

INSTRUCTIONS FOR ESTABLISHING A SPECIAL NEEDS TRUST

These instructions are intended as a guideline only and should not be relied upon as a comprehensive list of duties in a special needs trust.

The following information and forms are designed to offer procedural advice and direction to accomplish this task.

If you have a settlement for the benefit of a minor or an alleged incompetent with special needs, it may be in the ward's best interest to establish a SPECIAL NEEDS TRUST.

First, it is necessary for a guardian to be appointed for the minor or alleged incompetent. Second, the guardian shall apply for the approval of the settlement for the benefit of the minor or incompetent. This guardian is also the person who will apply for the SPECIAL NEEDS TRUST.

This trust shall be administered as any other trust in the Probate Court. Bond shall be required of every non-corporate fiduciary unless bond is waived according to law.

A fee is required at the time of filing. Current Court Costs are posted at: <https://www.probatect.org/about/general-resources>. Please confirm the amount with the Cashier since filing fees may have changed subsequent to the publication of the instruction sheet. **This fee must be paid in cash, money order, certified check, MasterCard, Discover, or American Express. No personal checks will be accepted.**

The forms may be obtained from the Issue Desk on the 9th floor of the Probate Court, 230 E. 9th Street, Cincinnati, Ohio or by downloading the forms from the web site.

PROCEDURAL STEPS

Step 1: Complete the following forms	
Application to Create a [Special Needs] Trust and to Approve the Trust form. (H.C. Form 115.54) <ul style="list-style-type: none"> - Complete form. - This application is filed as part of the guardianship proceedings. - The specific reasons for seeking a SPECIAL NEEDS TRUST must be clearly explained in a memorandum. <p>A copy of the application together with the proposed SPECIAL NEEDS TRUST should be delivered to the Chief Magistrate so the Judge may review the proposed trust before the hearing.</p>	Filed in the guardianship
Entry Setting Hearing (H.C. Form 202.00) <ul style="list-style-type: none"> - Fill in the name of the ward only, the magistrate will fill in the hearing date and time and initial the entry. 	Filed in the guardianship
Entry Creating Trust and Approving Trust Form (H.C. 115.55) <ul style="list-style-type: none"> - Complete form. - Bring to Court on the day of the hearing. - If the SPECIAL NEEDS TRUST is approved, the Judge will sign it. 	Filed in the guardianship after the hearing

<p>Application for Appointment of a Trust (H.C. 54.1)</p> <ul style="list-style-type: none"> - Complete form. - This application will be given a separate case number. 	<p>Filed at the time the Application to Create Trust is filed. Set for hearing same day and time.</p>
<p>Entry Setting Hearing (H.C. Form 202.00)</p> <ul style="list-style-type: none"> - Fill in the name of the ward only, the magistrate will fill in the hearing date and time and initial the entry. 	<p>Given the same date and time as the Application to Create Trust</p>
<p>Special Needs Trust Agreement</p> <ul style="list-style-type: none"> - There is no prescribed trust form. - Counsel are directed to 42 U.S.C. Sec. 1396p(d)(4)(A) and Ohio Administrative Code 5101-1-39-271 for guidance in drafting said trusts. - The guardian shall be identified as the settlor of said trust. - No trust shall be approved which seeks to give unfettered discretion for disbursements to the trustee. 	
<p>Trustee's Bond (H.C. 54.3)</p> <ul style="list-style-type: none"> - When applying to be appointed trustee, the applicant is required to execute a bond. - Applicant must execute and date form. - Bond must be executed by a surety company in front of the court personnel. - The bond shall be twice the value of the assets funding the trust, with a minimum bond requirement of \$20,000. 	<p>Once signed by the applicant, the bond form needs to be left with the Court in order for the agent of the surety company to execute the bond in the presence of the clerk.</p> <p>May be left with the Court anytime prior to the hearing.</p>
<p>Application for Release of Funds to Custodial Depository in Lieu of Bond (H.C.204.05)</p> <ul style="list-style-type: none"> - Complete form. - Filed when there is not an attorney and applicant does not want to obtain one. - Filed to dispense with requirement of joint control with an attorney, posting of a bond and filing of fiduciary accounts. 	<p>Normally the day of the hearing</p>
<p>Entry Releasing Funds to Custodial Depository in Lieu of Bond (H.C. 204.06)</p> <ul style="list-style-type: none"> - Complete form. - Make sure you have obtained an account number from the bank. 	<p>Normally the day of the hearing</p>
<p>Verification of Receipt and Deposit of Custodial Depository (H.C. 204.07)</p> <ul style="list-style-type: none"> - A bank clerk completes form once the funds are in the account. - Normally the bank sends the form to the court. 	<p>Filed by the bank, normally within 30 days from filing of Entry Releasing Funds to Custodial Depository</p>
<p>Entry Appointing Trustee;Letters of Authority (H.C. 54.4)</p> <ul style="list-style-type: none"> - Complete form. - If the Judge approves the SPECIAL NEEDS TRUST agreement, the magistrate will sign the entry. 	<p>Preferably at the time of initial filing. Otherwise, the day of the hearing.</p>

