

# LawFacts

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What you should know about.....

## Administering an Estate Without a Will

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### What does it mean when someone dies “intestate”?

Dying *intestate* means that a person has died without a will stating how his or her property (called an *estate*) is to be distributed.

### What is the role of the probate court?

In each of Ohio’s 88 counties, there is a division of the common pleas court called the probate division, commonly referred to as the probate court. A primary job of the probate court is to supervise the legal process by which all debts, taxes and other financial affairs of people who die in that county are lawfully resolved, and to ensure that the money and other property left, after debts are paid, are distributed to the persons legally entitled to receive them.

### Who handles the estate?

When the person who has died (the *decedent*) leaves a will, the probate court appoints the person named in the will to serve as *executor* of the estate. If the person’s will did not name anyone to be the executor, or if the person(s) named in the will refuse or cannot act, then the probate court will appoint someone to act as the *administrator* of the will. The executor (or the administrator) is responsible to the court to ensure that the decedent’s financial affairs are resolved and the remainder of the estate is distributed according to the instructions in the will.

When someone dies intestate, the probate court will appoint an administrator of the estate. Like the executor or administrator of the will, the appointed estate administrator will report to the court to ensure that the decedent’s financial affairs are resolved and the remainder of the estate is distributed according to the law.

When appointing an administrator of the estate, Ohio law requires that the court ordinarily appoint the surviving spouse of the decedent, or if none, or if the spouse declines, the court will appoint one of the next of kin of the decedent. The administrator must be an Ohio resident. If there is no surviving spouse or next of kin resident of the state, or if the court finds such person(s) to be unsuitable, some other suitable person will be appointed as administrator.

Before the court issues official *letters of appointment* naming an administrator (or executor), the appointed person must sign an acceptance statement that states his or

her duties and acknowledges that the court can fine or remove an administrator (or executor) for failure to perform those duties faithfully. The administrator (or executor) must also post a bond (paid from the decedent's estate) to cover potential losses that the estate might suffer through error or mishandling of property during the administration process (although a will may waive the bond).

### **What are the duties of an administrator of an intestate estate?**

The duties of an administrator are similar to those of the executor of a will, except that an administrator must follow more defined instructions of the probate court and must distribute the property in accordance with the statute of descent and distribution rather than by the terms of a will. The basic duties of an administrator are:

- 1. Inventory and appraisal.** The administrator must identify and determine the fair market value of all financial assets and property that were owned by the decedent at the time of death. The administrator must file an inventory listing all of the decedent's so-called probate assets and their date-of-death values with the probate court within three months of the administrator's appointment, unless an extension is granted.

It is important to understand that most estates include what are known as *non-probate assets*, which generally *do not have to be included in the inventory filed with the probate court*. Non-probate assets are assets that legally pass from a decedent to a named beneficiary or to a co-owner at the time of death, by title, by contract, or by law, without having to go through the probate court. Non-probate assets include: insurance policies, IRAs and retirement benefits that are payable on death to a beneficiary; and a home, car or bank account that the decedent owned jointly with rights of survivorship to another person. In many cases, many of a decedent's assets may be non-probate assets. The administrator must identify and report non-probate assets for tax purposes, but *these assets are not otherwise included in the probate estate for which the administrator is responsible to the probate court*. When this pamphlet refers to collecting or distributing a decedent's assets, it refers only to those assets that are subject to probate court process even if other property is taxable.

In valuing and reporting assets and liabilities, if the value is "readily ascertainable" (for example, shares of stock in a publicly traded company or the balance in a bank account), then no professional appraisal is required. However, items such as jewelry, art objects, antiques, real estate and any other items whose value cannot be readily established must be appraised by a qualified person in order for the inventory to be approved by the probate court and for the tax returns to be acceptable to the taxing authorities.

- 2. Collecting assets.** The administrator must collect all assets of the decedent. This is very important because it is these assets that will be distributed to the heirs after debts and taxes have been paid. Complications can arise in this

process if assets legally owned by a decedent are in the possession of someone else at the time of death, or if property belonging to the decedent has been concealed or misappropriated by a third party. Sometimes collecting assets may require the administrator to complete a lawsuit in which the decedent was involved at the time of death, or to file a new lawsuit to satisfy a legal claim the decedent had not fully asserted while alive. For example, if the deceased was killed in an accident it may be necessary to file a suit to recover damages for wrongful death.

- 3. Payment of debts and expenses.** Creditors (people to whom the decedent, or his or her estate, owes money) have six months from the date of death to present their claims against the estate. In most cases, any claim not submitted within six months is barred forever. Claims must be in writing and sent directly to the administrator or mailed to the decedent's address, and must be received by the administrator within six months. In addition to ordinary bills the decedent owed at the time of death, other debts typically include expenses to keep up property; local, state and federal taxes; hospital and funeral expenses; and expenses of administration including probate court costs, bond premiums and fees charged by appraisers, attorneys and the administrator.

