

## PUBLICATION UPDATE

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# Ohio Probate

Publication 68950

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## HIGHLIGHTS

### Chapter Changes and Revisions

- Completely updated to discuss recent judicial decisions and statutory amendments.

**Current Developments in Case and Statutory Law**—This release reflects recent case law and changes to the Ohio statutes.

### Chapter 2: JURISDICTION OF PROBATE COURTS—ACTIONS GENERALLY

Comments on several new cases have been added, and O.R.C. Section 2102.24 has been revised.

#### ORC § 2102.24

Jurisdiction of probate court

(A)(1) Except as otherwise provided by law, the probate court has exclusive jurisdiction:

(a) To take the proof of wills and to

admit to record authenticated copies of wills executed, proved, and allowed in the courts of any other state, territory, or country. If the probate judge is unavoidably absent, any judge of the court of common pleas may take proof of wills and approve bonds to be given, but the record of these acts shall be preserved in the usual records of the probate court.

(b) To grant and revoke letters testamentary and of administration;

(c) To direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates;

(d) To appoint the attorney general to serve as the administrator of an estate pursuant to section 2113.06 of the Revised Code;

(e) To appoint and remove guardians, conservators, and testamentary trustees, direct and control their conduct, and settle their accounts;

**(f)** To grant marriage licenses;

**(g)** To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;

**(h)** To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;

**(i)** To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;

**(j)** To authorize the completion of real property contracts on petition of executors and administrators;

**(k)** To construe wills;

**(l)** To render declaratory judgments, including, but not limited to, those rendered pursuant to Chapter 5817. Of the Revised Code;

**(m)** To direct and control the conduct of fiduciaries and settle their accounts;

**(n)** To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;

**(o)** To terminate a testamentary trust in any case in which a court of equity may do so;

**(p)** To hear and determine actions to contest the validity of wills;

**(q)** To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;

**(r)** To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;

**(s)** To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;

**(t)** To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;

**(u)** To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;

**(v)** To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;

**(w)** To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;

**(x)** To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pur-

suant to section 2133.09 of the Revised Code, in accordance with that section;

**(y)** To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;

**(z)** To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337.16 or 2133.12 of the Revised Code;

**(aa)** To hear and determine applications for an order relieving an estate from administration under section 2113.03 of the Revised Code;

**(bb)** To hear and determine applications for an order granting a summary release from administration under section 2113.031 of the Revised Code;

**(cc)** To hear and determine actions relating to the exercise of the right of disposition, in accordance with section 2108.90 of the Revised Code;

**(dd)** To hear and determine actions relating to the disinterment and reinterment of human remains under section 517.23 of the Revised Code;

**(ee)** To hear and determine petitions for an order for treatment of a person experiencing alcohol and other drug abuse filed under section 5119.93 of the Revised Code and to order treatment of that nature in accordance with, and take other actions afforded to the court under, sections

5119.90 to 5119.98 of the Revised Code.

**(2)** In addition to the exclusive jurisdiction conferred upon the probate court by division (A)(1) of this section, the probate court shall have exclusive jurisdiction over a particular subject matter if both of the following apply:

**(a)** Another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court.

**(b)** No section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.

**(B)(1)** The probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine actions as follows:

**(a)** If jurisdiction relative to a particular subject matter is stated to be concurrent in a section of the Revised Code or has been construed by judicial decision to be concurrent, any action that involves that subject matter;

**(b)** Any action that involves an inter vivos trust; a trust created pursuant to section 5815.28 of the Revised Code; a charitable trust or foundation; subject to divisions (A)(1)(t) and (y) of this section, a power of attorney, including, but not limited to, a durable power of attorney; the medical treatment of a competent adult; or a writ of habeas corpus;

(c) Subject to section 2101.31 of the Revised Code, any action with respect to a probate estate, guardianship, trust, or post-death dispute that involves any of the following:

(i) A designation or removal of a beneficiary of a life insurance policy, annuity contract, retirement plan, brokerage account, security account, bank account, real property, or tangible personal property;

(ii) A designation or removal of a payable-on-death beneficiary or transfer-on-death beneficiary;

(iii) A change in the title to any asset involving a joint and survivorship interest;

(iv) An alleged gift;

(v) The passing of assets upon the death of an individual otherwise than by will, intestate succession, or trust.