THE NEXT GROUP OF FORMS IS NOT NEEDED AT THE INITIAL FILING.	
Trustee's Inventory (H.C. Form 54.5) <ul style="list-style-type: none"> - The trustee must file an inventory specifically listing the assets of the trust and the value of those assets. 	3 months from date of appointment
Trustee's Account (H.C. Form 54.8) <ul style="list-style-type: none"> - From the date of appointment, the trustee is responsible for filing an account every 2 years. - On back of Trustee's Account (form 54.8), have an employee of each bank where trust funds are deposited complete a bank certificate. - Trustee must sign form. 	Every 2 years starting with date of appointment
Receipts and Disbursements (H.C. Form 54.81) <ul style="list-style-type: none"> - Specifically list the assets of the trust that were listed on the Inventory (54.5) plus all income and disbursements made. 	Filed with account
Assets Remaining in Trustee's Hands (H.C. Form 54.82) <ul style="list-style-type: none"> - Complete form if filing a current account. - Specifically describe those assets of the trust remaining in trustee's hands. 	
Entry Setting Hearing on Account (H.C. 213.8) <ul style="list-style-type: none"> - Fill in the caption and have attorney sign. - The account clerk will fill in hearing date & time and sign & date the form. 	Filed with account.
Notice of Hearing on Account (H.C. 13.5) Waiver of Notice of Hearing (H.C. 13.7) <ul style="list-style-type: none"> - When filing a <i>current</i> account, all <i>income</i> beneficiaries are entitled to be notified of the hearing on the account. - When filing a <i>final</i> account, all <i>trust</i> beneficiaries are entitled to be notified of the hearing on the account. - You must either obtain a waiver from each individual (H.C. 13.7) or perfect certified mail notice (H.C. 13.5) on each individual. See Local Rule 64.1(D) - If certified mail notice is used, present certified mail return (green card) and a copy of the notice that was sent to each individual to the magistrate assigned to your case. 	
Entry Approving and Settling Account (H.C. 13.3) <ul style="list-style-type: none"> - Fill in the caption and case number. - Magistrate will complete form on the day of the account hearing. 	
STEP 2: ASSIGNING OF MAGISTRATE, REVIEWING OF FORMS, AND SETTING HEARING DATE.	
When the initial forms have been completed, present them to the magistrate's assistant at the information desk on the 9 th Issue Desk where the clerk will write the initials of the assigned magistrate on the form. From the Information Desk you will go to the assignment desk on the 10 th floor to obtain a hearing on the Judge's docket.	

STEP 3: FILING OF FORMS WITH CASHIER	
<p>All forms are taken to the cashier who will assign a case number. At this time, the cashier will require the payment of the filing fee. The cashier will stamp the case number on all the papers plus one set of copies, if provided, and clock in the original forms that can be docketed that day. After clocking in the forms, the cashier will place the forms in a file folder and give it to you to take to the Issue Desk.</p>	
STEP 4: THE HEARING – WHAT TO EXPECT	
<p>At the date and time of the hearing, you (and your attorney, if an attorney is obtained) should report to the 9th Floor of the Probate Court. (The Magistrate will already have the file with the forms you initially filed). If you had to obtain waivers or serve notices of the hearing you will give them to the Magistrate. The Judge will conduct the hearing, and if he approves the trust he will sign the Entry Creating Trust and Approving Trust Form (H.C. 115.55) to be filed under the guardianship number. The Magistrate will sign the Entry Appointing Trustee; Letters of Authority (H.C. 54.4), but they cannot be issued until the Judge signs the trust agreement. Once the trust agreement is signed, you must go to the Issue Desk on the 9th Floor to have the original letters issued.</p>	

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

IN THE MATTER OF _____

CASE NO. _____

**APPLICATION TO CREATE TRUST
AND APPROVE TRUST FORM**

Applicant is the guardian trustee and has received funds for the benefit of the ward beneficiary as a result of a personal injury settlement or other (specify):_____. Applicant states that it would be in the best interest of the ward beneficiary to create a trust for the ward beneficiary pursuant to R.C. 2111.50(B)(3) R.C. 2125.03 (A)(2), for the reasons set forth in the attached Memorandum.

Applicant prays for an order of the Court authorizing the creation of a special needs trust or other (specify):_____ and approval of the trust form.

