

# Table of Contents

## CHAPTER 1. HISTORY OF PROBATE COURTS

- § 1:5 Constitutional and legislative provisions
- § 1:6 Ohio probate system unique *[New]*

## CHAPTER 2. ADMINISTRATION OF A DECEDENT'S ESTATE—OVERVIEW

- § 2:3 Time for administration of decedent's estate and payment of estate taxes
- § 2:6 Identification of assets
- § 2:6.50 Identification of assets—Application to disburse attorney decedent's trust account(s) (Form 13.11) *[Retitled]*
- § 2:8 Preparation and execution of necessary documents

### I. PROBATING THE WILL

- § 2:14 Probating the will—Appeal—Will contest

### II. APPOINTMENT OF FIDUCIARY

- § 2:15 Appointment of fiduciary—Appointment of executor or administrator
- § 2:16 Appointment of fiduciary—Fiduciary's bond

### III. INVENTORY AND APPRAISAL

- § 2:17 Inventory and appraisal—Ascertaining assets
- § 2:18 Inventory and appraisal—Appraisal of assets
- § 2:21 Inventory and appraisal—Decedent's automobiles to spouse, or motor vehicle, boat or outboard motor to surviving joint owner
- § 2:22 Inventory and appraisal—Family allowance
- § 2:23 Inventory and appraisal—Filing of inventory

### IV. TAX RELEASES

- § 2:24 Tax releases

### V. PAYMENT OF DEBTS AND CLAIMS

- § 2:27 Payment of debts and claims—Presentation of claims
- § 2:28 Payment of debts and claims—Notice to creditors
- § 2:34 Payment of debts and claims—Mortgage and tax liens

### VI. ELECTIVE RIGHTS OF SURVIVING SPOUSE

- § 2:37 Elective rights of surviving spouse—Election to take under law or under the will—Procedure for making election
- § 2:38 Elective rights of surviving spouse—Election to take under law or under the will—Elective share of surviving spouse against the will

- § 2:39 Elective rights of surviving spouse—Election to take under law or under the will—Failure to make election against the will

## **XI. OHIO ESTATE TAX**

- § 2:61 Ohio estate tax—Levy of estate tax
- § 2:62 Ohio estate tax—Filing the return
- § 2:79 Ohio estate tax—Determining the gross estate—Marital deduction

## **XII. OTHER STATE AND FEDERAL TAXES**

- § 2:89 Other state and federal taxes—Ohio personal property tax
- § 2:91 Other state and federal taxes—Federal estate tax

## **XIII. FIDUCIARY'S ACCOUNT**

- § 2:92 Fiduciary's account—Time for filing
- § 2:94 Fiduciary's account—Hearing
- § 2:95 Fiduciary's account—Copy of account to interested parties—Notice of hearing; Exceptions to account
- § 2:96 Fiduciary's account—Effect of order settling account
- § 2:98 Fiduciary's account—Effect of vacation; Supplemental final account

## **XIV. DISTRIBUTION OF ASSETS**

- § 2:106 Distribution of assets—Transfer of real estate
- § 2:107 Distribution of assets—Transfer of titles to motor vehicles, boat or outboard motor

## **XV. RELEASE FROM ADMINISTRATION**

- § 2:108 Release from administration
- § 2:109 Release from administration—Appraisal of property
- § 2:110 Release from administration—Application; Notice
- § 2:112 Summary release from administration generally
- § 2:114 Application for summary release from administration
- § 2:116 Effect of probate court order
- § 2:117 Election of surviving spouse to receive mansion house
- § 2:118 Certificate of transfer or interest in real property
- § 2:119 Matters outside formal estate administration

## **XVI. TIMETABLE**

- § 2:120 Administration of decedent's estate—Timetable

## **XVII. CHECKLISTS**

- § 2:121 Administration of decedent's estate—Checklist<sup>Ⓢ</sup>
- § 2:122 Administration of decedent's estate—Release—Checklist<sup>Ⓢ</sup>

## **CHAPTER 3. JURISDICTION OF PROBATE COURT**

- § 3:2 Statutory
- § 3:4 Subject matter—In general
- § 3:5 Subject matter—Specific areas—Inter vivos trusts
- § 3:6 Subject matter—Specific areas—Fiduciaries

## TABLE OF CONTENTS

- § 3:7 Subject matter—Specific areas—Testamentary trusts
- § 3:8 Subject matter—Specific areas—Specific performance of contract
- § 3:9 Subject matter—Specific areas—Will contests
- § 3:10 Subject matter—Specific areas—Exhaustion of jurisdiction—Estate closed
- § 3:11 Subject matter—Specific areas—Exhaustion of jurisdiction—Nonprobate beneficiaries
- § 3:12.50 Subject matter—Specific areas—Obtaining identity of biological parents *[New]*
- § 3:13.50 Subject matter—Specific areas—Treatment of persons suffering from alcohol or other drug abuse *[New]*
- § 3:14 Scope—Exclusive and concurrent jurisdiction
- § 3:17 Dispute resolution procedure in probate court

## I. JURISDICTION OF PROBATE COURT—FORMS

### A. CAPTIONS

- § 3:19 Guardianship of incompetent—Form<sup>⊗</sup>

### B. SIGNATURE

- § 3:25 Signature—Form

### D. OATHS AND BONDS

- § 3:35 Appointment of magistrate—Form<sup>⊗</sup>

### E. JURY DEMANDS

- § 3:44 Demand for jury—Form
- § 3:46 Notice of jury trial, to clerk of courts—Form
- § 3:47 Certificate of clerk of courts—Form
- § 3:48 Summons for jury *[Retitled]*

### F. ANATOMICAL GIFTS

- § 3:53 Gift of all or part of the body—Form<sup>⊗</sup>
- § 3:54 Gift by next of kin or other authorized person—Form

## CHAPTER 4. SERVICE

- § 4:3 Notice—Methods
- § 4:11 Notice—Waiver
- § 4:12 Summons—Generally
- § 4:15 Summons—Methods within Ohio—Certified or express mail
- § 4:17 Summons—Methods within Ohio—Residence service
- § 4:18 Summons—Methods outside Ohio—When permitted
- § 4:19 Summons—Methods outside Ohio—Certified or express mail
- § 4:20 Summons—Methods outside Ohio—Personal service
- § 4:21 Summons—Methods outside Ohio—In a foreign country
- § 4:23 Summons—Publication—Application to probate jurisdiction
- § 4:24 Summons—Publication—Procedure
- § 4:25 Summons—Service refused
- § 4:26 Summons—Service unclaimed
- § 4:33 Summons—Specific persons or entities—Fictitious name

## **I. SERVICE—FORMS**

### **E. SUBPOENA**

- § 4:51 Subpoena for attendance at hearing or trial, and for production of documents—Form
- § 4:52 Subpoena for taking deposition and for production of documents—Form

## **CHAPTER 5. EVIDENTIARY MATTERS**

- § 5:1 Privileged communications—Statutory protection
- § 5:2 Privileged communications—Protected relationships—Attorney and client—Definition and scope of the privilege
- § 5:5 Privileged communications—Protected relationships—Attorney and client—Probating a will: Admissible communications—Implied waiver of privilege
- § 5:6 Privileged communications—Protected relationships—Attorney and client—Probating a will: Admissible communications—Actual waiver of privilege
- § 5:7 Privileged communications—Protected relationships—Physician or dentist and patient—Definition and scope of the privilege
- § 5:8 Privileged communications—Protected relationships—Physician or dentist and patient—Waiver of the privilege
- § 5:9 Privileged communications—Protected relationships—Husband and wife—Definition and scope of the privilege
- § 5:14 Dead man’s statute

## **CHAPTER 6. DECLARATORY JUDGMENTS**

- § 6:2 Declaratory Judgment Act
- § 6:4 Action—Parties
- § 6:5 Action—Jury
- § 6:6 Probate court proceedings

### **I. DECLARATORY JUDGMENTS—FORMS**

- § 6:7.10 Complaint for declaratory judgment, and request for creation of trust in connection with controversy with regard to parties’ right and obligations to property<sup>Ⓢ</sup> *[New]*
- § 6:9.10 Complaint for fraud, intentional interference with inheritance, unjust enrichment, conversion, and fraudulent conveyance and seeking constructive trust<sup>Ⓢ</sup> *[New]*

## **CHAPTER 8. APPEAL FROM PROBATE COURT**

- § 8:1 Appeal—Statutory provisions
- § 8:2 Appeal—Final appealable orders
- § 8:3 Appeal—Notice—Filing requirement
- § 8:4 Appeal—Notice—Time for filing
- § 8:6 Appeal—Notice—Service
- § 8:7 Cross appeal—Filing requirement; Time limit
- § 8:8 Cross appeal—Notice not required, when

## **CHAPTER 10. EXPECTANT ESTATES**

- § 10:4 Alienable

TABLE OF CONTENTS

**CHAPTER 11. DISCLAIMER OF SUCCESSION  
TO PROPERTY**

- § 11:1 Disclaimant—Definition
- § 11:2 Disclaimant—Other than fiduciary
- § 11:7 Right to disclaim—Limitations—Conditions barring right to disclaim
- § 11:14 Delivery of disclaimer instrument—Interest disclaimed—Nontestamentary instrument
- § 11:17 Delivery of disclaimer instrument—Disclaimer of interest in real estate
- § 11:23 Application to separate interests

**CHAPTER 12. WRONGFUL DEATH**

- § 12:1 Scope of RC Ch. 2125
- § 12:2 Who may bring an action; Arbitration agreement [*Retitled*]
- § 12:3 Jurisdiction of probate court
- § 12:4 Trial
- § 12:7 Status of beneficiaries fixed at death of decedent
- § 12:9 Damages—Criteria for award
- § 12:10 Damages—Loss of chance doctrine
- § 12:11 Damages—Compensatory
- § 12:12 Damages—Apportionment
- § 12:13 Damages—Stacking of uninsured/underinsured motorist coverage
- § 12:14 Statute of limitations—Savings statute
- § 12:15 Failure of fiduciary to file action
- § 12:16 Interspousal and parental immunities not applicable
- § 12:19 Denial of damages to parent who abandoned child—In general
- § 12:20 Denial of damages to parent who abandoned child—Motion to deny damages
- § 12:21 Denial of damages to parent who abandoned child—Hearing; Burden of Proof; Order; Effect
- § 12:22 Release by decedent; arbitration agreement [*Retitled*]
- § 12:23 Post-judgment review; appeal

**CHAPTER 13. GIFTS INTER VIVOS**

**I. OVERVIEW**

- § 13:1 Defined
- § 13:2 Evidence and burden of proof
- § 13:3 Capacity of parties to make and receive

**II. ELEMENTS**

- § 13:5 Elements—Donative intent
- § 13:6 Elements—Delivery requirement—In general

**III. LIMITATIONS ON GIFTS INTER VIVOS**

- § 13:12 Effect of fraud and undue influence

**IV. SUITABLE PROPERTY FOR GIFTS INTER VIVOS**

- § 13:21 Subject of gifts—Insurance policies

- § 13:22 Subject of gifts—Money in bank accounts—Donor’s savings account
- § 13:24 Subject of gifts—Money in bank accounts—Joint account without right of survivorship
- § 13:25 Subject of gifts—Money in bank accounts—Rights created by joint account with right of survivorship
- § 13:26 Subject of gifts—Money in bank accounts—Rights of guardian in joint account with right of survivorship: Agent under power of attorney

## **CHAPTER 14. GIFTS CAUSA MORTIS; P.O.D. ACCOUNTS; TOD REGISTRATION**

### **I. GIFTS CAUSA MORTIS**

- § 14:1 Elements
- § 14:3 Fraud, duress, or undue influence
- § 14:4 Personal property only—In general
- § 14:8 Personal property only—Bank accounts
- § 14:9 Personal property only—Life insurance
- § 14:11 Delivery—In general
- § 14:14 Donor to relinquish all control
- § 14:15 Apprehension or expectation of death

### **II. P.O.D. ACCOUNTS**

- § 14:18 Payable on death accounts

### **III. TOD REGISTRATION**

- § 14:19 Uniform Transfer-on-Death Security Registration Act

### **IV. TRANSFER-ON-DEATH AFFIDAVIT *[Retitled]***

- § 14:20 Transfer-on-Death Affidavit *[Retitled]*
- § 14:20.50 Transfer-on-death Designation Affidavit<sup>®</sup> *[New]*