(2) Any action that involves a concurrent jurisdiction subject matter and that is before the probate court may be transferred by the probate court, on its order, to the general division of the court of common pleas.

(3) Notwithstanding that the probate court has exclusive jurisdiction to render declaratory judgments under Chapter 5817. Of the Revised Code, the probate court may transfer the proceeding to the general division of the court of common pleas pursuant to division (A) of section 5817.04 of the Revised Code.

(C) The probate court has plenary power at law and in equity to dispose fully of any matter that is properly

before the court, unless the power is expressly otherwise limited or denied by a section of the Revised Code.

(D) The jurisdiction acquired by a probate court over a matter or proceeding is exclusive of that of any other probate court, except when otherwise provided by law.

**History:** GC §§ 10501-53, 10501-55; 114 v 320; Bureau of Code Revision, 10-1-53; 125 v 903 (960); 127 v 27 (Eff 9-9-57); 129 v 7 (Eff 10-5-61); 130 v 611 (Eff 10-14-63); 136 v S 145 (Eff 1-1-76); 136 v S 466 (Eff 5-26-76); 137 v H 1 (Eff 8-26-77); 137 v S 112 (Eff 11-1-77); 137 v H 505 (Eff 1-1-79); 140 v H 84 (Eff 3-19-85); 141 v S 135 (Eff 3-13-86); 143 v S 46 (Eff 1-1-90); 143 v H 764 (Eff 4-10-91); 144 v S 1 (Eff 10-10-91); 144 v S 124 (Eff 4-16-93); 146 v H 167 (Eff 11-15-95); 148 v H 313. Eff 8-29-2000; 151 v H 426, § 1, eff. 10-12-06; 151 v H 416, § 1, eff. 1-1-07; 2011 SB 124, § 1, eff. Jan. 13, 2012; 2011 SB 117, § 1, eff. Mar. 22, 2012; 2012 HB 479, § 1, eff. Mar. 27, 2013; 2013 HB 59, § 101.01, eff. Sept. 29, 2013; 2013 SB 23, § 1, eff. Mar. 20, 2015; 2016 hb158, § 1, effective October 12, 2016; 2018 hb595, § 1, effective March 22, 2019; 2022 hb281, § 1, **effective April 3, 2023.**

ORC § 2101.16 has been revised.

[For the text of revised ORC § 2101.16, see § 2.13[9], pages 2-121 to 2-127]

The courts of common pleas are vested by statute with full equitable powers and jurisdiction appropriate

to the determination of all domestic relations matters. When a court of common pleas patently and unambiguously lacks jurisdiction to hear a case, it is almost always because a statute explicitly removed that jurisdiction. *State ex rel. Heyside v. Calabrese*, 2023-Ohio-406 (Ohio 2023).

### Chapter 3: DESCENT AND DISTRIBUTION

ORC § 2106.22 has been revised.

#### **ORC § 2106.22**

#### Action to set aside antenuptial or separation agreement

Any antenuptial, postnuptial, or separation agreement to which a decedent was a party is valid unless an action to set it aside is commenced within four months after the appointment of the executor or administrator of the estate of the decedent, or unless, within the four-month period, the validity of the agreement otherwise is attacked.

**History:** GC § 10512-3; 114 v 320 (469); Bureau of Code Revision, RC § 2131.03, 10-1-53; RC § 2106.22, 143 v H 346. Eff 5-31-90; 2022 sb210, § 1, effective March 23, 2023.