Attorney for Applicant

Applicant

Attorney Registration No. _____

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

IN THE MATTER OF _____

CASE NO. _____

ENTRY CREATING TRUST AND APPROVING TRUST FORM

This cause came on to be heard upon an application to create a [select one of the following]: wrongful death trust special needs trust other (specify)

_____.

The Court finds that _____ is the
 guardian trustee and has received funds for the benefit of the ward
beneficiary and that it would be in the best interest of the ward beneficiary that the
Court create a trust pursuant to R.C. 2111.50 (B)(3) R.C. 2125.03 (A)(2).

It is therefore ordered that a [select one of the following] wrongful death trust
 special needs trust other (specify) _____ be created
for the benefit of the ward. The trust is hereby approved as to form and shall be
administered under Case No. _____.

Ralph Winkler, Probate Judge

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

TRUST OF _____

FOR THE BENEFIT OF _____

CASE NO. _____

APPLICATION FOR THE APPOINTMENT OF A TRUSTEE

Now comes _____, a resident of Hamilton County, Ohio, and hereby makes application to be appointed Trustee of said Estate and agrees to perform the duties of said office according to **[Check one]**: the terms of said Will (and Codicil/s) under Item _____ the wrongful death trust; special needs trust; other (specify) _____, for the benefit of _____.

Your applicant represents that said trust estate is estimated as follows:

Personal Property	\$	_____
Real Property	\$	_____
Annual Rents	\$	_____
Other Annual Income	\$	_____

Wherefore your applicant asks to be appointed Trustee and presents a bond as such Trustee in the sum of \$_____ with the following surety:

Applicant accepts the duties of Trustee imposed by law, and such additional duties as may be required by the Court. Applicant acknowledges that he/she may be removed as fiduciary for failure to perform such duties as required, and also acknowledges that he/she may be subject to criminal penalties for improper conversion of any property held as fiduciary.

Attorney for Applicant

Applicant

Typed or Printed Name

Typed or Printed Name

Address

Address

City State Zip Code

City State Zip Code

Phone No. (include area code)

Phone No. (include area code)

Attorney Registration No.

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

TRUST OF _____

FOR THE BENEFIT OF _____

CASE NO. _____

CONSENT TO APPOINTMENT OF TRUSTEE

[Check one of the following]:

The undersigned, being adult beneficiaries or guardians of minor beneficiaries of the trust, do hereby consent to the appointment of _____ as Trustee of the wrongful death trust.

The undersigned, being guardian of said minor or incompetent, does hereby consent to the appointment of _____ as Trustee of the special needs trust.

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

TRUST OF _____

FOR THE BENEFIT OF _____

CASE NO. _____

TRUSTEE'S BOND

Amount of Bond \$ _____

The undersigned principal, and sureties if any, are obligated to the State of Ohio in the above amount, for payment of which we bind ourselves and our successors, heirs, executors and administrators, jointly and severally.

The principal has accepted in writing the duties of trustee pursuant to:

- () said decedent's Will (and Codicil(s))
- () wrongful death settlement trust [R.C. 2125.03]
- () special needs trust [R.C. 2111.50(B)(3)]

Said duties include the following:

1. Make and return to the Court, on oath, as provided by and within the time required by law a true inventory of the real and personal property belonging to the Trust;
2. Administer and distribute according to law and the Trust all the real and personal property belonging to the Trust;
3. Render upon oath a just and true account of the administration at the time or times required by the Court or the law; AND in all matters, faithfully and honestly discharge the duties of said office, and comply with all conditions imposed by law.

This obligation is void if the principal performs such duties as required. This obligation remains in force if the principal fails to perform such duties, or performs them tardily, negligently, or improperly, or if the principal misuses or misappropriates estate assets or improperly converts them to his own use or the use of another.

[Check if personal sureties are involved] - The sureties certify that each of them owns real estate in this county, with a reasonable net value as stated below.

Date

Principal

Surety

Surety

By
Attorney in Fact

By
Attorney in Fact

Typed or Printed Name

Typed or Printed Name

Address

Address

Net value of real estate owned in this county

Net value of real estate owned in this county

\$ _____

\$ _____

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

TRUST OF _____

FOR THE BENEFIT OF _____

CASE NO. _____

ENTRY APPOINTING TRUSTEE; LETTERS OF AUTHORITY

Name of Trustee: _____

Name(s) of Co-Trustee(s) [if any]: _____

On hearing in open court on the application for appointment of trustee, the Court finds that the applicant is a suitable and competent person to execute the trust, that applicant has filed a written acceptance of duties as Trustee, and that the Trustee's Bond has been **[Check one]**:

- filed and approved
- waived under the terms of the decedent's Will
- waived according to law.

The Court therefore appoints applicant as Trustee. This entry of appointment constitutes the trustee's letters of authority.

Date

Ralph Winkler, Probate Judge

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the appointment and letters of authority of the named trustee, who is qualified and acting in such capacity.

