

**CONSIDERATIONS FOR COLLECTING THE ASSETS, PREPARING THE  
INVENTORY AND HANDLING CLAIMS AGAINST THE ESTATE**

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**A. PRACTICAL PROCEDURES FOR OPENING ESTATE ACCOUNTS**

The assets of the estate must be deposited in an interest bearing account or invested. The decedent's accounts must be transferred to a new account in the name of the estate. Generally, the account will be titled "John Doe, Executor of the Estate of Mary Doe." In order to open the account, the executor or administrator will need his certified letters of authority, a tax identification number for the estate and proof of his identification, such as a driver's license.

The institutions holding the decedent's accounts may require several documents before they will transfer or close the account. These may include a certified letter of authority, an affidavit of domicile, a death certificate, a stock power, a letter of instruction, a tax release and the tax identification number for the estate.

**B. OBTAINING TAX IDENTIFICATION NUMBER AND TITLE TO ASSETS**

**1. Tax Identification Number.** An estate is an independent entity separate from the decedent and the executor, so the estate requires its own Tax Identification Number (also referred to as an Employer Identification Number or EIN). Once appointed the Executor or Administrator should complete Form SS-4 and obtain a tax identification number for the estate. Form SS-4 and its instructions are available on the Internal

Revenue Service website. The form may be filed by mail, by fax, over the phone or online.

**2. Title to Assets.** You must determine how the decedent's assets are titled. Some attorneys may send a questionnaire to be completed by the client. You must evaluate whether your client will find this helpful or whether it will be too much. A sample form is attached as Exhibit A.

The best source of information regarding a decedent's assets will be the surviving spouse, if any.

a. **Income Tax Returns.** I usually request the last three years of income tax returns. These can provide information about accounts and other assets. If a 1099 was received, you can verify if the decedent still owned the asset at the time of death.

b. **Social Security.** The social security administration should be notified if the decedent was receiving social security benefits. The check you receive at the beginning of the month is for the previous month. You must survive the entire month to receive benefits. For example, if a person dies on December 30, the estate must return the social security check received in January. If the check was directly deposited into a bank account, the social security administration will issue a reclamation order to the bank.

The surviving spouse of a decedent is entitled to a death benefit of \$255 from social security.

c. **Pension.** If the decedent was receiving a pension, there may be survivor benefits or assets payable to the estate.

d. Bank Accounts, Etc. All bank accounts, brokerage accounts, savings bonds, etc. should be reviewed to determine if the assets are probate assets or whether they pass to a beneficiary outside of probate. Even though an asset may pass directly to a beneficiary, it may be included in the decedent's taxable estate.

e. Life Insurance. Life insurance policies should be reviewed to determine whether or not a beneficiary is named. Ohio Revised Code §5731.12 provides that life insurance payable to a named beneficiary is not included on Ohio estate tax returns. If a beneficiary is designated, the life insurance is not a probate asset.

You will need to find out whether the decedent owned any insurance on the life of another.

f. IRAs and 401(k)s. These plans should be reviewed to determine whether a beneficiary is named. Even though these may be non-probate, they are usually included in the estate tax return. However, certain plans are excluded under Ohio Revised Code §5731.09. For example, this statute excludes the value of an employee plan to the extent assets were contributed by the employer, if the contributions were made by reason of the decedent's employment.

g. Deeds. All deeds should be reviewed to determine title to the real estate.

### **C. CANCELING UTILITIES AND CREDIT CARDS**

As soon as practical, the Executor should cancel utilities and credit cards. If necessary to preserve the real estate, utilities such as gas and electric and water should be maintained. However, within a few weeks of the Executor's appointment, cable service

and telephone service should be terminated or transferred to the surviving spouse or new owner of the real estate.

#### **D. BEST STRATEGIES FOR PREPARING THE INVENTORY**

The purpose of an inventory is to furnish a list of the property that belongs to the decedent and the value of such property. It is the beginning list of the assets of the estate that the probate court will track through the estate administration. The inventory only includes assets that were owned by the decedent in his individual name. It does not include non-probate property such as the joint and survivorship assets or property which passes outside of probate, such as life insurance with a beneficiary designation, retirement plans with a beneficiary designation, etc. It is important to note that property that is not included on the inventory may still be subject to Ohio and/or federal estate tax. Therefore, even though non-probate property does not need to be placed on the inventory, you will still need to account for and determine the value of non-probate property when it is potentially subject to either Ohio or federal estate tax. The probate forms to be used are Form 6.0, Inventory and Appraisal, and Form 6.1, Schedule of Assets.