## **CHAPTER 15. DESCENT AND DISTRIBUTION**

- § 15:1 Scope of statutes
- § 15:4 Heir
- § 15:6 Surviving spouse—In general
- § 15:17 Rights of surviving spouse—Example 4—Chart
- § 15:26 Afterborn or posthumous child
- § 15:28 Adopted child
- § 15:29 Designated heir
- § 15:33 Grandparents or their lineal descendants
- § 15:51 Denial of inheritance to parent who abandons minor—Scope of RC 2105.10
- § 15:57 Artificial reproduction technology *[New]*

## **CHAPTER 16. PRESUMPTION OF ORDER OF DEATH**

- § 16:1 Statutory provisions
- § 16:3 Statutory presumption—Construed

TABLE OF CONTENTS

**CHAPTER 17. DESIGNATION OF HEIR**

§ 17:3 Designation—Contrast with adoption

**CHAPTER 19. ILLEGITIMATE CHILD—  
ACKNOWLEDGMENT BY FATHER; ACTION  
TO LEGITIMATE; UNIFORM PARENTAGE  
ACT**

§ 19:2 Legitimation—Procedure—Acknowledgment of paternity

§ 19:4 Legitimation—Historical provisions

§ 19:6 Uniform Parentage Act—Jurisdiction of action to determine father-child relationship

§ 19:7 Uniform Parentage Act—Presumptions

§ 19:8 Uniform Parentage Act—Support order

§ 19:9 Uniform Parentage Act—Res judicata; Doctrine of laches

§ 19:10 Uniform Parentage Act—Procedure in action to determine father-child relationship

§ 19:14 Uniform Parentage Act-Surrogacy agreement

**CHAPTER 20. ADVANCEMENTS**

§ 20:1 Definition

**CHAPTER 21. RIGHTS OF SURVIVING SPOUSE**

**I. RIGHTS OF SURVIVING SPOUSE, GENERALLY**

*[New]*

§ 21:1 Rights of surviving spouse—In general *[Retitled]*

§ 21:1.50 Rights of surviving spouse—Community property *[New]*

**II. ELECTION BY SURVIVING SPOUSE TO TAKE  
UNDER OR AGAINST THE WILL**

§ 21:5 Rights of surviving spouse to make election—Statutory provisions—  
Effect

§ 21:19 Rights of surviving spouse to make election—Effect of election—  
Generally

§ 21:32 Rights of surviving spouse to make election—Election to be made in  
person—Scope of RC 2106.06

§ 21:33 Rights of surviving spouse to make election—Explanation of “in  
person” requirement

**III. ELECTION TO RECEIVE MANSION HOUSE AS  
INTESTATE SHARE**

§ 21:44 Rights of surviving spouse to elect to receive mansion house—  
Statutory right

§ 21:46 Rights of surviving spouse to elect to receive mansion house—  
Procedure—Application for certificate of transfer

§ 21:47 Rights of surviving spouse to elect to receive mansion house—  
Procedure—Election where estate relieved from administration

#### **IV. PAYMENT OF SPECIFIC MONETARY SHARE**

§ 21:50 Rights of surviving spouse to payment of specific monetary share—  
Monetary share as charge on real estate

#### **V. FAMILY ALLOWANCE**

§ 21:51 Family allowance—Distribution  
 § 21:52 Family allowance—Reduction  
 § 21:53 Family allowance—Preference of payment

#### **VII. PURCHASE OF PROPERTY AT APPRAISED VALUE**

§ 21:62 Purchase of other property at appraised value

#### **VIII. RIGHT OF SURVIVING SPOUSE TO MOTOR VEHICLES, BOAT OR OUTBOARD MOTOR**

§ 21:77 Right to receive motor vehicles, boat or outboard motor—  
Automobile or truck or motorcycle owned by decedent  
 § 21:78 Right to receive motor vehicles, boat or outboard motor—Motor  
vehicle, boat or motor owned jointly with right of survivorship

#### **IX. FUNERAL EXPENSES**

§ 21:83 Right to body for burial; Disinterment

#### **XI. TERMINATION OF RIGHTS**

§ 21:85 Termination of rights upon divorce, dissolution, or annulment of  
marriage

#### **XII. RIGHTS OF SURVIVING SPOUSE—FORMS**

§ 21:86 Reference list  
 § 21:87.10 Complaint by former spouse for breach of settlement agreement,  
breach of fiduciary duty, and tortious interference with  
contract<sup>Ⓢ</sup> *[New]*

### **CHAPTER 26. TESTAMENTARY CAPACITY**

§ 26:2 Who may make a will—In general  
 § 26:6 Defining capacity—Factors bearing on capacity  
 § 26:9 Defining capacity—Factors bearing on capacity—Senility  
 § 26:10 Defining capacity—Factors bearing on capacity—Undue influence

### **CHAPTER 27. TESTAMENTARY FORMALITIES**

§ 27:1 Definition of will; Testamentary intent  
 § 27:2 Compliance with statute  
 § 27:3 Necessity for a writing  
 § 27:3.50 Electronic wills *[New]*  
 § 27:3.60 Electronic estate planning documents *[New]*  
 § 27:4 Signature—“At the end”  
 § 27:5 Signature—By the maker  
 § 27:6 Signature—By another person

## TABLE OF CONTENTS

- § 27:8 Acknowledgment by testator
- § 27:9 Attesting witnesses
- § 27:10 Time of execution and attestation
- § 27:12 Harmless error in will execution

## CHAPTER 28. CODICILS

- § 28:2 Requirements

## CHAPTER 29. ORAL WILLS

- § 29:1 Disposition of personal property—Statutory requirements

## CHAPTER 30. DRAFTING A WILL

- § 30:1 Scope
- § 30:2 General recommendations—Tailoring language to avoid ambiguity
- § 30:7 Introductory clause—Assertion of testamentary capacity
- § 30:11 Funeral and memorial instructions—Autopsy or post-mortem examination
- § 30:12 Funeral and memorial instructions—Anatomical gifts
- § 30:13 Funeral and memorial instructions—Funeral and burial arrangements
- § 30:13.50 Funeral and memorial instructions—Appointment of representative for disposition of bodily remains, funeral arrangements, and burial or cremation goods and services<sup>Ⓢ</sup> [New]
- § 30:15 Beneficiary clauses—Definitions
- § 30:16 Beneficiary clauses—Specific bequest
- § 30:18 Beneficiary clauses—Alternate beneficiary
- § 30:24 Surviving spouse—Bequest in lieu of statutory rights
- § 30:25 Surviving spouse—Election to take against the will
- § 30:26 Surviving spouse—Disinheritance of spouse
- § 30:30 Clauses to discourage a will contest action—In terrorem (No-contest) clauses [Retitled]
- § 30:32 Designation of guardian, trustee, and attorney—Designation of guardian of minor children
- § 30:33 Designation of guardian, trustee, and attorney—Designation of testamentary trustee
- § 30:35 Appointment of executor, alternate executor; Ancillary administrator
- § 30:37 Authorization for executor’s activity—Self-dealing
- § 30:41 Execution of the will
- § 30:42 Attestation clause
- § 30:43 Choosing witnesses—In general
- § 30:44 Choosing witnesses—Drafting attorney as witness
- § 30:46 Choosing witnesses—Psychiatrist as witness
- § 30:55 Mechanical recording of execution of will—Deposit of will
- § 30:57 Malpractice liability of drafting attorney; Professional disciplinary action
- § 30:58 Without a license to practice law
- § 30:59 Harmless error in will execution

## I. DRAFTING A WILL—FORMS

- § 30:60 Scope
- § 30:61 Simple will—Form

§ 30:61.50 Last will and testament sample form<sup>Ⓞ</sup> *[New]*

**A. INTRODUCTORY CLAUSE**

§ 30:62 Publishing clause—Form

**C. GRAVE MARKER; CARE AND DECORATION OF GRAVE**

**H. SPECIFIC, DEMONSTRATIVE, AND GENERAL LEGACIES**

§ 30:95 Automobile, specific bequest; Provision if there is more than one—  
Form

§ 30:102 Farm and chattel property used in connection therewith, specific  
devise—Form<sup>Ⓞ</sup>

**I. CONDITIONS AND CHARGE ON GIFT**

§ 30:127.10 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of security in registered form<sup>Ⓞ</sup>  
*[New]*

§ 30:127.20 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of security not in registered  
form<sup>Ⓞ</sup> *[New]*

§ 30:127.30 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of money<sup>Ⓞ</sup> *[New]*

§ 30:127.40 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of life or endowment insurance  
policy<sup>Ⓞ</sup> *[New]*

§ 30:127.50 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of interest in real estate<sup>Ⓞ</sup>  
*[New]*

§ 30:127.60 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of interest in tangible personal  
property<sup>Ⓞ</sup> *[New]*

§ 30:127.70 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of interest in tangible personal  
property (title to which is evidenced by Certificate of Title  
issued by a Department or Agency of a State or of the United  
States)<sup>Ⓞ</sup> *[New]*

§ 30:127.80 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of designation of minor as bene-  
ficiary of life or endowment insurance policy, annuity  
contract or benefit plan<sup>Ⓞ</sup> *[New]*

§ 30:127.90 Statutory form for gifts or transfers under Ohio Transfers to  
Minor Act for gift or transfer of an irrevocable exercise of a  
Power of Appointment in favor of minor or is an interest in  
any property not otherwise described<sup>Ⓞ</sup> *[New]*

**O. LEGAL LIFE ESTATE**

§ 30:150 Life estate in real property, power to sell and to keep proceeds—  
Form<sup>Ⓞ</sup>

**P. CHARITABLE GIFTS**

§ 30:155 Provision if charity nonexistent—Form<sup>Ⓞ</sup>

TABLE OF CONTENTS

**Q. RESIDUARY ESTATE**

- § 30:165.50 Will language for exercise of general power of appointment for basis adjustment<sup>Ⓞ</sup> [New]

**V. GUARDIAN**

- § 30:179 Guardianship, generally

**W. PAYMENT OF TAXES**

- § 30:188 Apportionment of taxes among beneficiary including spouse—Form

**Y. EXECUTION OF WILL**

- § 30:191 Testator's name signed by another—Form  
§ 30:192 Testator's mark—Form  
§ 30:193 Attestation clause of witnesses—Form  
§ 30:196 Acknowledgment of signature where testator has already signed will—Form  
§ 30:197 Will signed in presence of one witness; Signature acknowledged to the other—Form

**AA. CONTINGENT TESTAMENTARY TRUST;  
TESTAMENTARY TRUST; POUR-OVER WILLS  
AND INTER VIVOS TRUST AND WILLS**

- § 30:200 Estate planning considerations under the Ohio Trust Code  
§ 30:201 Sample will; All to surviving spouse, otherwise contingent testamentary trust for children—Form<sup>Ⓞ</sup>  
§ 30:202 Estate planning considerations under ERTA and Ohio tax laws—Form<sup>Ⓞ</sup>  
§ 30:203 Will of husband creating testamentary trust—Form<sup>Ⓞ</sup>  
§ 30:205 Inter vivos trust agreement—Form<sup>Ⓞ</sup>  
§ 30:207 Wife's pour-over will to her inter vivos trust agreement or to husband's inter vivos trust agreement—Form<sup>Ⓞ</sup>

**AB. GENERATION-SKIPPING TRUST**

- § 30:208 Generation-skipping trust—Form<sup>Ⓞ</sup>  
§ 30:209 Husband's pour-over will to his generation-skipping trust—Form

**AC. EXAMPLES OF OTHER TRUSTS**

- § 30:211 Irrevocable trust—Insurance—Form<sup>Ⓞ</sup>  
§ 30:211.50 Irrevocable trust agreement for education<sup>Ⓞ</sup> [New]  
§ 30:214 Irrevocable trust—Annual exclusion—Form<sup>Ⓞ</sup>  
§ 30:215 Joint trust agreement—Form<sup>Ⓞ</sup>

**AD. MISCELLANEOUS TRUST PROVISIONS**

- § 30:258 Miscellaneous trust provision—Qualified domestic trust provision—Form<sup>Ⓞ</sup>  
§ 30:265 Miscellaneous trust provision—Appointment of representative for disposition of bodily remains, funeral arrangements, and burial or cremation goods and services (RC 2108.72)—Form<sup>Ⓞ</sup>