Ralph Winkler, Probate Judge/Clerk

[Seal]

Date

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

TRUST OF _____

FOR THE BENEFIT OF _____

CASE NO. _____

**TRUSTEE'S INVENTORY
[R.C. 2109.58]**

Description of Real and Personal Property	Value
	\$

[use additional pages, if necessary]

RECAPITULATION

Total Value of Personal Estate \$ _____

Total Value of Real Estate \$ _____

Yearly Rent of Real Estate \$ _____

Other Annual Income \$ _____

Total \$ _____

Trustee

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

TRUST OF _____

FOR THE BENEFIT OF _____

CASE NO. _____

TRUSTEE'S ACCOUNT

[R.C. 2109.30]

The trustee offers an account of the trust and has attached an itemized statement of receipts and disbursements.

The trustee states that the account is true and correct, and asks that it be approved and settled.

[Check one of the following]

This is the _____ partial account for the period from _____
(Number) to _____. A statement of the assets remaining in the trustee's hands is attached.

This is a final and distributive account, and the trustee asks to be discharged upon its approval and settlement.

This account is recapitulated as follows:

RECEIPTS

Balance brought forward from inventory or previous account \$ _____
Income..... \$ _____
Other receipts \$ _____
Total receipts \$ _____

DISBURSEMENTS

Fiduciary fees (this accounting period) \$ _____
Attorney fees (this accounting period) \$ _____
Other administration costs and expenses \$ _____
Other disbursements \$ _____
Total disbursements \$ _____

BALANCE REMAINING IN FIDUCIARY'S HANDS \$ _____

Date

Trustee

BANK CERTIFICATE

N.B. Must be executed when funds are on deposit.

I HEREBY CERTIFY that the within names trustee, on the date named below, had on deposit in

the _____ of _____, Ohio the sum
of \$ _____ on _____ to the credit of the trust of
Nature of Deposit

Bank

Dated _____

By _____
Cashier

Trustee

BANK CERTIFICATE

N.B. Must be executed when funds are on deposit

I HEREBY CERTIFY that the within named trustee, on the date named below, had on deposit in

the _____ of _____, Ohio
the sum of \$ _____ on _____ to the credit of the trust of
Nature of Deposit

Bank

Dated _____

By _____
Cashier

Trustee

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

**TRUST OF
GUARDIANSHIP OF
ESTATE OF _____**

CASE NO. _____

ENTRY SETTING HEARING ON ACCOUNT

The Court sets _____ at _____ o'clock ____ M.
as the date and time for hearing on the current/final account in this matter. If notice is required,
the Court orders that notice of the hearing on the account be given to all parties entitled to notice,
who do not waive the same, at least fifteen (15) days prior to the date and time set for
hearing.

Date

Ralph Winkler, Probate Judge

Attorney

Attorney Registration No. _____

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

**TRUST OF
GUARDIANSHIP OF
ESTATE OF** _____

CASE NO. _____

NOTICE OF HEARING ON ACCOUNT

To:

You are hereby notified that a _____ account covering the period from _____ to _____ has been filed, and the hearing will be held on _____ at _____ o'clock ___ M. The Court is located at the William Howard Taft Center, 230 East Ninth Street, Ninth Floor, Cincinnati, Ohio 45202-2145.

You are required to examine the account, to inquire into the contents of the account, and into all matters that may come before the Court at the hearing on the account. **There is no requirement to appear for this hearing if you have no exceptions to the account.** Any exceptions to the account shall be filed in writing not less than five days prior to the hearing. Absent the filing of written exceptions, the account may be approved without further notice.

Fiduciary/Attorney for Fiduciary
Attorney Registration No. _____

**PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE**

**TRUST OF
GUARDIANSHIP OF
ESTATE OF** _____

CASE NO. _____

ENTRY APPROVING AND SETTLING ACCOUNT

[R.C. 2109.32]

Upon hearing the account filed _____, the Court finds that:

[Check whichever of the following are applicable]

- The _____ partial account has been lawfully administered.
- The events have occurred after which the Court may approve and settle a final account.
- The events have occurred after which the Court may approve and settle a supplemental final account.

The account is therefore approved and settled.

[Check whichever of the following are applicable]

The fiduciary shall be discharged without further order of the Court twelve months following the approval of the final and distributive account unless discharged by this entry.

- The fiduciary is discharged herewith.
- The surety bond is terminated herewith.
- This is a final account of a (deceased) (removed) (resigned) fiduciary. The estate shall remain open.
- This is a final account of the guardianship for the estate only. This matter shall continue as a person only guardianship.
- This is a final account of a beneficiary of a trust. The trust estate shall remain open for other beneficiaries of the trust.

Date

Ralph Winkler, Probate Judge