Ohio Revised Code §2115.02 provides that the inventory must be filed within three months after the Executor or Administrator is appointed. The probate court may grant an extension for a good cause shown, but the request for an extension must be signed by the fiduciary.

The inventory should include the decedent's interest in all real estate located in Ohio. Ohio Revised Code §2115.02. It should also include tangible and intangible personal property of the decedent that is to be administered and of which the Executor is aware. Tangible personal property includes furniture, jewelry, and art. These are items that usually can be physically picked up or touched. Intangible personal property includes cash, stocks, bonds, bank accounts, etc. Ohio Revised Code §2115.02 provides that the assets are valued as of the date of death. Assets that have a readily ascertainable

value such as cash, a checking account, and a certificate of deposit, do not need to be appraised. The value of a car is readily ascertainable if you can determine its value in a book or online. We use Kelly's Blue Book to determine the value of a car. Their web site is [www.kbb.com](http://www.kbb.com). However, if you disagree with the blue book value, you may need to obtain an appraisal for the car. Automobiles that are transferred to the surviving spouse pursuant to Ohio Revised Code §2106.18 do not need to be included on the inventory.

The inventory must include a statement as to whether or not an Ohio estate tax return will be required. Ohio Revised Code §2115.09.

If a spouse survives and an inventory is going to be taken, that is an appraiser is coming to the home to value the property, then not less than five days before the inventory is taken the Executor or Administrator must serve written notice upon the surviving spouse stating the time and place of the taking of the inventory. This notice may be waived in writing by the surviving spouse. Ohio Revised Code §2115.04.

Ohio Revised Code §2115.06 provides that the real estate and personal property in the inventory must be appraised by a suitable disinterested person appointed by the Executor or Administrator subject to the approval of the court and sworn to a faithful discharge of his trust. It may be necessary to appoint more than one appraiser. For example, an appraiser may be required for commercial real estate, a different appraiser for residential real estate and another appraiser for art work, jewelry, antiques. Each appraiser is paid subject to the approval of the probate court. This is a cost of the estate. The appraiser's fee is sometimes set by local rule.

The appraiser must sign the inventory at the end. You may either submit an original signed appraisal to the probate court or the certification signed by the appraiser

that the appraisal is a true and accurate appraisal of the property. Ohio Revised Code §2115.15.

When the inventory is filed the probate court will schedule a hearing on the inventory to be held not more than one month after the date of filing. Ohio Revised Code §2115.16. The fiduciary may serve notice of the hearing or cause notice to be served upon any person who is interested in the estate.

Exceptions to the inventory may be filed at any time prior to five days before the date set for the hearing. This time limit does not apply in the case of fraud or concealment of assets. When exceptions are filed notice of the exceptions and the time of the hearing must be given to the Executor or Administrator and the fiduciary's attorney by certified mail or by personal service, unless notice is waived. At the hearing on the exceptions the fiduciary and any witness may be examined under oath. Exceptors may except to the improper inclusion or the exclusion of an asset or they may dispute the valuation of the asset.

If an inventory is not timely filed, the probate court shall issue an order requiring the Executor or Administrator to file an inventory. Ohio Revised Code §2115.03. If the inventory is not filed by the time set by the court, the court may remove the Executor or Administrator and issue new letters of authority. Ohio Revised Code §2115.03.

**E. MEDICARE, INSURANCE CLAIMS AND PUBLIC ASSISTANCE:  
UNDERSTANDING THE PAPERWORK INVOLVED**

Ohio's Medicaid program provides benefits to poor persons who are either age 55 or older, or who are disabled. If a decedent was 55 years of age or older at the time of his death or was permanently institutionalized, the decedent's executor or administrator must determine if the decedent was, at any time, a Medicaid recipient. If the individual was a

Medicaid recipient, the estate may be subject to the Medicaid Estate Recovery Program. The Medicaid Estate Recovery (“MER”) Program attempts to recover from the estates of Medicaid recipients what Medicaid paid for services provided to the recipient. The program is administered by the Ohio Department of Job and Family Services and the Ohio Attorney General’s Office. MER is only from the estates of Medicaid recipients aged 55 years or older in the amount of all Medicaid benefits correctly paid after the individual attained age 55 and Medicaid benefits correctly paid to a person of any age that was permanently institutionalized. If the decedent was a Medicaid recipient, the executor or administrator must complete a MER reporting form listing all of the assets that are part of the Medicaid recipient’s estate and must file the form with the probate court.

