

ADMINISTERING AN ESTATE WITHOUT A WILL

What does it mean when someone dies *intestate*?

When someone dies without leaving a will to spell out how his or her money and property (called an *estate*) is to be distributed to survivors, that is called dying *intestate*.

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. The primary job of the probate court is to see that all debts, taxes and other financial affairs of people who die in that county are resolved, and that the money and other valuable property left, after debts are paid, are distributed to the persons legally entitled to receive them.

Who handles the estate?

When the person who died (the *decedent*) leaves a will, the probate court appoints a trusted person named in the will to serve as executor of the estate. The executor works with the court to see that the decedent's financial affairs are resolved and the remainder of his or her estate is distributed according to the instructions spelled out in the will.

When someone dies intestate, an administrator for the estate is appointed by the probate court. Ohio law requires that the court appoint the surviving spouse of the decedent as administrator, and if none, or if the spouse declines, the court will appoint one of the next of kin of the decedent. In any event, the administrator must be a resident of Ohio. If there is no surviving spouse or next of kin resident of the state, or if the court finds such persons to be unsuitable, some other suitable person will be appointed as administrator.

Before the court issues official letters *of appointment naming* an administrator, the person named must sign an acceptance statement that spells out his or her duties and acknowledges that the court can fine or remove an administrator for failure to perform those duties faithfully. The administrator 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 assets during the administration process.

What are the duties of an administrator?

The duties of an administrator are similar to those of the executor of a will, except that an administrator must follow the instructions of the probate court and the statute of descent rather than the terms of a will. The basic duties of an administrator are:

1. *Inventory and appraisal.* The administrator must identify all financial assets and property that were owned by the decedent at the time of death, * and file an inventory with the probate court within three months of the administrator's appointment, unless an extension is granted.

* (Important note: Most estates include what are known as *non-probate assets* that generally *do not have to be included in the inventory filed with the 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, without having to go through the probate court. Non-probate assets include: insurance policies, IRAs and pensions that are payable on death to a beneficiary; and a home, car or bank account that the decedent owned jointly with rights of survivorship. In many cases, the bulk of a decedent's assets may be non-probate assets. The administrator must identify non-probate assets for tax purposes, but these assets are not otherwise included in the "estate" for which the administrator is responsible. When this pamphlet refers to collecting or distributing a decedent's assets, it refers only to those assets that are subject to probate.)

While a professional appraisal is not required for assets the value of which is "readily ascertainable" (for example, shares of stock in a publicly traded company or the balance in a bank account), items such as jewelry, art objects, antiques, real estate and any other possessions whose value cannot be readily established must be appraised by a qualified person.

2. *Collecting assets.* The administrator must collect all assets of the decedent. This is very important (especially to prospective heirs) because it is these assets that will be distributed to 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 follow through on a lawsuit in which the decedent was involved at the time of death, or to file a lawsuit to complete 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 from wrongful death.

3. *Payment of debts and expenses.* Creditors (people to whom the decedent, or his or her estate, owe money) have one year from the date of death to present their claims against the estate. (Claims must be presented within six months from the date of death for dates of death occurring after April 8, 2004.) In most cases, any claim not submitted within one year is barred forever. Claims must be submitted to the administrator in writing. 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, taxes, funeral expenses and costs and expenses of administering the estate 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 if necessary) 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.* When 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 strict percentage formula spelled out in Ohio's statute of descent and distribution. Because an administrator may be held personally liable for an error or excess distribution to an heir 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 received. In such cases, it may be prudent to advise persons receiving early partial distributions that they may be required to return money or property to the estate if it is needed to satisfy valid claims.

What is the statute of descent and distribution?

This is the state law that specifies what share of the probate assets in an intestate estate shall be distributed to each of the decedent's heirs after all valid claims have been paid. Generally speaking, the statute gives strong preference to those persons 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 rather than precise legal terms or definitions, and does not include an extensive list of additional survivorship situations spelled out in the statute.

- * If a decedent is survived by a spouse and no surviving children or lineal 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 lineal descendants, and all the children who survive or have lineal 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 lineal descendants and 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 and the balance of the remainder passes to the child or the child's lineal descendants.
- * If a decedent is survived by a spouse and more than one child or their lineal descendants, the spouse will receive 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 will receive one-third of the balance of the estate and the children will receive two-thirds of the balance of the estate. Lineal descendants of a deceased child divide that child's share.

- * If there is no surviving spouse, but surviving children or their lineal descendants, each of the children receives an equal share of the estate. Lineal descendants of a deceased child divide that child's share.
- * If the decedent has no surviving spouse or children and no lineal 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 lineal descendants.

The statute goes on at considerable length to cover other possible survivorship 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 legal 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 not later than 13 months after appointment and once a year thereafter. This account must include an itemized statement of all receipts, disbursements and distributions made by the administrator during the reporting period. When the administrator files the *final and distributive account* with the 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 very careful records and to carry out all procedures required by the probate court in an orderly manner. It is also important to maintain a positive relationship with the decedent's heirs. This is especially true when the administrator is one of several surviving relatives of the decedent. An administrator will encounter far 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 responsibilities, and can expose you to financial liability if claims and assets are not properly handled. If you are appointed to serve as administrator of an estate, do not rely on casual advice from friends and family members regarding your duties to the court and the decedent's heirs. A lawyer can provide you with trained legal advice and professional judgment regarding the complicated laws involved, to help you avoid pitfalls and make the proper decisions.

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

(Updated 10/01/2004)