§ 30:266 Simplified probate *[New]*

## CHAPTER 31. INCORPORATION BY REFERENCE

§ 31:2 Pour-over will to a trust

## CHAPTER 32. CHARITABLE BEQUESTS

§ 32:2 Doctrines of cy pres and deviation

§ 32:3 Charitable trusts

§ 32:3.50 Charitable endowments *[New]*

## CHAPTER 33. TRUSTS

§ 33:1 Testamentary addition to existing trust—Statutory provisions for pour-over: Transfer of property to trust

§ 33:2 Testamentary addition to existing trust—Purpose of pour-over statute

§ 33:3 Testamentary addition to existing trust—Validity of unfunded trust

§ 33:4 Testamentary addition to existing trust—Recording memorandum of trust<sup>⊗</sup>

§ 33:5 Testamentary trustee as beneficiary of life insurance or other benefit plan—Purpose and scope of statute allowing trustee-beneficiary

§ 33:6 Testamentary trustee as beneficiary of life insurance or other benefit plan—Statutory provisions regarding trustee as beneficiary

§ 33:7 Beneficiary of payable on death account and transfer of other assets

§ 33:8 Spendthrift provision

§ 33:9 Spendthrift provision—“S corporation” stock

§ 33:10 Spendthrift provision—Generation-skipping transfer

§ 33:11 Accumulation of trust income

§ 33:12 Beneficiary of IRA account

§ 33:13 Consolidation or division of trusts

§ 33:14 Consolidation or division of trusts—Approval of court, notice

§ 33:15 Consolidation or division of trusts—Rights under RC 5804.17 not exclusive

§ 33:15.50 Notice of resignation by Trustee (“Notice”) and beneficiary’s consent to action<sup>⊗</sup> *[New]*

§ 33:16 Medicaid-qualifying; Transfers of property

§ 33:17 Ohio Trust Code (OTC)—Ohio Uniform Prudent Investor Act

§ 33:18 Ohio Principal and Income Act

§ 33:19 Reports of inter vivos trustees

§ 33:20 “Disability” trusts—Trust to provide supplemental services for disabled individuals

§ 33:21 Two-year statute of limitations for action contesting validity—Acceleration of statute of limitation

§ 33:22 Termination of small trusts

§ 33:23 Preparation of trust without license to practice law or other violations

## II. TRUSTEE OF UNBORN PERSONS

§ 33:38 Application for appointment of trustee for unborn persons—Form<sup>⊗</sup>

**CHAPTER 34. OHIO TRUST CODE**

- § 34:1 Ohio Trust Code; background and research *[Retitled]*
- § 34:1.50 Researching the Ohio Trust Code *[Deleted]*
- § 34:2 Applicability of Ohio Trust Code *[Retitled]*
- § 34:3 Default—Mandatory rules
- § 34:4 Beneficiary
- § 34:5 Notice by the trustee to a beneficiary
- § 34:6 Creation of a trust
- § 34:6.50 Joint trusts *[New]*
- § 34:6.60 Pet trusts *[New]*
- § 34:6.65 Specific gift relating to pets<sup>⊙</sup> *[New]*
- § 34:7 Jurisdiction; Situs of trust
- § 34:8 Modification, termination, revocation, or merger of a trust
- § 34:8.10 Modification, termination, revocation, or merger of a trust—Notice of proposed termination of trust by trustee (“Notice”) and beneficiaries’ consent to proposed distributions<sup>⊙</sup> *[New]*
- § 34:8.50 Modification, termination, revocation, or merger of a trust—Court modification or termination of a trust *[New]*
- § 34:8.60 Modification, termination, revocation, or merger of a trust—Modification or termination for unanticipated circumstances *[New]*
- § 34:8.70 Simplified procedure for termination of intervivos trusts *[New]*
- § 34:9 Spendthrift provision
- § 34:10 Creditor of the settlor
- § 34:12 Action to contest the validity, revocation, amendment, or transfer of property of a trust
- § 34:13 Wholly discretionary trust; Creditor of a beneficiary
- § 34:14 Trustee; Powers, delegation, acceptance, compensation, bond, vacancies, resignation or removal
- § 34:14.50 Payment by trustee of expenses incurred by a trust beneficiary *[New]*
- § 34:15 Breach of trust by a trustee
- § 34:15.50 Breach of trust by a trustee—Voidable actions of the trustee; good faith; presumption *[New]*
- § 34:15.60 Trust protector; trust advisor; administrative trustee *[New]*
- § 34:16 Certification of trust by trustee to third party
- § 34:17 Representation
- § 34:18 Private settlement agreements
- § 34:18.50 Private settlement agreements—Nonstatutory private agreements relative to trustee’s liability *[New]*
- § 34:18.60 Private settlement agreements—Removing or appointing trustees *[New]*
- § 34:19 Guardian of person or estate *[New]*
- § 34:20 Anti-lapse statute pertaining to trusts *[New]*
- § 34:21 Distribution from a trust under R.C. 5808.17(D) and (E) when trust beneficiary is deceased *[New]*
- § 34:22 Decanting of a trust *[New]*
- § 34:22.10 Statutory notice for period of decanting of distributing trust<sup>⊙</sup> *[New]*
- § 34:22.20 Waiver of notice period and acknowledgement of distributing trust<sup>⊙</sup> *[New]*
- § 34:22.30 Statutory acknowledgement for individual acting in own right<sup>⊙</sup> *[New]*
- § 34:22.40 Statutory acknowledgement for corporation<sup>⊙</sup> *[New]*

- § 34:22.50 Decanting of a trust—Irrevocable trust agreement<sup>⊗</sup> *[New]*
- § 34:22.55 Statutory acknowledgement limited liability company<sup>⊗</sup> *[New]*
- § 34:22.60 Statutory acknowledgement for partnership<sup>⊗</sup> *[New]*
- § 34:22.70 Statutory acknowledgement by any public officer, trustee or personal representative<sup>⊗</sup> *[New]*
- § 34:23 Trustee’s duties with respect to trust-owned life insurance policies *[New]*
- § 34:24 Titling of real property and personal property transferred to a trust *[New]*
- § 34:25 Ohio Legacy Trust Act *[New]*
- § 34:26 Statute of limitation for creditors under Ohio Uniform Fraudulent Transfer Act (“UFTA”) *[New]*
- § 34:27 Forms under Ohio Trust Code *[New]*
- § 34:28 Forms under Ohio Trust Code—PSA provisions<sup>⊗</sup> *[New]*
- § 34:29 Forms under Ohio Trust Code—Complete trust agreement form<sup>⊗</sup> *[New]*
- § 34:30 Forms under Ohio Trust Code—Companion pour-over will<sup>⊗</sup> *[New]*
- § 34:31 Arbitration of trust disputes *[New]*
- § 34:32 Sample joint trust agreement form<sup>⊗</sup> *[New]*
- § 34:33 Construction of formula tax clause gifts *[New]*
- § 34:34 Statutory jurat<sup>⊗</sup> *[New]*

## **CHAPTER 35. DECLARING THE VALIDITY OF A WILL—ANTE MORTEM**

- § 35:1 Scope of chapter *[Retitled]*
- § 35:2 Jurisdiction, complaint *[Retitled]*
- § 35:3 Parties *[Retitled]*
- § 35:4 Hearing *[Retitled]*
- § 35:5 Judgment *[Retitled]*
- § 35:6 Forms of complaint *[Retitled]*
- § 35:6.50 Complaint to validate will<sup>⊗</sup> *[New]*
- § 35:7 Consent validation complaint<sup>⊗</sup> *[Retitled]*
- § 35:8 Consent validation answer<sup>⊗</sup> *[Retitled]*
- § 35:9 Adversary proceeding complaint<sup>⊗</sup> *[New]*
- § 35:10 Medical records release<sup>⊗</sup> *[New]*

## **CHAPTER 36. JURISDICTION TO PROBATE A WILL**

- § 36:2 Domicile of testator—Ohio
- § 36:6 Contesting jurisdiction to probate—Interested persons

## **CHAPTER 37. ADMISSION TO PROBATE**

- § 37:1 Criteria
- § 37:2 Notice

## **CHAPTER 39. WILL CONTESTS**

- § 39:1 Will contests
- § 39:1.50 Complaint for will contest<sup>⊗</sup> *[New]*
- § 39:2 Statutory provisions
- § 39:3 Later will admitted to probate
- § 39:4 Interested persons

## TABLE OF CONTENTS

- § 39:6 Capacity to contest a will
- § 39:7 Commencement of action; Limitation of actions
- § 39:8 Parties to action—Necessary parties
- § 39:10 Service of process
- § 39:12 Pretrial procedure
- § 39:13 Trial—Procedure
- § 39:14 Trial—Attorney as witness
- § 39:15 Trial—Juries
- § 39:16 Termination action—Dismissal not on the merits
- § 39:17 Termination—Directed verdict, summary judgment, and judgment notwithstanding the verdict
- § 39:18 attorney’s fees
- § 39:19 Appeal from judgment

## **CHAPTER 40. LOST, SPOILIATED, OR DESTROYED WILLS**

- § 40:1 Definition
- § 40:2 Statutory provisions for admission to probate
- § 40:3 Evidence

## **CHAPTER 41. REVOCATION OF WILL**

- § 41:1 Revocation of will—Introduction
- § 41:3 Revocation of will—Physical act—Elements—Intent
- § 41:8 Revocation of will—Subsequent written instrument—Types—Wills and codicils
- § 41:12 Revocation of interest

## **CHAPTER 42. ENCUMBRANCES**

- § 42:3 Mortgage lien; Exoneration

## **CHAPTER 44. CONSTRUING A WILL**

- § 44:1 Action for instructions—Scope
- § 44:3 Action for construction—Nature
- § 44:4 Action for construction—Function of the court
- § 44:5 Action for construction—Direction of the testator as to interpretation of a will
- § 44:10 Rules of construction—Guides to ascertain testator’s intent
- § 44:11 Liberal construction—Introduction
- § 44:15 Liberal construction—Charitable bequests; or construction problems
- § 44:18 Language—Actually employed by testator
- § 44:19 Language—Unambiguous
- § 44:20 Language—Ambiguous
- § 44:23 Words and phrases—Grandchildren
- § 44:24 Words and phrases—Home and its contents
- § 44:25 Words and phrases—Heirs or children
- § 44:30 Words and phrases—Per stirpes
- § 44:31 Words and phrases—Securities
- § 44:38 Admissibility of parol evidence—Latent ambiguity
- § 44:40 Admissibility of parol evidence—Inadmissible parol evidence
- § 44:44 Apportionment of estate—Construing a fee simple—When a fee simple does not pass

- § 44:45 Apportionment of estate—Construing a life estate—When a life estate passes
- § 44:47 Apportionment of estate—Exercise of power of appointment
- § 44:47.50 Apportionment of estate—Exercise of power of appointment—Trust language for grant of general power of appointment for basis adjustment<sup>⊗</sup> *[New]*
- § 44:48 Apportionment of estate—Rights of specific devisee or legatee
- § 44:48.10 Residuary clause *[New]*
- § 44:49 Deviation or modification of trust provisions; Resulting trust

## **CHAPTER 46. RULE AGAINST PERPETUITIES**

- § 46:1 Statutory expression—Vesting of estate
- § 46:5 Statutory expression—Reformation of interests
- § 46:6 Statutory expression—Effective date and powers of appointment
- § 46:7 Statutory expression—Ohio State Bar Association, Probate and Trust Law Section comment on amendments effective January 1, 1968 and thereafter *[Retitled]*
- § 46:9 Application to powers of appointment
- § 46:11 Application to trusts
- § 46:14 Dynasty trusts

## **CHAPTER 47. ANTI-LAPSE STATUTE**

- § 47:0.50 New anti-lapse statute pertaining to wills *[New]*
- § 47:1.50 Provisions of former RC 2107.52 *[Retitled]*
- § 47:2 “Relative” as beneficiary
- § 47:3 “Issue” as beneficiary
- § 47:4 Deceased member of a class as beneficiary

## **CHAPTER 48. AFTERBORN OR PRETERMITTED HEIRS**

- § 48:2 Statutory provisions

## **CHAPTER 49. PROPERTY CHARGEABLE WITH PAYMENT OF DEBTS**

- § 49:4 Ademption
- § 49:9 Beneficiaries liable for payment of decedent’s debts—General rules
- § 49:10 Beneficiaries liable for payment of decedent’s debts—Liability for secured claims
- § 49:11 Liability for payment of claims against estate

