

## **INITIAL INSTRUCTION SHEET FOR PRO SE ESTATE SITUATIONS**

First of all, the Court wishes to express its sympathy for the loss of your loved one. We understand that this is a stressful time emotionally and the last thing anyone needs is to be frustrated with the whole probate process. Therefore, we will make every effort to assist you in the processing of the estate. Please keep in mind that unless you have a specific emergency, there is no real urgency to proceed with any probate process prior to the funeral.

Keep in mind, however, that neither the Judge, nor any of the Judge's clerks, are permitted by law to give you any legal advice. Legal advice includes advising which estate proceeding you need to use, helping you fill out forms, or indicating to you whether or not the forms you filled out will satisfy the legal requirements of the statute and the Court.

I can, however, give you some explanation of how the system works in general.

### **DECEDENT'S ASSETS**

First of all there, are two types of assets: probate assets and non-probate assets.

Non-probate assets are assets to which title passes as a matter of law and no estate need be opened for these particular assets. These assets include:

1. A life insurance policy payable to an individual or individuals
2. Property that is held as joint tenants with right of survivorship
3. Payable on Death (P.O.D.) accounts
4. Transfer on Death (T.O.D.) property
5. Property in which the decedent held only a life estate
6. Certain annuities and retirement benefits

The rules are different for each of these assets and they may be different depending upon which institution holds the asset. In almost all of the situations you will need a copy of the death certificate. Keep in mind that just because property is held in two names does not mean that the property is joint with right of survivorship. If property is held in two names with nothing else, then one-half of the property is owned by the decedent and one-half of the property is owned by the other co-tenant.

In addition, other state laws may apply.

To a large extent, most every other asset is a probate asset.

## **ESTATE PROCEEDINGS**

There are three types of estate proceedings that can be used:

### **1. Summary Release**

The first proceeding is called a summary release. A summary release can be used if one of the following situations apply:

(1). The applicant is decedent's surviving spouse entitled to one hundred percent of the allowance for support and decedent's funeral and burial expenses have been prepaid or the surviving spouse has paid or is obligated in writing to pay decedent's funeral and burial expenses and the value of the assets does not exceed \$40,000 allowance for support under R.C. 2106.13(B) plus an amount not exceeding \$5,000 for decedent's funeral and burial expenses.

(2). The applicant, who is not the surviving spouse, has paid or is obligated in writing to pay decedent's funeral and burial expenses and the value of the assets is the lesser of \$5,000 or the amount of decedent's funeral and burial expenses.

NOTE: If more than one person has paid the funeral expenses, the parties must agree in writing as to who receives the property.

### **2. Relieving From Administration**

The second type of estate proceeding is called a relieving from administration. This can be used if one of the following situations apply:

(1). The assets are \$35,000 or less and the decedent died on or after November 9, 1994.

(2). The assets are \$100,000 or less; the surviving spouse is entitled to all of the assets and the decedent died on or after March 18, 1999.

If the dates of death listed here do not apply to your particular situation, ask the deputy clerk for more information.

### **3. Full Administration**

The third type of estate proceeding is called a full administration, which is for all other estates and situations where there has to be an executor/administrator appointed for purposes of litigation, recovery of assets, etc.

## **LEGAL COUNSEL**

The summary release and possibly even the relieving from administration can be accomplished without an attorney, although it is always suggested that you consult with an attorney and let the attorney do this important legal work for you if possible.

If the assets are very minimal, or you cannot afford to hire an attorney, I would suggest that you contact Southeastern Ohio Legal Services at 1-800-686-3668, or Community Action at 289-2371.

Perhaps you may be able to find an attorney who will give you an initial consultation for no charge and lead you in the right direction.

In the case of a full administration, it would be very unwise to even attempt to do a full administration without the assistance of an attorney.

## **TRANSFERRING MOTOR VEHICLES TO A SURVIVING SPOUSE**

An important consideration to know is the fact that up to two (2) vehicles can be transferred to a surviving spouse by affidavit without the necessity of formal estate proceedings. The vehicles you transfer by affidavit must be titled in the name of decedent only in order to use the affidavit. If it is titled in both names, then it must be owned by both parties jointly with rights of survivorship or transfer on death. We are in a position to provide you with those forms upon request. However, these forms are not processed through the Probate Court, but are processed by the Title Department, which also can provide you with the same forms. They are fairly simple to fill out and no attorney is necessary.

However, if there are additional estate assets, make sure you provide the attorney with copies of these affidavits because they do have to be included in some of the other estate documents if an estate proceeding is required.

Again, I remind you that unless there is a specific emergency, there is no urgency to take care of these probate matters prior to the funeral. The most important need is to take care of the decedent's family and friends, including yourself.

Please feel free to ask our clerks any questions, and they will answer any questions that they are permitted to answer. However, again, keep in mind that there may be some questions that they are simply not permitted to answer.

ROBERT N. ROSENBERGER  
Probate Judge