator is a party in a civil action;
- (5) The estate is insolvent;
- (6) For other reasons subject to Court approval it would be detrimental to the estate and its beneficiaries to file a final and distributive account.

If a final and distributive account is not required within six months of appointment, then Ohio Revised Code §2109.301(B)(3) provides that the initial account is due within thirteen months of appointment of the fiduciary unless a certificate of termination is filed. Thereafter, an account must be filed at least annually. A final account must be filed within 30 days after completing the administration of the estate.

Notwithstanding the foregoing, the Court on its own motion or on the motion of any interested person and for good cause shown may order any fiduciary to file an account at any time. Ohio Revised Code §2109.301(A).

**B. TIMING OF DISTRIBUTIONS - HOW LONG DO YOU HAVE TO WAIT UNTIL YOU GET YOUR MONEY?**

One of the first questions from clients about the administration of the estate is how long will this take? Usually this means when do I get my money? Of course, the answer is "it depends". It depends on how complicated the estate is, what claims of creditors there are, whether there are disagreements among the estate beneficiaries, if there is only one beneficiary, etc. For example, if there is only one beneficiary and that beneficiary is the surviving spouse and the surviving spouse is the Executor of the estate, the administration can be completed fairly quickly. However, if the decedent left no will and has potential heirs that are difficult to find, the process may be very long.

Usually at the first meeting I tell the client that the probate administration could take as long as a year, depending on whether an Ohio estate tax return and a federal estate tax return will be filed. It should be stressed to the clients that their cooperation and good record keeping will help speed the process of administering the estate.

Ohio Revised Code §2113.53 states that the fiduciary may distribute assets "anytime after the appointment". If the fiduciary is the sole beneficiary, the courts may allow the closure of the estate as soon as the inventory is prepared and filed. Otherwise, the courts will usually allow closure after the will contest period expires. Our practice is to generally delay distributions until the estate tax has been paid and until we are sure that all of the bills have been paid.

Since Ohio estate tax returns are only required if the estate is greater than \$338,333 many estates will be able to close at an earlier time. The Ohio estate tax is repealed effective January 1, 2013, so the majority of estates will be able to close within six months in the near future.

If the fiduciary decides that a distribution should be made to the beneficiaries before the estate will be closed, the fiduciary should make sure he keeps enough assets in the estate to pay debts, including attorneys' fees and taxes. If a partial distribution is made, it may be subject to the claims of creditors and the beneficiaries may have to return all or part of the property. For this reason the fiduciary must provide notice to the distributees of their potential liability to the estate. If the fiduciary does not maintain enough funds to cover valid claims or spousal elective shares, he may be personally liable for the difference depending on when the distributions were made. If the distribution is made within three months of death, he is liable only for those claims filed within that time period. If the distribution is made before one year from the date of death, he is liable only for those claims filed prior to distribution and within the statutory claims period.

**C. TRANSFERRING JOINTLY HELD ASSETS**

Real estate held jointly with right of survivorship is transferred by filing an affidavit of survivorship with an attached death certificate with the county recorder.

For bank accounts which are held jointly with right of survivorship, the co-owner should take the death certificate to the financial institution to have the accounts transferred. If the value of the account is more than \$25,000 and the co-owner is not the surviving spouse, a tax release may be required.

**D. TRANSFERRING OTHER PROBATE AND NON-PROBATE ASSETS**

**1. Probate Assets.** Probate assets must be included on the probate account. The fiduciary should obtain a receipt or a cancelled check for each distribution.

**2. Specific Bequests.** Specific bequests included in a will may be distributed any time after the fiduciary is appointed. Again, a receipt or cancelled check for each such distribution should be obtained to be filed with the probate account.

**3. Motor Vehicles.** An application for transfers of motor vehicles should be filed with the probate court. This identifies the transferee, the vehicle and its approximate value. The court will issue an order authorizing the transfer and the transferee will need to take the order, the title, possibly a copy of the fiduciary's letter of authority and the death certificate to the title department. The title should be completed and signed by the fiduciary and notarized.

**4. Real Estate.** For real estate that is included in the probate estate, an application for certificate of transfer is filed with the court. This document is also presented to the county recorder for recording.

**5. Stocks Certificates and Brokerage Accounts.** For certificated shares the original certificates must be delivered to the transfer agent along with a copy of the letters of authority, certified within sixty days, an affidavit of domicile, a stock power with signature guaranteed, a letter of instruction listing the name, address and tax identification number of the distributee and if the value of the stock is greater than \$25,000, a tax release. For a brokerage account the letter of instruction should specify the name and quantity of each stock and to whom it should go. Many transfer agents have specific forms that they require to be completed. These can usually be obtained by telephone request or some may be obtained on the website.

## **E. HANDLING DISTRIBUTIONS TO MINORS AND TRUSTS**

**1. Minors.** When funds due to a minor originate from a bequest under a will, an inheritance or a distribution from a trust and the amount due to the minor is less

than \$10,000 no guardian needs to be appointed. The funds may be transferred into an Ohio Transfers to Minors Account. If the amount is greater than \$10,000, then a guardian must be appointed for the estate of the minor. The estate fiduciary then transfers the funds to the guardian. These guardianship funds remain under court supervision until the minor reaches the age of eighteen.