### Chapter 4: WILLS

The probate court is a court of limited jurisdiction and cannot exercise authority other than that specifically granted by statute or the constitution. R.C. 2101.24, Jurisdiction of probate court. The probate division has no jurisdiction over claims for money damages arising from allegations of fraud. The plaintiff's primary aim is recovery of money damages from alleged fraud, then the issues

raised are solely within the jurisdiction of the general division. *DeSantis v. Estate of DeSantis*, 2023-Ohio-518 (Ohio Ct. App. 2023).

ORC § 2107.46 authorizes a fiduciary or beneficiary to file a separate action in probate court to obtain judicial guidance concerning a will, the property to be administered, or the rights of the parties involved. The same objective can be accomplished by filing a separate declaratory-judgment action in probate court. A final order construing a decedent's will under either R.C. 2107.46 or the declaratory-judgment act would dispose of that action and would have preclusive effect in related probate proceedings. Such an order would be appealable immediately. A probate-court order construing a will in an action filed under R.C. 2107.46 is a final order. *Estate of Goubeaux*, 2023-Ohio-647 (Ohio Ct. App. 2023).

### Chapter 5: TRUSTS

A constructive trust is considered a trust because when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee. The party seeking to have a constructive trust imposed bears the burden of proof by clear and convincing evidence. *McLean v. Estate of McDaniel (In re Estate of McDaniel)*, 2023-Ohio-1065 (Ohio Ct. App. 2023).

### Chapter 6: EXECUTORS AND ADMINISTRATORS

The relationship between a guard-

ian and a ward is fiduciary in nature, and in discharging the duties of a guardian, the law requires fiduciaries to act in good faith and primarily for the benefit of the ward in matters connected with his well-being. Likewise, an executor, administrator, or other personal representative of a testamentary estate is a fiduciary. A fiduciary is statutorily-defined as any person appointed by and accountable to the probate court and acting in a fiduciary capacity for any person, or charged with duties in relation to any property, interest, trust, or estate for the benefit of another. *Thomas v. Delgado*, 2022-Ohio-4235 (Ohio Ct. App. 2022).

Executors, administrators, trustees and the like, are charged by law with non-delegable duties. In re *Estate of Nugent*, 2023-Ohio-700 (Ohio Ct. App. 2023).

## Chapter 7: GUARDIANS AND CONSERVATORS

ORC § 2111.10 has been revised.

### **ORC § 2111.10.**

#### Corporation as guardian

(A) As used in this section, “developmental disability” has the same meaning as in section 5123.01 of the Revised Code.

(B) Any appointment of a corporation as guardian shall apply to the estate only and not to the person, except when either of the following applies:

(1) A nonprofit corporation organized under the laws of this state and entitled to tax exempt status under section 501(a) of the “Internal Rev-

enue Code of 1986,” 100 Stat. 2085, 26 U.S.C. 501 that has a contract with the department of developmental disabilities to provide protective services may be appointed as a guardian of a person with a developmental disability and may serve as guardian pursuant to sections 5123.55 to 5123.59 of the Revised Code.

(2) A nonprofit corporation domiciled in this state and organized under the laws of this state and entitled to tax exempt status under section 501(a) of the “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C. 501 may be appointed as a guardian of the person of an incompetent when certified by the probate court to receive such an appointment. The probate court shall certify that nonprofit corporation and any individual acting as a guardian on behalf of the nonprofit corporation upon meeting the requirements for serving as a guardian as prescribed by the supreme court in the Rules of Superintendence for the Courts of Ohio and the rules of court adopted by the probate court of the county exercising jurisdiction over the incompetent. A nonprofit corporation appointed as guardian of the person of an incompetent shall not be the residential caregiver, health care provider, or employer of the incompetent.

**History:** GC § 10507-10; 114 v 320 (386); Bureau of Code Revision, 10-1-53; 137 v S 415 (Eff 7-20-78); 138 v H 900 (Eff 7-1-80); 143 v H 569. Eff 7-1-91; 153 v S 79, § 1, eff. 10-6-09; 2016 hb158, § 1, effective

October 12, 2016; 2021 hb7, § 1, **effective August 17, 2021.**

## Chapter 8: PROBATE PROCEDURE

ORC § 2107.52 has been revised.