The MER estate is all real and personal property in which the recipient had a legal interest at the time of his death. The MER Program can only recover to the extent of the decedent’s interest in the property. The department will attempt to recover medical assistance only after the recipient's surviving spouse, if any, is deceased and only when the recipient has no surviving child under age 21 or blind or permanently and totally disabled. The department may waive recovery if it would cause undo hardship.

The method of MER recovery varies depending on the assets and whether a probate estate was opened. The ODJFS may file a creditor’s claim in a probate estate, an Affidavit of Facts Relating to Title for real estate, collections letters and Medicaid liens.

While ODJFS has the authority to impose Medicaid liens on real estate owned by Medicaid recipients during their lifetimes, they rarely exercise this option. Instead, ODJFS files Affidavits of Facts Relating to Title.

An Affidavit of Facts Relating to Title may be filed in the county recorder’s office to state the facts and amount of the MER claim. This puts a cloud on the title to the real

estate and forces the owners of the real estate to deal with the MER claim before selling the real estate.

**F. PRIORITY OF CONCERN: FOLLOWING THE CHAIN OF COMMAND  
IN ALLOWANCES, CLAIMS AND TAXES**

**1. Claims by Fiduciary.** An Executor or Administrator who has a claim against the decedent's estate must present his claim to the Probate Court for approval before the claim can be paid. Ohio Revised Code §2117.01. This claim will not have any priority over claims of the same class. It must be presented within three months of appointment.

If the claim is for \$500 or more, the court will set it for a hearing within four to six weeks. The fiduciary must give notice to all the heirs, legatees, or devisees interested in the estate, and to creditors named in the order. The notice must contain a statement of the amount claimed, designate the time of the hearing and it must be served at least twenty days before the hearing.

If anyone mentioned in the court order is not a resident of the county, the court may direct notice by publication or other notice.

**2. Claims by Someone Other Than a Fiduciary.** All creditors with claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether the debts are due or not due, secured or unsecured, liquidated or unliquidated should present their claims. Ohio Revised Code §2117.06(A). Examples of claims include: expenses of decedent's last illness, promissory notes, judgment lien creditors, rent, unsecured debts, and claims based on buy-sell agreements.



Some claims do not need to be presented. If the decedent provided for payment of a debt in his will, the creditor need not present a claim. If the fiduciary is a co-maker of a promissory note with the decedent and is aware of the holder's efforts to collect, the noteholder need not present a claim. Mortgage liens that were recorded prior to death need not be presented. If the Executor or Administrator has knowledge of a claim that has preference under state or federal law, the claim can be paid without presentment. These include expenses of administration and property taxes. In addition, the allowance for family support under Ohio Revised Code §2106.13 can be paid without presentment.

**3. Time for Presentment.** Generally, a claim must be presented within six months of the date of death. This is true whether or not the estate is released from administration and whether or not an Executor or Administrator has been appointed. An untimely claim is barred forever. Ohio Revised Code §2117.06.

You may accelerate the deadline by sending written notice to a potential claimant. The notice must identify the decedent by name, state the date of death of the decedent, identify the Executor or Administrator by name and mailing address, and inform the potential claimant that his or her claims must be presented to the Executor or Administrator in writing within thirty days after receipt of the notice or six months after the date of death, whichever is earlier.

If the Executor or Administrator distributes assets prior to six months after the date of death, he must give notice to the distributee that the distributee may be required to return all or part of the distribution if a timely, valid claim is subsequently made. Ohio Revised Code §2117.06(k).

**4. Presentment of Claims.** All claims must be presented in writing. The writing can be presented to the Executor or Administrator alone, to the Executor or Administrator and to the Probate Court, or in a writing addressed to the decedent that the

Executor or Administrator receives within six months of the decedent's death. This is usually a utility bill or credit card bill. If a claim is presented to the court, the court may not close the administration of the estate until the claim is either accepted or rejected.

**5. Contingent Claims.** This is a claim where the liability depends on some event which may or may not happen. A contingent claim must be filed by the later of one year after the date of death or two months after the cause of action accrues. Ohio Revised Code §2117.37. If the fiduciary has made a partial distribution at the time the claim is presented, and if the claim is allowed, the remaining estate assets must be exhausted before proceeding to recover against the distributees. Ohio Revised Code §§ 2117.38.

**6. Action on Presented Claims.** The Executor or Administrator has three months after presentation to accept or reject the claim. An exception is made for tax assessment claims. If the Executor does not allow or reject the claim within three months, that does not mean that he may not do so after that time.