### **I. PROPERTY CHARGEABLE WITH PAYMENT OF DEBTS—FORMS *[New]***

- § 49:12 Complaint seeking order declaring mortgage null and void and bank note a debt of estate<sup>⊗</sup> *[New]*

## **CHAPTER 50. WITHHOLDING A WILL**

- § 50:1 Scope of RC 2107.10
- § 50:2 Forfeiture—Nature of intent necessary to trigger
- § 50:3 Forfeiture—Defining the penalty
- § 50:4 Enforcing production

TABLE OF CONTENTS

**CHAPTER 51. AGREEMENT TO MAKE A WILL**

§ 51:1 RC 2107.04—Scope

§ 51:3 Essential elements

§ 51:7 Part performance and/or oral contract

§ 51:8 Quantum meruit for agreement to pay for services

# Table of Contents

## CHAPTER 52. RESIDENCY REQUIREMENTS OF FIDUCIARIES

- § 52:1 Residency—Administrator
- § 52:2 Residency—Executor or testamentary trustee
- § 52:4 Residency—Guardian
- § 52:5 Residency—Guardian—Removal of nonresident
- § 52:6 Residency—Removal of nonresident fiduciary

## CHAPTER 53. FIDUCIARY'S BOND

- § 53:2 In general
- § 53:4 Exceptions to requirement
- § 53:6 Amount
- § 53:13 Exceptions for trustee of estate of ward

### I. SURETIES ON BONDS

- § 53:24 Sureties—Statutory requirements
- § 53:26 Sureties—Liability—General
- § 53:27 Sureties—Liability—Extent and commencement
- § 53:32 Release—On application of surety

### II. FIDUCIARY'S BOND—FORMS

- § 53:51 Entry approving new bond—Form

## CHAPTER 54. FIDUCIARY'S ATTORNEY

- § 54:1 Appointment, fees
- § 54:6 Unauthorized practice of law
- § 54:7 Responsibilities—Legal malpractice

### I. FIDUCIARY'S ATTORNEY—FORMS *[New]*

- § 54:8 Complaint for legal malpractice, breach of contract and fiduciary duty<sup>⊗</sup> *[New]*
- § 54:9 Complaint for legal malpractice, conversion, fraud, and negligence<sup>⊗</sup> *[New]*

## CHAPTER 55. FIDUCIARY ACCOUNTS

### I. FILING

- § 55:1 Filing—Time
- § 55:3 Filing—By mail
- § 55:4 Contents—Certificate of service

## **II. HEARING AND NOTICE**

- § 55:11 Hearing on account—Notice of hearing—Copy of account
- § 55:12 Jurisdiction to settle
- § 55:14 Notice of hearing—Service

## **III. PRIOR ACCOUNTS**

- § 55:16 Prior accounts

## **IV. WAIVER**

- § 55:17 Waiver of service of notice and consent to approval of account

## **V. EXCEPTIONS**

- § 55:18 Exceptions
- § 55:19 Burden of proof on exception to account

## **VII. EFFECT OF ORDER**

- § 55:22 Effect of order settling account

## **VIII. VACATION**

- § 55:23 Vacation of order of settlement of account for fraud
- § 55:24 Person under legal disability
- § 55:26 Vacation for good cause on motion of person not party to proceeding
- § 55:27 Who is deemed a party
- § 55:28 Liability of fiduciary and surety
- § 55:29 Vacation on motion where notice was solely by newspaper publication
- § 55:30 Vacation upon motion of fiduciary
- § 55:32 Notice of hearing to vacate

## **IX. FIDUCIARY ACCOUNTS—FORMS**

### **A. INVEST OR EXPEND FUNDS**

- § 55:37 Application to invest or expend funds—Form

## **CHAPTER 56. FIDUCIARY MISCONDUCT**

### **I. PERSONAL USE OF TRUST**

- § 56:1 Deposit and investment of funds—Generally
- § 56:2 Prohibition against personal use
- § 56:3 Liability for funds and property of trust
- § 56:4 Time of action against fiduciary
- § 56:5 Exceptions filed to accounts

### **II. SELF-DEALING**

- § 56:6 Self-dealing
- § 56:7 Self-dealing—Person as trustee of more than one trust

TABLE OF CONTENTS

**III. FIDUCIARY MISCONDUCT—FORMS**

**B. BREACH OF FIDUCIARY DUTIES [New]**

§ 56:13.10 Complaint for breach of fiduciary duty and interference with expectancy of inheritance—Form<sup>⊗</sup> [New]

**CHAPTER 57. CONCEALED OR EMBEZZLED ASSETS**

- § 57:1 Scope of RC 2109.50 to RC 2109.56
- § 57:2 Jurisdiction over complaint
- § 57:3 Extra-county powers
- § 57:4 Judgment for recovery
- § 57:5 Guilty finding
- § 57:7 Action not estopped by exceptions to inventory
- § 57:8 Complaint for recovery of assets
- § 57:9 Question of title
- § 57:10 Dismissal of complaint
- § 57:11 Ex parte proceedings
- § 57:12 Defense to concealment action
- § 57:13 Burden and standard of proof
- § 57:14 Evidence of concealment
- § 57:17 Declaratory judgment; Summary judgment
- § 57:18 Dismissal of appeal or reversal

**I. CONCEALED OR EMBEZZLED ASSETS—FORMS**

- § 57:19 Complaint for concealing, embezzling, etc., of assets—Form
- § 57:20 Entry on filing of complaint—Form
- § 57:21 Citation—Form
- § 57:26 Order on complaint for concealing assets—Form

**CHAPTER 58. RESIGNATION OR REMOVAL OF FIDUCIARY**

**I. RESIGNATION**

- § 58:1 Resignation of fiduciary

**II. REMOVAL**

- § 58:2 Removal of fiduciary—Introduction
- § 58:4 Removal of fiduciary—Grounds—Failure to file inventory or account
- § 58:5 Removal of fiduciary—Grounds—Nonresidency of fiduciary
- § 58:6 Removal of fiduciary—Grounds—“Interest of trust”
- § 58:7 Removal of fiduciary—Other grounds
- § 58:10 Removal of fiduciary—Procedure—Discretion of probate court

**III. APPEAL**

- § 58:12 Removal of fiduciary—Appeal

**IV. RESIGNATION OR REMOVAL OF FIDUCIARY—  
FORMS**

- § 58:13 Resignation of fiduciary—Form
- § 58:14 Entry on resignation of fiduciary with account—Form
- § 58:15 Entry on resignation of fiduciary ordering final account—Form

**CHAPTER 60. EFFECTS OF DEATH OF  
PARTNER ON GENERAL PARTNERSHIP  
*[Retitled]***

**I. UPON DEATH OF PARTNER**

- § 60:0.10 Effective dates—Applicability—Construction *[New]*
- § 60:0.20 Death of a partner under RUPA *[New]*
- § 60:0.30 Relationship among and between partners *[New]*
- § 60:0.40 Definition of partnership *[New]*
- § 60:0.50 Partnership interest *[New]*
- § 60:0.60 Death of a partner *[New]*
- § 60:0.70 Transfer of partner’s economic interest *[New]*
- § 60:0.80 Transfer restriction in partnership agreement *[New]*
- § 60:0.85 Termination of non-economic rights of a partner *[New]*
- § 60:0.90 Dissolution and winding up *[New]*
- § 60:0.95 Judicial determination *[New]*
- § 60:1 Partnerships—Effect of death
- § 60:2 Partnerships—Probate court jurisdiction over property

**CHAPTER 61. POWER OF ATTORNEY**

- § 61:1 General; Written
- § 61:4 Real property transactions
- § 61:5 Personal property transactions—Prima facie evidence
- § 61:6 Personal property transactions—Separate records and fees
- § 61:9 Appointment of guardian for principal
- § 61:10 Power of attorney for principal’s minor or incompetent adult child—  
Standby guardian
- § 61:12 Action without knowledge of death or disability of principal
- § 61:13 Affidavit by attorney in fact—Termination of agency upon divorce
- § 61:14 Applicability to agency agreement
- § 61:15 Contesting validity
- § 61:16 Validity of transfers to agent

**I. THE OHIO POWER OF ATTORNEY ACT *[New]***

- § 61:16.10 Ohio Power of Attorney Act, generally *[Retitled]*
- § 61:16.15 Execution; validity of other powers of attorney
- § 61:16.20 Nomination of guardian
- § 61:16.25 Durability; termination; revocation; divorce, etc
- § 61:16.30 Liability of agents or co-agents
- § 61:16.35 Representative capacity, no liability
- § 61:16.40 Common law of agency, mandatory duties
- § 61:16.45 Construction of document, review of agent’s conduct, liability
- § 61:16.50 Resignation of agent
- § 61:16.55 Real property, personal property

## TABLE OF CONTENTS

- § 61:16.60 Other general powers
- § 61:16.65 Gifts
- § 61:16.70 Statutory form
- § 61:16.75 Powers of agent relative to *inter vivos* trust, gifts, beneficiary designation, survivorship rights
- § 61:16.80 Accounting by agent *[New]*

## II. POWER OF ATTORNEY FOR HEALTH CARE; LIVING WILL (HEALTH CARE DECLARATION)

- § 61:17 Power of attorney for health care—Ohio legislation
- § 61:17.50 State of Ohio Advance Directives: Health care power of attorney *[New]*
- § 61:19 Power of attorney for health care—Attorney in fact
- § 61:19.50 Power of attorney for health care—Appointment of guardian for principal or minor children or incompetent adult child *[New]*
- § 61:23 Power of attorney for health care—When instruments effective
- § 61:24 Power of attorney for health care—Expiration; Revocation
- § 61:25 Power of attorney for health care—Formal execution requirements
- § 61:28 Power of attorney for health care—Decision in absence of valid health care instrument; Probate court proceedings
- § 61:33 Power of attorney for health care—Withholding or withdrawing life-support measures or other care—Comfort care; Nutrition and hydration
- § 61:36 Do-not-resuscitate order
- § 61:37 Declaration of anatomical gift

## IV. POWERS OF ATTORNEY; HEALTH CARE DOCUMENTS—FORMS

- § 61:46 Ohio power of attorney—Statutory form<sup>⊗</sup> *[Retitled]*
- § 61:47 General durable power of attorney—Form (optional)<sup>⊗</sup> *[Retitled]*
- § 61:48 Springing power of attorney—Form (optional) *[Retitled]*
- § 61:53 Guardian designation—Form
- § 61:57 Health care declaration—Living will—Form<sup>⊗</sup>
- § 61:57.50 State of Ohio Advance Directives: Living will *[New]*

## CHAPTER 62. LEGAL DISABILITY

- § 62:3 Person of unsound mind
- § 62:5 Person under guardianship of person or estate

## CHAPTER 63. GUARDIANSHIP— APPOINTMENT OF GUARDIAN

- § 63:1 Appointment of guardian—Definitions—Incompetent
- § 63:2 Appointment of guardian—Definitions—Guardian
- § 63:4 Appointment of guardian—Definitions—Resident guardian
- § 63:5 Appointment of guardian—Definitions—Limited guardian
- § 63:6 Appointment of guardian—Definitions—Interim guardian
- § 63:7 Appointment of guardian—Definitions—Emergency guardian
- § 63:9 Appointment of guardian—Definitions—Guardianship of the person and/or estate
- § 63:10 Appointment of guardian—Definitions—Residence, legal settlement and domicile