### **ORC § 2107.52.**

#### Definitions

(A) As used in this section:

(1) “Class member” means an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(2) “Descendant of a grandparent” means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment under either of the following:

(a) The rules of construction applicable to a class gift created in the testator’s will if the devise or the exercise of the power of appointment is in the form of a class gift;

(b) The rules for intestate succession if the devise or the exercise of the power of appointment is not in the form of a class gift.

(3)(a) “Devise” includes a primary devise, an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(b) Except as otherwise provided in this division, the amendment to division (A)(3)(a) of this section in this act shall be given retroactive effect to the fullest extent permitted under Ohio Constitution, Article II, Section 28. The amendment shall not be given retroactive effect in those

instances where doing so would invalidate or supersede any instrument that conveys real property or any interest in the real property, recorded in the office of the county recorder in which that real property is situated.

(4) “Devisee” means any of the following:

(a) A class member if the devise is in the form of a class gift;

(b) An individual or class member who was deceased at the time the testator executed the testator’s will or an individual or class member who was then living but who failed to survive the testator;

(c) An appointee under a power of appointment exercised by the testator’s will.

(5) “Per stirpes” means that the shares of the descendants of a devisee who does not survive the testator are determined in the same way they would have been determined under division (A) of section 2105.06 of the Revised Code if the devisee had died intestate and unmarried on the date of the testator’s death.

(6) “Stepchild” means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor.

(7) “Surviving devisee” or “surviving descendant” means a devisee or descendant, whichever is applicable, who survives the testator by at least one hundred twenty hours.

(8) “Testator” includes the donee of a power of appointment if the



power is exercised in the testator's will.

**(B)(1)** As used in “surviving descendants” in divisions (B)(2)(a) and (b) of this section, “descendants” means the descendants of a deceased devisee or class member under the applicable division who would take under a class gift created in the testator's will.

**(2)** Unless a contrary intent appears in the will, if a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, either of the following applies:

**(a)** If the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. The surviving descendants take, per stirpes, the property to which the devisee would have been entitled had the devisee survived the testator.

**(b)** If the devise is in the form of a class gift, other than a devise to “issue,” “descendants,” “heirs of the body,” “heirs,” “next of kin,” “relatives,” or “family,” or a class described by language of similar import that includes more than one generation, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviv-

ing devisee takes the share to which the surviving devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take, per stirpes, the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of division (B)(2)(b) of this section, “deceased devisee” means a class member who failed to survive the testator by at least one hundred twenty hours and left one or more surviving descendants.

**(C)** For purposes of this section, each of the following applies:

**(1)** Attaching the word “surviving” or “living” to a devise, such as a gift “to my surviving (or living) children,” is not, in the absence of other language in the will or other evidence to the contrary, a sufficient indication of an intent to negate the application of division (B) of this section.

**(2)** Attaching other words of survivorship to a devise, such as “to my child, if my child survives me,” is, in the absence of other language in the will or other evidence to the contrary, a sufficient indication of an intent to negate the application of division (B) of this section.

**(3)** A residuary clause is not a sufficient indication of an intent to negate the application of division (B) of this section unless the will specifically provides that upon lapse or failure the nonresiduary devise, or nonresiduary devises in general, pass



under the residuary clause.

(4) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power of appointment.

(D) Except as provided in division (A), (B), or (C) of this section, each of the following applies:

(1) A devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(2) If the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

(3) If a residuary devise fails for any reason in its entirety, the residue passes by intestate succession.

(E) This section applies only to outright devises and appointments. Devises and appointments in trust, including to a testamentary trust, are subject to section 5808.19 of the Revised Code.

(F) This section applies to wills of decedents who die on or after March 22, 2012.