When a creditor presents a claim, the Executor may require written proof in support of the claim. He may also require an affidavit of the claimant stating that the claim is justly due, that no payments have been made on the claim, that there are no counterclaims against it to the knowledge of the claimant, whether there is any security held for payment of the claim and the date of maturity of the claim. Ohio Revised Code § 2117.08.

If a creditor presents a claim to the probate court, the court may not close the administration of the estate until that claim is allowed or rejected.

The Executor or Administrator may allow a valid and legally enforceable claim on demand from the creditor. If the claim is allowed, the Executor must furnish the

creditor with a written statement of the fact and date of the allowance. A claim that has been accepted may later be rejected.

If the Executor disputes a claim he may enter into an agreement with the claimant to refer the matter in controversy to three disinterested referees. The referees must be approved by the probate judge. Ohio Revised Code § 2117.09. The referees will hear the matter and report their recommendation to the judge. The court may set aside the report of the referees, appoint other referees, or confirm the report and adjust costs as an action against Executors and Administrators.

**7. Rejection of Claims.** An Executor rejects a claim by giving the claimant written notice of the disallowance of the claim. The notice must be given personally or by registered mail with return receipt requested. It is effective upon delivery of the mail at the address given by the claimant on the claimant's claim. Ohio Revised Code § 2117.11.

The claimant may demand in writing for an allowance of the claim. A claim is deemed to have been rejected if after such demand the written statement of allowance is not made. When a claim has been rejected in whole or in part, the claimant must commence an action on the claim within two months after the rejection if the debt is due; or within two months after the same becomes due, or be forever barred from maintaining an action thereon. The claimant's complaint must be filed in a court of general jurisdiction. The probate court does not have jurisdiction to hear a rejected claim.

**8. Hearing On Claims.** The probate court may on its own, or on the motion of the Executor or Administrator hold a hearing to determine claims presented and known debts. The Executor or Administrator must give notice of the hearing not less than 10 days before the hearing. If it appears that the estate is fully solvent the notice is given to the surviving spouse and all other persons having an interest in the estate as devisees,

heirs and distributees. If it appears that there will not be sufficient assets to pay all of the debts, then notice is also given to creditors and claimants whose claims have been rejected, and those whose rights have not been finally determined by judgment, reference or lapse of time. The notice must be served personally, or by certified mail in the manner specified for service of notice of the rejection of a claim. Proof of service of the notice to the satisfaction of the court by affidavit or otherwise, and waivers of service must be filed in court at the time of the hearing. If a hearing is held on the claims, the Ohio Supreme Court's Rules of Superintendence require the Executor or the Administrator to file a schedule of claims. Sup R 62(B).

**9. Order of Payment.** The order of payment of debts is found in Ohio Revised Code § 2117.25:

(a) Costs and expenses of administration;

(b) An amount not exceeding \$4000 for funeral expenses that are included in the bill of the funeral director, funeral expenses other than those in the bill of the funeral director that are approved by the probate court and an amount not exceeding \$3000 for burial and cemetery expenses, including that portion of the funeral bill directors allocated to cemetery expenses that have been paid to the cemetery by the funeral director. Ohio Revised Code § 2117.25(A)(2) provides that burial and cemetery expenses are limited to the following:

- (1) purchase of a right of interment;
- (2) monuments or other markers;
- (3) the outer burial container;
- (4) the cost of opening and closing the place of interment; and
- (5) the urn.

(c) The allowance for support made to the surviving spouse, minor children, or both, under Ohio Revised Code § 2106.13.

(d) Debts entitled to a preference under the laws of the United States.

(e) Expenses of the last sickness of the decedent.

(f) If the total bill of the funeral director for funeral expenses exceeds \$4000, then an additional amount not exceeding \$2000 for funeral expenses that are included in the bill and that exceed \$4000.

(g) Personal property taxes, claims made under the Medicaid estate recovery program and obligations for which the decedent was personally liable to the state or any of its subdivisions.

(h) Debts for manual labor performed for the decedent within 12 months preceding the decedent's death, not exceeding \$300 to any one person.

(i) Other debts for which claims have been presented and finally allowed. This includes the funeral director to the extent the bill exceeds \$6000 and a person claiming money for manual labor to the extent the bill exceeds \$300.

No payments shall be made to creditors of one class until all of those of the preceding class are fully paid or provided for. If the assets are insufficient to pay all of the claims of one class, the creditors of that class must be paid ratably. Ohio Revised Code § 2117.25(E).