- § 63:11 Appointment of guardian—Definitions—Least restrictive alternative
- § 63:12 Powers and duties of a guardian of the person
- § 63:13 Powers and duties of a guardian of the estate
- § 63:14 Appointment of guardian—Application—Jurisdiction
- § 63:14.50 Adult Guardianship and Protective Proceedings Jurisdiction Act  
*[New]*
- § 63:15 Appointment of guardian—Application—Venue
- § 63:16 Appointment of guardian—Application—Who may apply
- § 63:18 Appointment of guardian—Application—Notice
- § 63:19 Appointment of guardian—Application—Investigations by court
- § 63:20 Appointment of guardian—Application—Guardian ad litem
- § 63:21 Appointment of guardian—Application—Hearing
- § 63:22 Appointment of guardian—Application—Appointment, acceptance, and bonding
- § 63:24 Appointment of guardian—Procedure—Guardian nominated in will, power of attorney, or other writing
- § 63:26 Appointment of guardian—Nomination of guardian of incompetent by power of attorney
- § 63:27 Appointment of guardian—Nomination by other writing
- § 63:28 Appointment of guardian—Residency requirements—Resident ward
- § 63:29 Appointment of guardian—Residency requirements—Nonresident ward
- § 63:30 Appointment of guardian—Residency requirements—Guardian
- § 63:31 Appointment of guardian—Miscellaneous—Minor and incompetent child of ward
- § 63:34 Guardianship proceedings—Court’s jurisdiction
- § 63:35 Guardianship proceedings—Determining when a guardianship for incompetent required
- § 63:38 Guardianship proceedings—Least restrictive alternative
- § 63:39 Guardianship proceedings—Hearings
- § 63:40 Guardianship proceedings—Who may serve
- § 63:41 Guardianship proceedings—Who may serve—Corporations
- § 63:44 Guardianship proceedings—Who may serve—Life support cases
- § 63:45 Guardianship proceedings—Consent to autopsy or post-mortem examination
- § 63:46 Guardianship proceedings—Role of physician or investigators
- § 63:51 Appointment of guardian of a minor or incompetent adult child—Designation by minor
- § 63:53 Appointment of guardian for a minor or incompetent adult child—Testamentary designation by parent
- § 63:54 Appointment of guardian of a minor—Designation by parent in a power of attorney or writing
- § 63:55 Appointment of guardian of a minor—Custody issues—Generally
- § 63:56 Appointment of guardian of a minor—Custody issues—Jurisdiction
- § 63:59 Appointment of guardian of a minor—Custody issues—Best interests of minor
- § 63:61 Limited guardianship
- § 63:62.10 Emergency ex parte order *[New]*
- § 63:63 Emergency guardianship
- § 63:65 Appeal of appointment of guardian
- § 63:66 Appeal from refusal to remove guardian
- § 63:67 Appellate standard of review—Discretion of court

TABLE OF CONTENTS

§ 63:68 Appeal from order for Civil Rule 35 psychiatric examination

**I. APPOINTMENT OF GUARDIAN—FORMS**

§ 63:72.50 Statement of expert evaluation of competency (Form 17.1) *[New]*

**II. GUARDIAN OF MINOR**

§ 63:83 Representative for minor or incompetent

**CHAPTER 64. GUARDIANSHIP—NOTICE OF PROCEEDINGS**

§ 64:1 Notice of guardianship hearing

§ 64:3 Notice of guardianship hearing—Service—Guardianship of incompetent

§ 64:6 Notice of guardianship proceedings—Waiver

**CHAPTER 65. GUARDIANSHIP—OPERATION**

§ 65:1 Powers and duties of guardian—Fiduciary relationship

§ 65:2 Powers and duties of guardian—Probate court is the superior guardian

§ 65:3 Standard of proof for interim orders from probate court regulating actions of guardian

§ 65:4 Powers and duties of guardian—Inventory

§ 65:5 Powers and duties of guardian—Accounting

§ 65:6 Powers and duties of guardian—Removal for failure to file an account or inventory

§ 65:7 Powers and duties of guardian—Biennial report

§ 65:8 Powers and duties of guardian—Ward's person—Mandatory duties

§ 65:11 Powers and duties of guardian—Ward's person—Discretionary acts—Donation of body parts/autopsy

§ 65:12 Powers and duties of guardian—Ward's person—Discretionary act—Consent to autopsy or post-mortem examination

§ 65:14 Powers and duties of guardian—Ward's person—Discretionary acts—Employment of agents

§ 65:16 Powers and duties of guardian—Special matters relating to minor wards—Settlement of claims for injury

§ 65:21 Powers and duties of guardian—Ward's estate—Mandatory duties

§ 65:22 Powers and duties of guardian—Ward's estate—Discretionary acts

§ 65:23 Powers and duties of guardian—Ward's estate—Acts of the ward—Payable on death accounts

§ 65:24 Powers and duties of guardian—Ward's estate—Acts of the ward—Contracts by ward

§ 65:25 Powers and duties of guardian—Ward's estate—Acts of the ward—Trusts

§ 65:27 Compensation—Guardian

§ 65:28 Compensation—Attorneys

§ 65:29 Evidence of abuse or exploitation

**I. OPERATION OF GUARDIANSHIP—FORMS**

**C. INVENTORY AND ACCOUNTS**

§ 65:38 Reference list

**D. PURCHASE OF HOME FOR WARD**

- § 65:39 Application to purchase home for ward—Form
- § 65:41 Complaint to purchase and mortgage real estate—Form

**H. TRANSFER OF FUNDS TO FOREIGN GUARDIAN**

- § 65:72 Application by foreign guardian to remove guardian when guardian moves to another state—Form
- § 65:73 Entry setting application for hearing and ordering notice—Form
- § 65:74 Notice of hearing—Form

**J. BIENNIAL REPORT**

- § 65:82 Multi-county guardianship service funds *[New]*

**CHAPTER 66. GUARDIANSHIP—LITIGATION INVOLVING GUARDIANS**

- § 66:1 Litigation involving guardians—Guardian may sue or be sued; Intervenor—Dispute resolution procedure
- § 66:5 Survival of actions beyond term of guardianship—Ward reaches the age of majority
- § 66:22 Settlement of suits—Generally—Approval of court
- § 66:23 Settlement of suits—attorney’s fees in cases where court approval is required

**I. LITIGATION INVOLVING GUARDIANS—FORMS**

**A. SETTLEMENT OF CLAIM FOR INJURY**

- § 66:25.50 Application to settle a minor’s claim and entry setting hearing (Form 22.0) *[New]*
- § 66:27.50 Entry approving settlement of minor’s claim (Form 22.2) *[New]*
- § 66:28.50 Report of distribution of minor’s claim (Form 22.4) *[New]*

**CHAPTER 67. GUARDIANSHIP—TERMINATION**

- § 67:1 Termination of guardianship—Mandatory
- § 67:2 Termination—Discretionary—Court; Removal
- § 67:3 *[Reserved]*
- § 67:4 Termination of guardianship—Incompetent—Necessity no longer exists
- § 67:5 Termination of guardianship—Incompetent—Application of the ward
- § 67:6 Termination of guardianship—Incompetent—Estate is less than \$25,000 *[Retitled]*
- § 67:10 Termination of guardianship—Minor
- § 67:12 Termination of guardianship—Attorney fees
- § 67:13 Termination of guardianship—Effect of order

**I. TERMINATION OF GUARDIANSHIP—FORMS**

- § 67:21 Motion to terminate guardianship—Amount less than \$25,000—Form<sup>⊗</sup> *[Retitled]*

TABLE OF CONTENTS

- § 67:22 Entry terminating guardianship—Amount less than \$25,000—  
Form<sup>⊗</sup> *[Retitled]*

**CHAPTER 68. GUARDIANSHIP—  
ALTERNATIVES**

- § 68:1 Alternatives to guardianship—Introduction  
§ 68:2 Alternatives to guardianship—Minors—Trusts  
§ 68:5 Alternatives to guardianship—Estate of minor not more than  
\$25,000 *[Retitled]*  
§ 68:6 Alternatives to guardianship—Transfers to Minors Act  
§ 68:7 Alternatives to guardianship—Adult wards

**I. ALTERNATIVES TO GUARDIANSHIP—FORMS**

**A. RELEASE OF ASSETS WITHOUT  
APPOINTMENT OF GUARDIAN**

- § 68:8 Application for release of assets without appointment of guardian—  
Incompetent—Form<sup>⊗</sup>  
§ 68:9 Entry to pay or deliver property of incompetent without  
appointment of guardian—Form<sup>⊗</sup>  
§ 68:10 Application for release of assets without appointment of guardian—  
Minor—Form  
§ 68:11 Entry to pay or deliver property of minor without appointment of  
guardian—Form<sup>⊗</sup>

**B. SETTLEMENT OF CLAIM WITHOUT  
APPOINTMENT OF GUARDIAN**

- § 68:12 Application for authority to settle claim not over \$25,000 without  
appointment of guardian for minor—Form *[Retitled]*  
§ 68:13 Entry authorizing settlement of claim to minor without  
appointment of guardian—Form<sup>⊗</sup>  
§ 68:14 Entry approving delivery of funds—Form<sup>⊗</sup>

**CHAPTER 69. LETTERS OF ADMINISTRATION  
AND TESTAMENTARY**

**I. IN GENERAL**

- § 69:1 Letters—In general—Jurisdiction  
§ 69:2 Letters—In general—Issuance

**II. LETTERS OF ADMINISTRATION**

- § 69:3 Letters of administration—General qualifications of administrators  
§ 69:4 Letters of administration—Specific qualifications of  
administrators—Residency requirement  
§ 69:5 Letters of administration—Specific qualifications of  
administrators—Preference of suitable persons—Surviving spouse  
§ 69:6 Letters of administration—Specific qualifications of  
administrators—Preference of suitable persons—Next of kin  
§ 69:8 Letters of administration—Specific qualifications of  
administrators—Preference of suitable persons—Creditor

- § 69:10 Letters of administration—Specific qualifications of administrators—Unsuitable persons—Surviving spouse
- § 69:12 Letters of administration—Specific qualifications of administrators—Unsuitable persons—Minors
- § 69:14 Letters of administration—Discretion of probate court in appointing administrators; Appeal
- § 69:16 Letters of administration—Waiver of right to appointment

### **III. LETTERS TESTAMENTARY**

- § 69:22 Letters testamentary—Qualifications for executors—Divorced wife as executor
- § 69:27 Letters testamentary—Refusal of appointment of executor by probate court

### **IV. LETTERS OF ADMINISTRATION AND TESTAMENTARY—FORMS**

#### **B. ADMINISTRATION OF ESTATE**

- § 69:39 Reference list

### **CHAPTER 70. SPECIAL ADMINISTRATOR**

- § 70:1 Necessity
- § 70:2 Nature of office and duties

### **CHAPTER 71. ADMINISTRATOR DE BONIS NON**

- § 71:1 Necessity
- § 71:3 Personal property requirement
- § 71:5 Rights and duties

### **CHAPTER 74. MANAGEMENT OF REAL ESTATE; MORTGAGED PROPERTY**

#### **I. MANAGEMENT OF REAL ESTATE**

- § 74:2 Management of real estate—Rental and maintenance of property
- § 74:5 Management of real estate—Termination of authority

#### **II. MORTGAGED PROPERTY**

- § 74:6 Mortgaged property—Equitable conversion and obtaining possession

### **CHAPTER 75. POWER TO SELL DECEDENT'S PROPERTY**

- § 75:1 Decedent's property—Authorization to sell

#### **I. POWER TO SELL DECEDENT'S PROPERTY—FORMS**

##### **B. EXTENSION OF TIME TO COLLECT**

- § 75:19 Application for extension of time—Form

TABLE OF CONTENTS

§ 75:20 Entry extending time—Form<sup>⊗</sup>

**CHAPTER 76. DISTRIBUTION TO HEIRS AND BENEFICIARIES**

**I. VOLUNTARY DISTRIBUTION**

§ 76:4 Distribution—Voluntary—Liability—Executor or administrator

**II. DISTRIBUTION UPON APPLICATION OF LEGATEE OR DISTRIBUTEE**

§ 76:13 Distribution—Upon application—Enforcement

**IV. TRANSFER OF AUTOMOBILES, MOTOR VEHICLES, WATERCRAFT AND OUTBOARD MOTOR**

§ 76:15 Transfer of automobiles to surviving spouse

§ 76:17 Transfer of motor vehicle, watercraft or outboard motor to surviving joint owner

§ 76:18 Other transfers of automobiles, watercraft and outboard motor

**V. REMAINDERMAN'S INTEREST**

§ 76:20 Distribution—Remainderman's interest—Without security

**VI. DISTRIBUTION TO HEIRS AND BENEFICIARIES—FORMS**

§ 76:32 Receipt, waiver, and consent on final distribution—Form<sup>⊗</sup>

**CHAPTER 79. NONRESIDENT LEGATEES, DISTRIBUTEES, AND TRUST BENEFICIARIES**

§ 79:2 Power of attorney for foreign beneficiary

**CHAPTER 80. INVENTORY OF EXECUTORS AND ADMINISTRATORS**

**I. INVENTORY**

§ 80:5 Inventory—Contents—"Each item" listed separately

**II. APPRAISAL**

§ 80:11 Inventory—Appraisal and value—Appraisers

**III. NOTICE AND HEARING**

§ 80:14 Inventory—Hearing

## **IV. EXCEPTIONS AND APPEALS**

- § 80:18 Inventory—Exceptions—Time limit for filing
- § 80:20 Inventory—Exceptions—Hearing
- § 80:21 Inventory—Exceptions—Nature of proceedings
- § 80:22 Inventory—Exceptions—Questions raised
- § 80:23 Inventory—Exceptions—Discretionary jurisdiction
- § 80:24 Inventory—Exceptions—Burden of proof and evidence
- § 80:25 Inventory—Exceptions—Res judicata as defense
- § 80:26 Inventory—Appeal of judgment