**History:** 2011 SB 117, § 1, eff. Mar. 22, 2012; 2018 hb595, § 1, effective March 22, 2019; 2022

sb202, § 3, effective April 3, 2023.

ORC § 2117.07 has been revised.

### **ORC § 2117.07.**

#### **Acceleration of bar against claims of potential claimants**

An executor or administrator may accelerate the bar against claims against the estate established by section 2117.06 of the Revised Code by giving written notice to a potential claimant that identifies the decedent by name, states the date of the death of the decedent, identifies the executor or administrator by name and mailing address, and informs the potential claimant that any claims the claimant may have against the estate are required to be presented to the executor or administrator in a writing in the manner provided in section 2117.06 of the Revised Code within the earlier of thirty days after receipt of the notice by the potential claimant or six months after the date of the death of the decedent. A claim of that potential claimant that is not presented in the manner provided by section 2117.06 of the Revised Code within the earlier of thirty days after receipt of the notice by the potential claimant or six months after the date of the death of the decedent is barred by section 2117.06 of the Revised Code in the same manner as if it was not presented within six months after the date of the death of the decedent.

**History:** 143 v H 346. Eff 5-31-90; 150 v H 51, § 1, eff. 4-8-04; 2022 sb202, § 3, effective April 3, 2023.

ORC § 2117.06 has been revised.

### **ORC § 2117.06.**

Presentation and allowance of creditor's claims; pending actions against decedent

(A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall present their claims in one of the following manners:

(1) After the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:

(a) To the executor or administrator, or to an attorney who is identified as counsel for the executor or administrator in the probate court records for the estate of the decedent, in a writing;

(b) To the probate court in a writing that includes the probate court case number of the decedent's estate;

(c) In a writing that is actually received by the executor or administrator, or by an attorney who is identified as counsel for the executor or administrator in the probate court records for the estate of the decedent, within the appropriate time specified in division (B) of this section and without regard to whom the writing is addressed. For purposes of this division, if an executor or administrator is not a natural person, the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of admin-

istering the estate of the decedent actually receives the writing within the appropriate time specified in division (B) of this section.

(2) If the final account or certificate of termination has been filed, in a writing to those distributees of the decedent's estate who may share liability for the payment of the claim.

(B) Except as provided in section 2117.061 of the Revised Code, all claims shall be presented within six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period. Every claim presented shall set forth the claimant's address.

(C) Except as provided in section 2117.061 of the Revised Code, a claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim, except as otherwise provided in sections 2117.37 to 2117.42 of the Revised Code with reference to contingent claims.

(D) In the absence of any prior demand for allowance, the executor or administrator shall allow or reject all claims, except tax assessment claims, within thirty days after their presentation, provided that failure of the executor or administrator to allow or reject within that time shall not prevent the executor or administrator from doing so after that time and

shall not prejudice the rights of any claimant. Upon the allowance of a claim, the executor or the administrator, on demand of the creditor, shall furnish the creditor with a written statement or memorandum of the fact and date of the allowance.

(E) If the executor or administrator has actual knowledge of a pending action commenced against the decedent prior to the decedent's death in a court of record in this state, the executor or administrator shall file a notice of the appointment of the executor or administrator in the pending action within ten days after acquiring that knowledge. If the administrator or executor is not a natural person, actual knowledge of a pending suit against the decedent shall be limited to the actual knowledge of the person charged with the primary responsibility of administering the estate of the decedent. Failure to file the notice within the ten-day period does not extend the claim period established by this section.

(F) This section applies to any person who is required to give written notice to the executor or administrator of a motion or application to revive an action pending against the decedent at the date of the death of the decedent.

(G) Nothing in this section or in section 2117.07 of the Revised Code shall be construed to reduce the periods of limitation or periods prior to repose in section 2125.02 or Chapter 2305. of the Revised Code, provided that no portion of any recovery on a claim brought pursuant to that section

or any section in that chapter shall come from the assets of an estate unless the claim has been presented against the estate in accordance with Chapter 2117. of the Revised Code.