Ohio Revised Code § 2106.20 provides that the surviving spouse is entitled to reimbursement from the estate of the deceased spouse for funeral expenses if paid by the

surviving spouses to the extent that the rights of the other creditors of the estate will not be prejudiced by the reimbursement.

**EXHIBIT A**

**ESTATE ADMINISTRATION INFORMATION**

In order to administer the estate, please provide the following information.

**I. DECEDENT**

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security Number: \_\_\_\_\_

Date of Death: \_\_\_\_\_

Date and Place of Birth: \_\_\_\_\_

Employer,  
or Former Employer \_\_\_\_\_

**II. SURVIVING SPOUSE**

If applicable, please provide the surviving spouse's name, address and Social Security Number:

**III. NEXT OF KIN (CHILDREN) AND BENEFICIARIES NAMED IN WILL**

Provide the name, address, social security number of all beneficiaries named in Decedent's will and all of Decedent's next of kin (children). Please also note whether the person is deceased.

	<u>NAME</u>	<u>ADDRESS</u>	<u>SS#</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

**IV. CHILDREN OF DECEASED NEXT OF KIN/NAMED BENEFICIARIES**

For any person listed in Part III as deceased, please provide the names, address, and social security number of his or her living children:

1. Name of Deceased: \_\_\_\_\_  
His or Her Living Children:  
Name                      Address                      SS#

2. Name of Deceased Beneficiary: \_\_\_\_\_  
His or Her Living Children:  
Name                      Address                      SS#

**V. ASSETS**

List all assets held in the Decedent's name individually:

Bank Accounts

For each of Decedent's bank accounts, please provide the following information, or a copy of the most recent statement.

	<u>BANK</u>	<u>TYPE OF ACCOUNT</u>	<u>ACCT #</u>	<u>APPROX.</u> <u>BALANCE</u>
1.				
2.				
3.				
4.				

Safe Deposit Box

Did Decedent have a safe deposit box?

If so, where is it located and under what names is it held?



Stocks

Please provide the following information, or a copy of the certificate(s):

<u>COMPANY</u>	<u>NUMBER OF SHARES</u>	<u>APPROXIMATE VALUE</u>
1.		
2.		
3.		

Brokerage Accounts (including mutual funds)

For each brokerage account owned by Decedent, please provide the following information, or a copy of the most recent statement.

<u>INSTITUTION'S NAME</u>	<u>NAME OF FUND</u>	<u>ACCOUNT #</u>	<u>APPROX. VALUE</u>
1.			
2.			
3.			

Automobiles

Please provide the make, model, year, mileage and condition (excellent, good, fair, poor) of any cars titled in Decedent's name.

*Attach a copy of the Title Certificate for each automobile.*

Life Insurance

For each life insurance policy owned by Decedent, provide the name of the insurance company, type of insurance (term, group, whole life, etc.), policy number and the primary and secondary beneficiaries.

Real Estate

List all real estate owned by Decedent. Include the location of the property, whether there is a mortgage(s) on the property, and if so, by whom or what institution. *If possible, please attach a copy of the deed(s):*

Pension Benefits

Provide information for all retirement funds/pension benefits to which Decedent was entitled.

Personal Items

Please list any personal items of value (art, jewelry, etc.) belonging to Decedent that may need an appraisal. Include an estimated value of the property.

Social Security

Was Decedent receiving Social Security?

If so, has it been cancelled?

Other Assets

Please list any other assets owned by Decedent and provide any relevant information (business interests, bonds or notes, annuity payments etc.)

**VI. TRUSTS**

Please provide any known information as to whether Decedent was a beneficiary of a trust, or had created any trusts during his or her lifetime.

**VII. GIFTS**

If Decedent had made any substantial gifts (\$10,000 or more) in the past three years, please provide information on amount and to whom gifts were made. If any gift tax returns (Form 709) were filed, please attach a copy.

**VIII. LIABILITIES/DEBTS**

Please list all liabilities of Decedent:

Funeral Expenses

Funeral, Burial and Related Costs: \$\_\_\_\_\_

*Please attach a copy of the bill(s)*

Credit Cards

Please provide the following information for each of Decedent's credit cards with an outstanding balance, or attach a copy of the most current statement.

	<u>TYPE OF CARD</u>	<u>ACCOUNT NUMBER</u>	<u>BALANCE</u>
1.			
2.			
3.			

Other expenses/loans/debts/ mortgages

Provide information about ALL other expenses and outstanding loans or debts of Decedent. Include expenses relating to last illness.

*Please attach a copy of Decedent's Death Certificate*  
*Please attach a copy of Decedent's last income tax return.*