Even after accepting a claim as valid, the administrator must be certain there will be sufficient assets to pay all claims, including those not yet presented. Certain debts have priority. Generally, costs and expenses of administering the estate, funeral expenses and taxes must be paid first. If there are sufficient cash assets in the estate to pay debts, they will be paid out of cash. If there is not enough cash, then estate property will be sold (personal property first and then real estate) to raise the cash needed. If the total assets in an estate are not sufficient to pay all of the valid debts, claimants must be paid according to a priority schedule established by law.

- 4. Distribution of assets.** After all debts, taxes, costs and expenses of the estate have been paid, the administrator must distribute the balance of the estate to the decedent's heirs according to a formula prescribed in Ohio's statute of descent and distribution. Because an administrator may be held personally liable for an error in making a distribution that cannot later be recovered, legal advice should be obtained before making a final disposition of estate assets. Sometimes an administrator will make a partial distribution of certain assets before all claims have been resolved. In such cases, it is prudent for the administrator to advise persons receiving early partial distributions that they may be required to return some or all of the money or property to the estate if it is needed to satisfy valid claims.

### **What is the statute of descent and distribution?**

The statute of descent and distribution, also known as the *intestacy* statute, is the law that defines how the probate assets in an intestate estate will be distributed to the

decedent's heirs after all claims, expenses and taxes have been paid. Generally, the statute favors those heirs most closely related to the decedent.

Following is a *partial summary* of some basic guidelines in Ohio's statute of descent and distribution:

*Please note that the following discussion uses lay person's language and not precise legal terms or definitions, and does not include an exhaustive definition of the persons who are entitled to inherit property, nor does it cover all inheritance situations provided for in the statute.*

- If a decedent is survived by a spouse and no surviving children or descendants of deceased children, the entire estate goes to the spouse.
- If a decedent is survived by a spouse and one or more children or their descendants, and if all the children who survive or who have descendants are also the children of the surviving spouse, the entire estate goes to the surviving spouse.
- If a decedent is survived by a spouse and one child or the child's descendants and if the surviving spouse is not the natural or adoptive parent of the child, the spouse receives the first \$20,000 from the estate plus one-half the remainder of the estate. The balance of the estate passes to the child or, if the child is deceased, to the child's descendants.
- If a decedent is survived by a spouse and more than one child or their descendants, the spouse receives the first \$60,000 if the spouse is the natural or adoptive parent of one, but not all of the children, or the first \$20,000 if the spouse is not the natural or adoptive parent of any of the children. The spouse receives one-third of the balance of the estate and the children will receive two-thirds of the balance of the estate in equal shares. Descendants of a deceased child divide that child's equal share.
- If there is no surviving spouse, but surviving children or their descendants, each of the children receives an equal share of the estate. Descendants of a deceased child divide that child's equal share.
- If the decedent has no surviving spouse or children and no descendants of deceased children, the estate goes to his or her surviving parent(s) or, if both parents have died, in equal shares to brothers and sisters or their descendants.

*The statute also defines other possible family situations not covered in this summary. Readers of this pamphlet are urged to consult an attorney for clarification of this information, and to seek professional advice before taking any action related to administration of an estate.*

### **What is an administrator's account?**

Within six months after his or her appointment, every administrator of an estate is required to file a report, called a *final and distributive account*, with the probate court. In certain circumstances, such as when an Ohio or federal estate tax return is due, an account is due 13 months after appointment and once a year thereafter until a final and distributive account can be filed. This account must include an itemized statement of all receipts, and disbursements, as well as all distributions made by the administrator during the reporting period. When the administrator files the *final and distributive account* with the court, and after it is approved by the probate court, the administrator is released from his or her duties.

### **What are characteristics of an effective administrator?**

One of the keys to being an effective administrator is to be highly organized. In the administration of a decedent's estate, it is essential to keep complete and accurate records and to carry out all procedures required by the probate court in an orderly manner. Also, keeping a positive relationship with the heirs is helpful. This is especially true when the administrator is one of several surviving relatives of the decedent. An administrator is likely to encounter fewer problems and complications if he or she keeps all the decedent's heirs informed of what is going on and treats them as equals.

### **Who should assist the administrator?**

Serving as an administrator involves serious legal and financial responsibilities, and can expose the administrator to financial liability if claims and assets are not properly handled. The administrator of an estate should not rely on casual advice from friends and family members regarding duties to the court and to the decedent's heirs. A lawyer can provide the administrator with trained legal advice and professional judgment regarding the complicated duties and laws involved to help avoid pitfalls and make the proper decisions.

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*The information contained in this pamphlet is general and should not be applied to specific legal problems without first consulting your own attorney.*

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