(H) Any person whose claim has been presented and has not been rejected after presentment is a creditor as that term is used in Chapters 2113. to 2125. of the Revised Code. Claims that are contingent need not be presented except as provided in sections 2117.37 to 2117.42 of the Revised Code, but, whether presented pursuant to those sections or this section, contingent claims may be presented in any of the manners described in division (A) of this section.

(I) If a creditor presents a claim against an estate in accordance with division (A)(1)(b) of this section, the probate court shall not close the administration of the estate until that claim is allowed or rejected.

(J) The probate court shall not require an executor or administrator to make and return into the court a schedule of claims against the estate.

(K) If the executor or administrator makes a distribution of the assets of the estate pursuant to section 2113.53 of the Revised Code and prior to the expiration of the time for the presentation of claims as set forth in this section, the executor or administrator shall provide notice on the account delivered to each distributee that the distributee may be liable to the estate if a claim is presented prior to the filing of the final account and may be liable to the claimant if the claim is presented after the filing of the final

account up to the value of the distribution and may be required to return all or any part of the value of the distribution if a valid claim is subsequently made against the estate within the time permitted under this section.

**History:** GC § 10509-112; 114 v 320(426); 119 v 394; Bureau of Code Revision, 10-1-53; 127 v 701 (Eff 9-14-57); 131 v 629 (Eff 11-5-65); 133 v H 363 (Eff 9-12-69); 136 v S 145 (Eff 1-1-76); 139 v H 379 (Eff 9-21-82); 140 v H 291 (Eff 7-1-83); 140 v S 115 (Eff 10-14-83); 140 v H 37 (Eff 6-22-84); 142 v S 228 (Eff 3-22-89); 143 v H 346 (Eff 5-31-90); 146 v H 350 (Eff 1-27-97); 149 v S 108, § 2.01 (Eff 7-6-2001); 149 v H 85 (Eff 12-31-2001); 149 v S 281. Eff 4-11-2003; 150 v H 95, § 1, eff. 9-26-03; 150 v H 51, § 1, eff. 4-8-04; 150 v S 80, § 1, eff. 4-7-05; 2022 sb202, § 3, effective April 3, 2023.

## Chapter 9: SALE OF ESTATE PROPERTY

ORC § 2127.05 has been revised.

### **ORC § 2127.05.**

#### Guardian may sell

Whenever necessary for the education, support, or the payment of the just debts of the ward, or for the discharge of liens on the real property of the ward, whenever the real property of the ward is suffering unavoidable waste, or a better investment of its value can be made, or whenever it appears that a sale of the real property will be for the benefit of the ward or the ward's children, the guardian of the person and estate or of the

estate only of a minor, incompetent adult, or other person under disability may commence a civil action in the probate court for authority to sell all or any part of the real property of the ward. If it appears to the advantage of the ward to lay out all or any part of the real property in town lots, application for that authority may also be made in the action.

When the same person is guardian for two or more wards whose real property is owned by them jointly or in common, the actions may be joined, and in one complaint the guardian may ask for the sale of the interest of all or any number of the guardian's wards in the real property. If different persons are guardians of wards interested jointly or in common in the same real property, they may join as parties plaintiff in the same action. On the hearing, in either case, the court may authorize the sale of the interest of one or more of the wards.

**History:** GC §§ 10510-6, 10510-7; 114 v 320(452); Bureau of Code Revision, 10-1-53; 125 v 903(981) (Eff 10-1-53); 136 v S 145. Eff 1-1-76; 2011 SB 124, § 1, eff. Jan. 13, 2012; 2022 hb281, § 1, effective April 3, 2023.

## Chapter 10: WILL CONTESTS

Probate court's denial of plaintiffs' motion for genetic testing and dismissal of their will-contest complaint was affirmed because plaintiffs were not named as beneficiaries under the decedent's will, and they would not inherit under the laws of intestate succession, the probate court prop-

erly found that plaintiffs were not persons interested to have standing to bring a will contest action. As such, the court lacked jurisdiction over the matter and properly dismissed the case. *Powell v. Williams*, 2022-Ohio-526, 185 N.E.3d 595, 2022 Ohio App. LEXIS 449 (Ohio Ct. App., Cuyahoga County 2022).