## **CHAPTER 81. COMMISSIONS AND FEES OF EXECUTORS, ADMINISTRATORS, AND ATTORNEYS**

### **I. COMMISSIONS**

- § 81:2 Commissions—Computation of allowance
- § 81:5 Commissions—Denial or reduction

### **III. ATTORNEY'S FEES**

- § 81:14 Attorney's fees—Determination
- § 81:16 Attorney's fees—Refused
- § 81:20 Attorney's fees—Dispute—Burden of proof
- § 81:23 Attorney liability

## **CHAPTER 82. REMOVAL OF EXECUTOR OR ADMINISTRATOR DUE TO CLAIMS OR LITIGATION**

- § 82:1 Removal—Statutory provisions
- § 82:3 Removal—Application

## **CHAPTER 83. PROCEEDINGS AGAINST FORMER EXECUTOR OR ADMINISTRATOR**

- § 83:1 Duties of new executor or administrator
- § 83:2 Applicability of statute—Death of executor

## **CHAPTER 84. PRESENTATION OF FIDUCIARY CLAIMS**

- § 84:1 Fiduciary claims—Time limit
- § 84:7 Fiduciary claims—Jurisdiction to allow

## **CHAPTER 85. PRESENTATION OF CREDITOR'S CLAIMS**

- § 85:1 Creditor's claims—Introduction
- § 85:3 Creditor's claims—Form of claim
- § 85:4 Creditors claims—Creditor defined
- § 85:5 Creditor's claims—Claims requiring presentation—Statutory provision

## TABLE OF CONTENTS

§ 85:6	Creditor's claims—Claims requiring presentation—Examples from case law
§ 85:10	Creditor's claims—Claims requiring presentation—Examples from case law—Personal injury actions
§ 85:14	Creditor's claims—Claims requiring presentation—Guardian or attorney fees
§ 85:17	Creditor's claims—Claims not requiring presentation—Trust property
§ 85:21	Creditor's claims—Claims not requiring presentation—Personal injury suit; Tort claim; Foreign creditor
§ 85:23	Creditor's claims—Claims not requiring presentation—Ownership of assets in an estate
§ 85:24	Creditor's claims—Claims not requiring presentation—Contingent claims—Definition
§ 85:25	Creditor's claims—Claims not requiring presentation—Contingent claims—Mandatory presentation
§ 85:26	Creditor's claims—Claims not requiring presentation—Contingent claims—Exception to presentation of contingent claim
§ 85:29	Creditor's claims—Statute of limitations
§ 85:31	Creditor's claims—No extension
§ 85:32	Creditor's claims—Setoff of barred claim
§ 85:34	Creditor's claims—Allowance or rejection
§ 85:35	Creditor's claims—Suit on rejected claims; Constructive rejection; Jurisdiction of probate court
§ 85:38	Creditor's claims—Effect on other statutes of limitations
§ 85:40	Creditor's claims—Medicaid estate recovery program
§ 85:40.50	Creditor's claims asserted against nonprobate assets <i>[New]</i>

## I. PRESENTATION OF CREDITORS' CLAIMS—FORMS

### A. CLAIMS AGAINST ESTATE

§ 85:44.10	Complaint for accounting, custody of property and money—Form © <i>[New]</i>
------------	---

## CHAPTER 86. ACCELERATION OF CLAIMS

§ 86:1	Introduction and purpose of statute
§ 86:2	Effect on other statutes of limitations

## CHAPTER 87. DEATH OF CLAIMANT

§ 87:1	Substitution of parties
§ 87:3	Motion for substitution within ninety days

## CHAPTER 89. REJECTION OF CLAIMS

§ 89:1	Purpose of statute
§ 89:2	Manner of rejection; Constructive rejection
§ 89:8	Action on rejected claim—Suit within two months of rejection
§ 89:9	Action on rejected claim—Commencement—Savings statute
§ 89:11	Jurisdiction

## CHAPTER 90. PAYMENT OF DEBTS

§ 90:4	Order of payment
--------	------------------

- § 90:7 Funeral expenses—General rule
- § 90:10 Funeral expenses—Reasonableness
- § 90:12 Allowance for support of surviving spouse and minor children—  
Distribution

## **CHAPTER 91. LAND SALE—PRELIMINARIES**

- § 91:1 Persons entitled to bring land sale actions—Executors and administrators
- § 91:3 Persons entitled to bring land sale actions—Testamentary trustee
- § 91:5 Persons entitled to bring land sale actions—Ancillary administrator
- § 91:7 Authority for land sale action—Consent or demand of beneficiaries
- § 91:8 Authority for land sale action—Insufficient personal property to pay debts
- § 91:9 Authority for land sale action—Overriding rights of surviving spouse
- § 91:15 Land sale actions—Venue

## **CHAPTER 92. LAND SALE—PROCEDURE**

- § 92:1 Land sale—Lis pendens
- § 92:2 Land sale—Complaint
- § 92:3 Land sale—Motion to commence action and proceed
- § 92:4 Land sale—Summary proceedings
- § 92:6 Land sale—To pay legacies
- § 92:20 Land sale—Necessary parties
- § 92:21 Land sale—Necessary parties defendant—List
- § 92:23 Land sale—Necessary parties defendant—Legatees
- § 92:24 Land sale—Necessary parties defendant—Lienholders
- § 92:25 Land sale—Necessary parties defendant—Person with dower interest
- § 92:27 Land sale—Necessary parties defendant—Unborn persons and charitable trusts not in being

### **I. LAND SALE—PROCEDURE—FORMS**

#### **A. SALE OF REAL PROPERTY**

- § 92:33 Reference list

#### **C. TRANSFER OF INHERITED PROPERTY**

- § 92:35 Affidavit for transfer and record of real estate inherited—Form

#### **I. SERVICE OF PROCESS**

- § 92:61 Service of summons

## **CHAPTER 93. LAND SALE—RESTRICTIONS, ENCUMBRANCES, AND DOWER**

- § 93:1 Property subject to sale—General rule
- § 93:7 Sale of land fraudulently conveyed
- § 93:11 Sale of land subject to encumbrances—Equities and priorities among lienholders
- § 93:14 Dower—Nature of interest

TABLE OF CONTENTS

- § 93:19 Dower—Sale of land subject to interest
- § 93:20 Homestead exemption

**CHAPTER 96. LAND SALE—ORDER OF SALE**

- § 96:4 Public sale—Statutory provisions
- § 96:5 Public sale—Notice
- § 96:6 Private sale—Statutory provisions
- § 96:14 Price—Minimum—Private sale
- § 96:15 Price—Minimum—Public sale
- § 96:17 Price—Property sold on execution

**I. ORDER OF SALE—FORMS**

**B. PUBLIC SALE**

- § 96:32 Notice of public sale—FormⓈ

**CHAPTER 97. LAND SALE—CONFIRMATION;  
DISTRIBUTION OF PROCEEDS**

- § 97:5 Deed of fiduciary
- § 97:9 Distribution of proceeds—Method
- § 97:12 Expenses of sale—Compensation of executor or administrator
- § 97:13 Expenses of sale—attorney’s fees
- § 97:14 Taxes

**CHAPTER 98. LAND SALE—BY GUARDIAN**

- § 98:5 Selling fractional interests
- § 98:7 Death of guardian
- § 98:8 Summary proceeding
- § 98:9 Complaint
- § 98:10 Necessary parties defendant
- § 98:11 Venue
- § 98:12 Consent
- § 98:14 Liens against property to be sold
- § 98:15 Appraisal of property to be sold
- § 98:16 Additional bond of guardian
- § 98:19 Proceeds
- § 98:20 Fees and expenses
- § 98:21 Nonresident ward

**CHAPTER 99. ADOPTION**

- § 99:1 Defined
- § 99:2 History
- § 99:3 Jurisdiction
- § 99:5 Parties—Who may be adopted—Statutory provisions
- § 99:6 Parties—Who may be adopted—Foreign child
- § 99:7 Parties—Who may be adopted—“Special needs” child
- § 99:8 Suitability of adoptive parents—Best interests of child
- § 99:12 Suitability of adoptive parents—Regulation of persons with criminal record
- § 99:21 Types of placement—Stepparent, guardian, and grandparent adoptions

- § 99:22 Types of placement—Independent adoptions
- § 99:23 Illegal placement
- § 99:28 Papers and records—Accounting
- § 99:29 Papers and records—Confidentiality
- § 99:30 Statutorily required consent
- § 99:31 Parties giving consent—Biological parents
- § 99:32 Parties giving consent—Putative father
- § 99:34 Parties giving consent—Agency
- § 99:38 Consent not required—Statutory scheme
- § 99:39 Consent not required—Noncommunication and nonsupport
- § 99:40 Consent not required—Putative father
- § 99:44 Hearing of petition—Notice
- § 99:49 Interlocutory and final orders
- § 99:51 Attacking adoption orders—Appeal
- § 99:53 Inheritance rights of adoptees
- § 99:54 Inheritance rights of adoptees—“Stranger to the adoption” doctrine
- § 99:55 Inheritance rights of adoptees—Effect of testamentary language

## **I. ADOPTION—FORMS**

### **C. SURRENDER**

- § 99:60 Permanent surrender of child—Form<sup>Ⓞ</sup>

### **I. REGISTRATION OF BIRTH**

- § 99:71 Acknowledgment of paternity affidavit—Form<sup>Ⓞ</sup>

## **CHAPTER 100. CHANGE OF NAME**

- § 100:1 Who may file application
- § 100:2 Notice
- § 100:3 Order of court
- § 100:4 Minor—Who may file application
- § 100:5 Minor—Jurisdiction of probate court
- § 100:8 Minor—Best interests of minor
- § 100:8.50 Simplified procedure to conform documents *[New]*

## **I. CHANGE OF NAME—FORMS**

- § 100:10 Application for change of name of adult (Form 21.0) *[Retitled]*
- § 100:11 Affidavit in support of application for change of name of adult (Form 21.01) *[Retitled]*
- § 100:12 Judgment entry for change of name of adult (Form 21.1) (Form 21.1) *[Retitled]*
- § 100:13 Affidavit in support of application for change of name of minor (Form 21.02) *[Retitled]*
- § 100:14 Application for change of name of minor (Form 21.2) *[Retitled]*
- § 100:15 Judgment entry setting hearing and ordering notice (Form 21.03) *[Retitled]*
- § 100:16 Judgment entry for changing name of minor (Form 21.3) *[Retitled]*
- § 100:17 Consent to change of name (Form 21.4) *[New]*
- § 100:18 Application to waive publication and seal file and judgment entry (Form 21.6A) *[New]*
- § 100:19 Application to conform legal name of adult (Form 21.7) *[New]*

## TABLE OF CONTENTS

- § 100:20 Affidavit in support of application to conform legal name of adult (Form 21.07) *[New]*
- § 100:21 Judgment entry conforming legal name of adult (Form 21.8) *[New]*
- § 100:22 Affidavit in support of application to conform legal name on minor (Form 21.09) *[New]*
- § 100:23 Application to conform legal name of minor (Form 21.9) *[New]*
- § 100:24 Judgment entry conforming legal name of minor (Form 21.10) *[New]*
- § 100:25 Judgment entry setting hearing and ordering notice (Form 21.11) *[New]*
- § 100:26 Notice of hearing on conforming legal name (Form 21.12) *[New]*
- § 100:27 Consent to name conformity (Form 21.13) *[New]*
- § 100:28 Release for criminal background check (Form 21.14) *[New]*

## **CHAPTER 101. ACTION TO SET ASIDE ANTENUPTIAL OR SEPARATION AGREEMENT**

- § 101:1 Four-month statute of limitations to set aside
- § 101:2 Nature of attack; Survival of action
- § 101:3 Formal requisite—Memorandum of agreement
- § 101:5 Intent and performance
- § 101:7 Necessity for full disclosure of assets
- § 101:8 Fraud and overreaching
- § 101:9 Disproportionate division of assets
- § 101:11 Conflict of laws
- § 101:12 Postnuptial agreements *[New]*