**2. Trusts.** Transfers to trusts can be accomplished simply by transferring the assets into the name of the trustee in his capacity as trustee. These are accomplished the same as the transfer to an individual. The trust should have its own tax identification number and the institution may require a copy of the trust document or a certification of the trust. If real estate is being transferred to a trust, the real estate would be transferred to \_\_\_\_\_, Trustee of the \_\_\_\_\_ Trust. In addition, a memorandum of trust should be recorded along with the deed or certificate of transfer. This memorandum confirms that the trust exists and it lists the powers of the trustee relative to the real estate.

## **F. ACCOUNTING AND SETTLEMENT OF THE ESTATE**

It is important to have very good records for the preparation and filing of an account. We will request that we retain the checkbook to make sure that we have the cancelled checks and the proper documentation for all checks that are written. If you cannot convince the fiduciary to allow you to keep the checkbook, you may request duplicate copies of the account statements and all cancelled checks or request that the fiduciary forward those to you on a regular basis. You should also compare the account with the inventory to make sure that you have not missed anything on the account. Ohio Revised Code §2109.32(B)(1) requires the Executor or Administrator to provide a copy of the account to each heir of an intestate estate and to each beneficiary of a testate estate. All estates must be set for hearing. Usually these are paper hearings, but some courts

require that notice of the hearing be sent to all interested parties unless notice is waived. If all of the waivers are filed, no formal hearing is held.

As I mentioned Form 13.0 is the fiduciary's account. This contains the overview and recapitulation of the account. On the first page, the Executor indicates what type of account is being filed, the time period for the account and whether any prior accounts were filed. On page two the recapitulation lists the receipts, disbursements and distributions of the estate according to the broad categories listed on the form. Finally, the value of the balance of the assets remaining in the fiduciary's hands at the end of the accounting period is shown. Form 13.1, Receipts and Disbursements, provides a detailed list of all receipts, disbursements and distributions of the estate during the accounting period. Although the Ohio Revised Code does not require an Executor or Administrator to exhibit vouchers to prove their accounts, many courts require vouchers to be exhibited. Hamilton County does not require vouchers to be filed with the account, but vouchers must be produced to the accounts clerk as supporting documentation. These vouchers commonly are a cancelled check or a receipt.

If the account is a partial account, Form 13.2 must also be filed. This form provides an itemized list of the assets still in the hands of the Executor or the Administrator.

Form 13.3 is the Entry Approving and Settling the Account. If the account is a distributive or a final and distributive account, the court may discharge the Executor or Administrator and may also order termination of the bond.

Form 13.5 is the Notice of Hearing on Account and is used to serve notice of the hearing on the account to interested persons. The notice of the hearing must be served at least fifteen days prior to the hearing and must set forth the time and place of the hearing, the account to be considered and acted upon, the time period covered by the account, a

statement to the person being notified that he or she is to examine the account, inquire into the contents of the account and to all matters that may come before the court at the hearing and a statement that exceptions to the account must be filed at least five days before the hearing on the account and that, upon the individual's failure to file exceptions the account may be approved without further notice. Hamilton County Probate Court Local Rule 64.1(J) provides that service of notice of hearing on all accounts may be made by ordinary mail or by personally delivering a copy of the notice to the person entitled to receive it. Evidence of notice shall be documented by the filing of an "Affidavit of Service" which sets out the manner of service. This Local Rule also requires notice of hearing on the final account to be served upon all heirs in an intestate estate, all residuary beneficiaries of a testate estate, counsel for those individuals and, if a charitable trust is created, the Ohio Attorney General, Charitable Division.

Form 13.6 is the Certificate of Termination which may be filed in lieu of an account if the Executor or Administrator is also the sole legatee, devisee or heir.

**G. COMPENSATION AND DISCHARGE OF THE PERSONAL REPRESENTATIVE**

The order of the court approving and settling the final account also includes the discharge of the fiduciary. This is the final order and discharges the fiduciary of all further obligation toward the estate and its beneficiaries. It also discharges the surety, allowing the fiduciary to receive a refund for any unused bond premium.

An Executor is also entitled to compensation. The amount of compensation is set forth by statute in Ohio Revised Code §2113.35 and Sup R 72. The commission is four percent of the first \$100,000, three percent of the estate above \$100,000 but less than \$400,000, and two percent of the estate over \$400,000. The commission is calculated on the amount of all the personal estate including the income from the personal estate that is



received and accounted for by the fiduciary and upon the proceeds of real estate that is sold. Executors and Administrators may be allowed a commission of one percent on the value of real estate that is not sold and on all property that is not subject to administration but that is includable for purposes of the Ohio estate tax return, excluding joint and survivorship property. Generally there is no application for a commission. The Executor's commission is shown as a disbursement on the final account for the estate.