## Chapter 11: TAXES

ORC § 5747.01(S) has been revised.

### **ORC § 5747.01(S).**

Definitions. [Effective April 3, 2023]

Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter that is not otherwise defined in this section has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes or if not used in a comparable context in those laws, has the same meaning as in section 5733.40 of the Revised Code. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

As used in this chapter:

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**(S) “Taxable income” or “Ohio taxable income” applies only to estates and trusts, and means federal taxable income, as defined and used in the Internal Revenue Code, adjusted as follows:**

**(1)** Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in com-

puting federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section:

**(a)** The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to beneficiaries for the taxable year;

**(b)** The net amount is attributable to the S portion of an electing small business trust for the taxable year.

**(2)** Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section;

**(3)** Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;

**(4)** Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, on obligations of the United States

and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S)(1)(a) or (b) of this section;

**(5)** Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the work opportunity tax credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

**(6)** Deduct any interest or interest equivalent, net of related expenses deducted in computing federal taxable income, on public obligations and purchase obligations, but only to the extent that such net amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

**(7)** Add any loss or deduct any gain resulting from sale, exchange, or other disposition of public obligations to the extent that such loss has been deducted or such gain has been

included in computing either federal taxable income or income of the S portion of an electing small business trust for the taxable year;

**(8)** Except in the case of the final return of an estate, add any amount deducted by the taxpayer on both its Ohio estate tax return pursuant to section 5731.14 of the Revised Code, and on its federal income tax return in determining federal taxable income;

**(9)(a)** Deduct any amount included in federal taxable income solely because the amount represents a reimbursement or refund of expenses that in a previous year the decedent had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable treasury regulations. The deduction otherwise allowed under division (S)(9)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer or decedent deducted under this section in any taxable year.

**(b)** Add any amount not otherwise included in Ohio taxable income for any taxable year to the extent that the amount is attributable to the recovery during the taxable year of any amount deducted or excluded in computing federal or Ohio taxable income in any taxable year, but only to the extent such amount has not been distributed to beneficiaries for the taxable year.

**(10)** Deduct any portion of the deduction described in section 1341(a)(2) of the Internal Revenue Code, for repaying previously re-

ported income received under a claim of right, that meets both of the following requirements:

(a) It is allowable for repayment of an item that was included in the taxpayer's taxable income or the decedent's adjusted gross income for a prior taxable year and did not qualify for a credit under division (A) or (B) of section 5747.05 of the Revised Code for that year.

(b) It does not otherwise reduce the taxpayer's taxable income or the decedent's adjusted gross income for the current or any other taxable year.

(11) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that the amount satisfies either of the following:

(a) The amount was deducted or excluded from the computation of the taxpayer's federal taxable income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction in the taxpayer's federal taxable income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

(12) Deduct any amount, net of related expenses deducted in computing federal taxable income, that a trust is required to report as farm income on its federal income tax return, but only if the assets of the trust include at least ten acres of land satisfying the definition of "land devoted exclusively to agricultural use" under section 5713.30 of the Revised

Code, regardless of whether the land is valued for tax purposes as such land under sections 5713.30 to 5713.38 of the Revised Code. If the trust is a pass-through entity investor, section 5747.231 of the Revised Code applies in ascertaining if the trust is eligible to claim the deduction provided by division (S)(12) of this section in connection with the pass-through entity's farm income.

Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S)(12) of this section is allowed only to the extent that the trust has not distributed such farm income.

(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income.

(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A)(17) or (18) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section.

(15) Add, to the extent not otherwise included in computing taxable income or Ohio taxable income for any taxable year, the taxpayer's proportionate share of the amount of the tax levied under section 5747.38 of the Revised Code and paid by an electing pass-through entity for the taxable year.