## **CHAPTER 102. CIVIL COMMITMENT OF MENTALLY ILL PERSONS**

### **I. DEFINITIONS**

- § 102:1 Definitions—Mental illness
- § 102:2 Definitions—Mentally ill person subject to hospitalization by court order
- § 102:3 Definitions—Psychiatrist
- § 102:4 Definitions—Community mental services provider *[Retitled]*
- § 102:6 Definitions—Health officer
- § 102:7 Definitions—Chief clinical officer
- § 102:8 Definitions—Independent expert evaluation
- § 102:9 Definitions—Residence

### **II. PROCEDURES IN NON-CRIMINAL CASES**

- § 102:10 Voluntary hospital admission—Application and admission
- § 102:11 Voluntary hospital admission—Discharge of adult; Competent persons
- § 102:12 Voluntary hospital admission—Request for discharge of adult, competent persons
- § 102:13 Voluntary hospital admission—Judicial proceedings for a voluntary patient
- § 102:14 Voluntary hospital admission—Court review for minors and persons with a guardian

- § 102:15 Outpatient treatment of minors—Availability, duration, and costs of services
- § 102:17 Involuntary admission—General rules for emergency and non-emergency commitments
- § 102:18 Involuntary admission—Notice and assessment requirements for all involuntary patients
- § 102:19 Involuntary admission—Rights of all involuntary patients
- § 102:20 Emergency admission procedure—Initiation of emergency commitment
- § 102:21 Emergency admission procedure—Rules for taking a person into custody for emergency commitments
- § 102:22 Judicial hospitalization—Jurisdiction—Noncriminal cases
- § 102:23 Judicial hospitalization—Jurisdiction—Affidavit and commencement of proceedings—Non-criminal cases
- § 102:24 Judicial hospitalization—Jurisdiction—Affidavit and commencement of proceedings—Pre-hearing procedures
- § 102:26 Judicial hearings—Initial hearing
- § 102:28 Judicial hearings—Hearing procedures
- § 102:29 Disposition of persons committed by court order—In general
- § 102:30 Disposition of persons committed by court order—Procedures when respondent is committed to a board of alcohol, drug addiction, and mental health services, or designated services provider *[Retitled]*
- § 102:31 Discharge in non-criminal cases
- § 102:32 Review hearings—General requirements
- § 102:33 Notification to the Bureau of Criminal Identification and Investigation
- § 102:35 Post-hearing remedies—Hearing on objections to magistrate’s report
- § 102:36 Post-hearing remedies—Rehearing
- § 102:38 Transfers
- § 102:39 Trial visits
- § 102:40 Hearing requirements—Summary

### **III. PROCEDURES FOR PERSONS FOUND TO BE INCOMPETENT TO STAND TRIAL OR NGRI**

- § 102:41 Overview
- § 102:42 Jurisdiction over commitments in criminal cases
- § 102:43 Voluntary status of persons committed by criminal *[Retitled]*
- § 102:44 Commencement of commitment proceedings in criminal cases
- § 102:45 Full hearing for persons found NGRI
- § 102:46 Disposition of persons committed by court order after finding of NGRI
- § 102:47 Initial treatment for persons found incompetent to stand trial; Maximum duration
- § 102:48 Further commitment of persons found incompetent to stand trial
- § 102:49 Hearings on nonsecured status and termination of commitment of persons found NGRI or incompetent to stand trial
- § 102:50 Conditional release
- § 102:51 Review hearings—Review process for persons found incompetent and NGRI
- § 102:52 Discharge for persons found incompetent or NGRI

### **IV. RIGHTS APPLICABLE TO ALL PERSONS**

- § 102:53 Rights of hospital patients—Treatment

## TABLE OF CONTENTS

- § 102:54 Rights of hospital patients—Additional rights
- § 102:55 Consent to treatment (RC 5122.271)
- § 102:56 Consent to treatment (RC 5122.271)—Surgery
- § 102:57 Consent to treatment (RC 5122.271)—Medical emergency
- § 102:58 Consent to treatment (RC 5122.271)—Major aversive intervention
- § 102:59 Consent to treatment (RC 5122.271)—Psychotropic medication
- § 102:60 Confidentiality of records (RC 5122.31)
- § 102:63 Miscellaneous provisions—Liability
- § 102:64 Miscellaneous provisions—Children
- § 102:65 Miscellaneous provisions—Ohio protection and advocacy system and client assistance program *[Retitled]*

## V. CIVIL COMMITMENT OF MENTALLY ILL PERSONS—FORMS

- § 102:66 Department of Mental Health Forms
- § 102:67 Complaint for false imprisonment and violation of patient's rights<sup>®</sup> *[New]*

## CHAPTER 103. PROTECTIVE SERVICES FOR ELDERLY ADULTS

- § 103:3 Definitions applicable to adult protective services law
- § 103:4 Duty to report abuse of elderly persons
- § 103:5 Investigation of reported abuse—Time requirements for investigation
- § 103:7 Investigation of reported abuse—Interviews with adult and others
- § 103:8 Investigation of reported abuse—Obstruction of investigation
- § 103:9 Protective services report and plan
- § 103:13 Court-ordered protective services plan—Petition by County Department of Jobs and Family Services (DJFS)—Notice
- § 103:16 Court-ordered protective services plan—Order
- § 103:20 Protective services—Emergencies—Notice of hearing
- § 103:22 Protective services—Emergencies—Standard of proof
- § 103:23 Protective services—Emergencies—Limits on emergency order

## CHAPTER 104. EMERGENCY INTERVENTION PROCEDURES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES *[Retitled]*

- § 104:1 Overview
- § 104:2 Definitions
- § 104:3 Duty of DD Board to investigate allegations of abuse or neglect *[Retitled]*
- § 104:4 Access by DD Board to investigate *[Retitled]*
- § 104:5 Emergency telephone orders
- § 104:7 Protective services plan
- § 104:8 Complaint to initiate emergency intervention
- § 104:9 Notice of complaint
- § 104:10 Temporary order after filing complaint
- § 104:11 Hearing on complaint
- § 104:12 Standard for final order
- § 104:13 Duration of final order

## **CHAPTER 105. APPROPRIATION OF PROPERTY**

### **I. IN GENERAL**

- § 105:4 Access rights
- § 105:7 Uncertainty in Ohio regulatory taking law
- § 105:8 Exhaustion of remedies
- § 105:11 Denoting the take

### **II. PLEADINGS AND PROCEDURE**

- § 105:13 Limitations
- § 105:19 Contents of answer
- § 105:24 Jury selection

### **III. EVIDENCE**

- § 105:29 Nature of proof
- § 105:34 Fair market value—Lost profits
- § 105:49 Relocation allowances

### **IV. JURY**

- § 105:51 Jury instructions, verdict, and waiver

### **VI. DISTRIBUTION**

- § 105:54 Interest

### **VII. APPEAL**

- § 105:56 Appeal

### **IX. APPROPRIATION OF PROPERTY—FORMS**

- § 105:83 Complaint against holder of estate's assets and their treatment as unclaimed assets—Form<sup>Ⓞ</sup> *[New]*

## **CHAPTER 106. JUVENILE COURT— INTRODUCTION, DEFINITIONS, AND ORGANIZATION**

- § 106:1 Introduction
- § 106:3 Purpose and function
- § 106:4 Constitutional issues
- § 106:5 Constitutional issues—Right to notice, counsel, and trial
- § 106:7 Constitutional issues—Double jeopardy in juvenile proceedings
- § 106:8 Constitutional issues—Investigation of suspected juvenile offenders
- § 106:10 Constitutional issues—Due process rights in actions to terminate parental rights
- § 106:18 Juvenile facilities—Creation of schools, forestry camps, and other facilities

TABLE OF CONTENTS

**CHAPTER 107. JUVENILE COURT—  
JURISDICTION**

- § 107:1 Exclusive original jurisdiction
- § 107:3 Divorce or alimony involving care or custody of children
- § 107:4 Custody and support of children: Certified from common pleas court
- § 107:5 Case certified by court of competent jurisdiction
- § 107:8 Age jurisdiction
- § 107:9 Waiver of jurisdiction
- § 107:10 Duration and termination of jurisdiction
- § 107:11 Certification from common pleas court

**CHAPTER 108. JUVENILE COURT—CHILDREN  
SUBJECT TO JURISDICTION**

- § 108:1 Juvenile court jurisdiction—Delinquent child—Definition: Evidence of delinquency
- § 108:3 Juvenile court jurisdiction—Delinquent child—Proof of age
- § 108:4 Juvenile court jurisdiction—Delinquent child—Non-criminal nature of delinquency proceedings
- § 108:8 Juvenile court jurisdiction—Unruly child—Definition: Evidence of unruliness
- § 108:11 Juvenile court jurisdiction—Neglected child—Definition: Evidence of neglect
- § 108:14 Juvenile court jurisdiction—Dependent child—Definition: Evidence of dependency
- § 108:17 Juvenile court jurisdiction—Abused child—Definition: Evidence of abuse

# Table of Contents

## CHAPTER 109. JUVENILE COURT—PRACTICE AND PROCEDURE

§ 109:1	Intake
§ 109:2	Types of complaints
§ 109:3	Contents of juvenile complaint—Facts establishing jurisdiction
§ 109:7	Jurisdiction and venue for juvenile proceedings
§ 109:9	Parties to proceedings
§ 109:10	Contents and issuance of summons
§ 109:11	Service of summons
§ 109:12	Service by publication
§ 109:15	Police investigation of juveniles—Custodial interrogation— Admissibility of juvenile statements and confessions
§ 109:16	Police investigation of juveniles—Custodial interrogation— Presence of parents or counsel
§ 109:21	Fingerprints and photographs of juveniles—Necessity for judicial consent
§ 109:23	Sealing and expungement of records
§ 109:25	Juvenile detention and shelter care—Grounds for detention or shelter care
§ 109:27	Detention separate from adult detainees
§ 109:28	Children subject to detention
§ 109:32	Discovery in juvenile proceedings—Information in possession of adverse party—Motion for discovery
§ 109:33	Restricting and/or enforcing discovery
§ 109:34	Discovery in neglect, dependency, and abuse actions
§ 109:37	Testimony of child sex offense victims
§ 109:38	Videotaped depositions
§ 109:38.50	Videotaped depositions—Where alleged victim is mentally retarded or developmentally disabled <i>[New]</i>
§ 109:39	Testimony on closed circuit television or recording
§ 109:39.50	Testimony on closed circuit television or recording—Where al- leged victim is mentally retarded or developmentally disabled <i>[New]</i>
§ 109:43	Scheduling juvenile court hearing
§ 109:45	Adjudicatory hearings—Parties' right to counsel
§ 109:46	Adjudicatory hearings—Child's right to guardian ad litem
§ 109:49	Adjudicatory hearings—Conduct of hearing by magistrate
§ 109:50	Adjudicatory hearings—Applicability of rules of court
§ 109:51	Adjudicatory hearings—Applicability of rules of evidence
§ 109:53	Adjudicatory hearings—Mental competency to stand trial
§ 109:54	Adjudicatory hearings—Applicability of physician-patient privilege
§ 109:55	Adjudicatory hearings—Procedure at adjudicatory hearing
§ 109:56	Adjudicatory hearings—Attendance of parties at hearing
§ 109:57	Adjudicatory hearings—Admission or denial of complaint
§ 109:58	Adjudicatory hearings—Competency of child witnesses