. . .



**History:** 134 v H 475 (Eff 12-20-71); 134 v S 472 (Eff 9-22-72); 134 v S 464 (Eff 10-16-72); 135 v H 95 (Eff 7-20-73); 135 v H 971 (Eff 9-23-74); 138 v H 653 (Eff 5-29-80); 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 140 v H 250 (Eff 7-30-84); 140 v S 307 (Eff 9-26-84); 141 v S 121 (Eff 1-1-86); 141 v H 428 (Eff 12-23-86); 142 v H 171 (Eff 7-1-87); 142 v S 386 (Eff 3-29-88); 143 v H 61 (Eff 10-2-89); 143 v H 111 (Eff 7-1-89); 143 v H 286 (Eff 11-8-90); 143 v S 223 (Eff 4-10-91); 144 v H 478 (Eff 1-14-93); 145 v H 152 (Eff 7-1-93); 145 v S 123 (Eff 10-29-93); 145 v S 74 (Eff 7-1-94); 146 v H 179 (Eff 10-1-96); 146 v H 627 (Eff 12-2-96); 147 v H 215 (Eff 9-29-97); 147 v H 408 (Eff 10-1-97); 147 v H 770 (Eff 9-16-98); 148 v H 282 (Eff 9-28-99); 148 v H 4 (Eff 10-14-99); 148 v S 161, § 1 (Eff 6-8-2000); 148 v H 471 (Eff 7-1-2000); 148 v S 161, § 3 (Eff 7-1-2000); 149 v S 261 (Eff 6-5-2002); 149 v H 675 (Eff 12-13-2002); 149 v S 266. Eff 4-3-2003; 150 v H 95, § 1, eff. 6-26-03; 150 v H 127, § 1, eff. 12-11-03; 150 v H 362, § 1, eff. 12-30-04; 151 v H 66, § 101.01, eff. 6-30-05, 9-29-05; 151 v H 530, § 101.01, eff. 3-30-06; 151 v H 73, § 1, eff. 4-4-07; 152 v H 119, § 101.01, eff. 6-30-07; 152 v H 372, § 1, eff. 3-24-08; 152 v H 562,

§ 101.01, eff. 9-23-08; 153 v H 1, § 101.01, eff. 1-1-10; 153 v S 106, § 1, eff. 3-23-10; 153 v H 48, § 1, eff. 4-2-10; 153 v H 519, § 1, eff. 9-10-10; 2011 HB 153, § 101.01, eff. Sept. 29, 2011; 2011 HB 167, § 1, eff. Dec. 9, 2011; 2012 HB 365, § 1, eff. Mar. 13, 2013; 2012 HB 510, § 1, eff. Mar. 27, 2013; 2013 HB 51, § 101.01, eff. July 1, 2013; 2013 HB 59, § 101.01, eff. Sept. 29, 2013; 2015 hb64, § 101.01, effective January 1, 2015; 2015 sb208, § 1, effective November 15, 2015; 2016 hb483, § 101.01, effective October 12, 2016; 2018 sb22, § 1, effective March 30, 2018; 2018 hb24, § 1, effective March 30, 2018; 2018 hb133, § 1, effective September 28, 2018; 2018 hb494, § 1, effective March 20, 2019; 2019 hb166, § 101.01, effective October 17, 2019; 2019 sb26, § 1, effective February 5, 2020; 2020 hb197, § 1, effective March 27, 2020; 2020 hb18, § 1, effective May 26, 2020; 2020 sb276, § 1, effective April 12, 2021; 2021 hb110, § 101.01, effective September 30, 2021; 2022 hb150, § 1, effective April 3, 2023; 2022 hb45, § 101.01, effective April 7, 2023; 2022 hb515, § 1, effective September 23, 2022; 2022 sb246, § 1, effective September 13, 2022; 2022 sb33, § 1, **effective April 3, 2023.**

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