- § 109:59 Adjudicatory hearings—Proof beyond a reasonable doubt
- § 109:60 Adjudicatory hearings—Right to transcript of proceedings
- § 109:63 Transfer of jurisdiction to criminal court—Introduction
- § 109:64 Mandatory Transfer (Prior to 2002) *[Retitled]*
- § 109:65 Mandatory transfer, effective January 1, 2002
- § 109:66 Discretionary transfer
- § 109:67 Procedural due process requirements in transfer proceedings
- § 109:70 Authority of criminal court over children
- § 109:71 Appealability of bindover order
- § 109:72 Dispositional hearings—Procedure
- § 109:74 Reasonable efforts determination
- § 109:75 Case plans
- § 109:76 Disposition of abused, neglected, or dependent child—Types of orders court may make
- § 109:77 Disposition of abused, neglected, or dependent child—Protective supervision
- § 109:78 Disposition of abused, neglected, or dependent child—Temporary custody
- § 109:79 Disposition of abused, neglected, or dependent child—Legal custody
- § 109:80 Disposition of abused, neglected, or dependent child—Permanent custody
- § 109:81 Disposition of abused, neglected, or dependent child—Permanent custody—Best interest determination factors
- § 109:82 Disposition of abused, neglected, or dependent child—Planned permanent living arrangement
- § 109:83 Motion for permanent custody of abused, neglected, or dependent child
- § 109:84 Desertion of child under 72 hours old
- § 109:85 Disposition orders for of delinquent children, effective January 1, 2002
- § 109:86 Disposition of delinquent children—Financial sanctions, effective January 1, 2002
- § 109:87 Enhanced dispositions due to felony specifications, effective January 1, 2002
- § 109:88 Custody of Department of Youth Services
- § 109:89 Tier classification of child as juvenile sex offender registrant—Compliance with Sex Registration Notification Law (effective January 1, 2002)
- § 109:90 Tier classification of juvenile as sex offender registrant—At time of dispositional order or upon release from secure facility; if a child is adjudicated delinquent for a sexually oriented offense or a child-victim oriented offense (on or after January 1, 2002)
- § 109:91 Hearing to determine tier classification, order, and reclassification of an adjudicated delinquent child as a juvenile offender registrant
- § 109:95 Court’s duty to classify child as a juvenile offender registrant; public registry-qualified juvenile offender registrant; compliance with sex offender registration and notification laws (on or after January 1, 2008)
- § 109:97 Frequency and duration of registration based on the classification of a juvenile sex offender registrant
- § 109:99 Serious youthful offenders (effective January 1, 2002)
- § 109:101 Requests to invoke adult portion of serious youthful offender disposition (effective January 1, 2002)

## TABLE OF CONTENTS

- § 109:102 Commitment of delinquent children to the custody of Department of Youth Services (effective January 1, 2002)
- § 109:103 Disposition of juvenile traffic offender—Mandatory
- § 109:104 Disposition of juvenile traffic offender—Permissive
- § 109:107 Disposition of juvenile traffic offender—Revocation of probationary operator’s license by the bureau of motor vehicles
- § 109:108 Disposition of unruly children—Mandatory
- § 109:110 Juvenile court’s authority over parents
- § 109:111 Juvenile court records—Confidentiality
- § 109:112 Juvenile court records—Statistical
- § 109:113 Procedure for obtaining a criminal protection order against a person under 18 years of age *[Retitled]*
- § 109:114 Proceedings after judgment: Continuing jurisdiction of juvenile court
- § 109:115 Modification of dispositional orders in abuse, neglect, and dependency proceedings
- § 109:117 Custody review—Juvenile court dispositional review
- § 109:118 Custody review—Revocation of probation or parole
- § 109:119 Appeals—Juvenile court judgments—Determination of neglect, dependency, unruliness, abuse, or delinquency
- § 109:120 Appeals—Juvenile court judgments—Appeals from custody determinations

## I. PRACTICE AND PROCEDURE IN JUVENILE COURT—FORMS

### D. ORDERS; NOTICE

- § 109:186 Petition for a Juvenile Protection Order and Juvenile Domestic Violence Civil Protection Order (RC 2151.34 and 3113.31; Ohio Supreme Court Form 10.05-B)—Form<sup>Ⓢ</sup> *[New]*
- § 109:187 Juvenile Civil Protection Order or Juvenile Domestic Violence Civil Protection Order Ex Parte (RC 2151.34 or 3113.31; Ohio Supreme Court Form 10.05-C)—Form<sup>Ⓢ</sup> *[New]*
- § 109:188 Juvenile Civil Protection Order or Juvenile Domestic Violence Civil Protection Order Full Hearing (RC 2151.34; Ohio Supreme Court Form 10.05-D)—Form<sup>Ⓢ</sup> *[New]*
- § 109:189 Juvenile Civil Protection Order Full Hearing or Juvenile Domestic Violence Consent Agreement and Civil Protection Order (RC 3113.31; Ohio Supreme Court Form 10.05-E)—Form<sup>Ⓢ</sup> *[New]*

## CHAPTER 110. JUVENILE COURT—ADULT CIVIL AND CRIMINAL ACTIONS

- § 110:1 Criminal jurisdiction
- § 110:5 Criminal jurisdiction—Affidavit charging offense
- § 110:13 Jurisdiction over child custody matters—Determination of custody
- § 110:14 Modification of decree allocating parental rights and responsibilities for care of children
- § 110:15 Visitation right of noncustodial parent and others
- § 110:17 Uniform Child Custody Jurisdiction Act
- § 110:20 Parentage Act—Jurisdiction and venue
- § 110:22 Parentage Act—Presumption of paternity
- § 110:23 Parentage Act—Parties in parentage action

- § 110:29 Parentage Act—Judgment determining existence of parent-child relationship
- § 110:30 Parentage Act—Enforcement of support order
- § 110:31 Parentage Act—Continuing jurisdiction to modify or revoke judgment
- § 110:33 Nonspousal artificial insemination and embryo donation
- § 110:35 Civil support proceedings—Liability for child support
- § 110:36 Civil support proceedings—Determination of amount of support under Child Support Guidelines
- § 110:37 Civil support proceedings—Uniform Interstate Family Support Act
- § 110:38 Civil support proceedings—Enforcement of support orders
- § 110:39 Civil support proceedings—Remedies for failure to comply with support order
- § 110:41 Appeal of adult cases
- § 110:44 *[Reserved]*
- § 110:46 Parental responsibility—Search of residence and property

## CHAPTER 111. OHIO ESTATE TAX

- § 111:1 Nature, scope, and definitions
- § 111:11 Gross estate—Joint and survivorship property—Rights of survivor—Transfer on death affidavit—Summary administration *[Retitled]*
- § 111:18 Gross estate—Qualified terminable interest property
- § 111:26 Gross estate—Deductions—Marital
- § 111:34 Nonresident
- § 111:35 Nonresident—Calculation of tax
- § 111:37 Return—Time for filing; Exceptions by tax commissioner
- § 111:41 Return—Penalties for failure to file or pay
- § 111:46 Additional tax—Repealed—Interest on refund
- § 111:51 Certified tax receipt of county treasurer
- § 111:62 Release or consent—Requirement
- § 111:63 Release or consent—Capital stock
- § 111:64 Release or consent—Securities, assets, or other property
- § 111:65 Release or consent—Deposits in financial institutions
- § 111:66 Release or consent—Life insurance
- § 111:67 Release or consent—Death benefit
- § 111:68 Release or consent—Safe deposit box
- § 111:69 Release or consent—Failure to comply
- § 111:70 Release or consent—Not required for transfer of assets of nonresident decedent
- § 111:71 Release or consent—Not required for transfer of assets to surviving spouse
- § 111:72 Release or consent—Not required for payment of wages less than \$2,500

### I. OHIO ESTATE TAX—FORMS

- § 111:76 Amended Ohio estate tax resident return—Form<sup>Ⓢ</sup>
- § 111:78 Ohio nonresident estate tax return—Death after June 30, 1983—Form<sup>Ⓢ</sup>
- § 111:79 Application for consent to transfer property or other interest of a resident decedent—Form<sup>Ⓢ</sup>
- § 111:80 Application for consent to transfer property or other interest of a nonresident decedent—Form<sup>Ⓢ</sup>

## TABLE OF CONTENTS

- § 111:81 Application for consent to transfer proceeds of insurance contracts, employer death benefit and retirement plans—Form<sup>Ⓢ</sup>
- § 111:82 Resident tax release—Form<sup>Ⓢ</sup>
- § 111:83 Nonresident tax release—Form<sup>Ⓢ</sup>
- § 111:85 Close corporation valuation—Form<sup>Ⓢ</sup>
- § 111:86 Application for certificate of release of Ohio estate tax lien—Form<sup>Ⓢ</sup>
- § 111:87 Certificate of estate tax payment and real property disclosure for dates of death on or after November 8, 1990—Form<sup>Ⓢ</sup>
- § 111:88 Application for extension of time to file Ohio estate tax return pursuant to RC 5731.21—Form<sup>Ⓢ</sup>
- § 111:90 Qualified farm property valuation election application—Form<sup>Ⓢ</sup>
- § 111:91 Worksheet for developing the value of qualified farm property—Form<sup>Ⓢ</sup>
- § 111:92 Qualified farm property annual report for estate tax valuation—Form<sup>Ⓢ</sup>
- § 111:93 Application for extension of time to pay Ohio estate tax—Form<sup>Ⓢ</sup>
- § 111:94 *[Reserved]*
- § 111:95 *[Reserved]*
- § 111:96 *[Reserved]*

## CHAPTER 112. APPORTIONMENT OF STATE AND FEDERAL ESTATE TAXES

- § 112:1 Apportionment law—Overview
- § 112:2 Apportionment of federal and Ohio estate taxes among interested persons
- § 112:3 Reapportionment of tax on interest not part of residuary estate
- § 112:5 Marital or charitable deductions, exceptions
- § 112:13 Qualified terminable interest property (QTIP), effect on apportionment
- § 112:15 Notice of apportionment
- § 112:16 Objection to apportionment and determination of apportionment by probate court
- § 112:18 Withholding taxes from distribution and recovery of deficiency
- § 112:21 Suit by fiduciary to recover tax—Reapportionment of uncollectible taxes

## CHAPTER 113. FEDERAL ESTATE TAX

- § 113:1 Caveat
- § 113:1.50 Current federal transfer taxes *[New]*
- § 113:3 Return requirement
- § 113:4 Gross estate—Defined
- § 113:5 Gross estate—Transfer within three years of death and other types of property
- § 113:6 Gross estate—Valuation date and special use valuation
- § 113:10 Deductions
- § 113:11 Deductions—Marital
- § 113:12 Deductions—Charitable; Conservation easement
- § 113:13 Taxable estate
- § 113:14 Imposition and rate of tax
- § 113:15 Credits—Types of credits
- § 113:16 Unified credit—Applicable exclusion amount against estate tax
- § 113:16.50 Portability of exclusion amount *[New]*

- § 113:17 Credit for state death taxes; deduction
- § 113:18 Time for filing return
- § 113:19 Payment
- § 113:20 Liability of fiduciary for payment: Effect upon the spousal share
- § 113:20.50 Reinstatement of estate tax; Repeal of carryover basis; Election for executors of 2010 estates *[New]*
- § 113:21.50 Removal of references to flower bonds *[New]*
- § 113:22 Overview of generation-skipping transfer tax: Apportionment
- § 113:23 Disclaimers

## **I. FEDERAL ESTATE AND GENERATION-SKIPPING TAX RETURN—FORM**

- § 113:24 United States estate (and generation-skipping transfer) tax return—Form<sup>®</sup>

## **CHAPTER 114. FEDERAL INCOME TAX**

- § 114:1 Introduction
- § 114:2 Gross income
- § 114:3 Gross income—Adjustments and deductions
- § 114:5 Itemized deductions
- § 114:6 Personal exemptions
- § 114:7 Taxable income and income tax
- § 114:8 Tax credits and additional taxes
- § 114:10 Miscellaneous items

## **CHAPTER 115. OHIO INCOME TAX**

### **I. IN GENERAL**

- § 115:1 Introduction
- § 115:2 Definitions

### **II. CALCULATION OF INCOME SUBJECT TO TAX**

- § 115:3 Income subject to tax
- § 115:3.50 Trusts subject to Ohio income tax *[New]*
- § 115:5 AGI adjustments—Individuals—Add to federal AGI
- § 115:6 AGI adjustments—Individuals—Deduct from federal AGI
- § 115:9 Taxable income adjustments—Estates—Deduct from federal taxable income

### **III. CALCULATION OF TAX LIABILITY**

- § 115:10 Rates

### **IV. CREDITS TO TAX LIABILITY**

- § 115:11 Credits
- § 115:12 Credits—Individuals

### **V. MISCELLANEOUS**

- § 115:15 Filing of returns and payment of tax

TABLE OF CONTENTS

§ 115:16 Unclaimed funds

§ 115:17 Municipal tax

**CHAPTER 116. INCOME TAX ASPECTS OF  
APPROPRIATION OF PROPERTY**

**CHAPTER 117. PERSONAL PROPERTY TAX**

**I. GENERAL**

§ 117:1 Definitions

**II. SPECIAL ITEMS**

§ 117:6 Fiduciary responsibility for returns

**Appendices**

Appendix A. Mortality Tables

Appendix B. Standard Probate Forms®

**Table of Laws and Rules**

**Table of Cases**

**Index**