

# **FREQUENTLY ASKED QUESTIONS FOR ESTATE ADMINISTRATION**

Questions can arise while you are looking for the content that you need. The following are common questions that have often been posed to our office.

## **DOES A FIDUCIARY NEED AN ATTORNEY?**

Due to the complexity of the law and the legal process that is involved in estate administration, the Probate Court strongly recommends that all fiduciaries seek legal counsel. Good legal advice and guidance can expedite the probate process, prevent costly errors, and ensure that the fiduciary is not cited by the Probate Court for the failure to properly perform his or her duties, or sued by beneficiaries for malfeasance.

## **WHAT ARE THE STEPS IN A FULL ADMINISTRATION?**

All estates are not alike, and can differ for a number of reasons. An estate may be testate (with a Will) or intestate (without a Will). The nature, and ownership of assets can vary and so too does the procedure for transferring those assets. Next of kin vary and so do very important notice requirements. Sometimes the fiduciary must address issues of spousal rights or even issues of insolvency where the estate's debts exceed the estate's assets. Because of these differences, each estate is treated differently.

As a general matter, the basic steps of administering an estate pursuant to Ohio law is as follows:

- Application for Authority to Admit the Will to Probate, if one exists, and for Authority to Administer the Estate;
- Appointment of a fiduciary;
- Gathering assets and obtaining appraisals as required;
- Filing an inventory in a timely manner;
- Determining debts, the sufficiency of assets and the payment of creditors;
- Timely filing of income tax returns, the Ohio Estate Tax return and the payment of taxes, if any;
- Distribution of assets to beneficiaries;
- Closing the estate by timely filing a final account or certificate of termination.

## **WHAT IS A RELIEF FROM ADMINISTRATION?**

A Relief from Administration is less complicated and may be completed more quickly than a full administration. If the estate asset is real property, however, you should consult with an attorney to avoid any costly errors.

If a decedent's date of death is on or after March 18, 1999, if the decedent's creditors will not be prejudiced and the probate estate consists of property with a gross value of

\$35,000, or less, the estate may be released from administration. When the surviving spouse is the sole beneficiary, and the probate estate consists of property with a gross value of \$100,000, or less, the estate may be released from administration.

### **WHAT IS A SUMMARY RELEASE FROM ADMINISTRATION?**

A Summary Release from Administration is the least complicated Estate Administration. This procedure is designed to reimburse the individual who has paid or is obligated to pay the funeral bill.

If a decedent's date of death is on or after August 28, 2000, there is an estate administration procedure called a "Summary Release from Administration". This procedure is available if the estate assets do not exceed \$45,000, and the applicant is the decedent's surviving spouse, who has paid the funeral bill or is obligated to do so, and who is also entitled to the entire allowance for support.

This procedure is also available where the applicant is not the surviving spouse, has paid or is obligated in writing to pay the decedent's funeral and burial expenses, and the value of the estate assets is the lesser of: \$5,000 or the amount of the decedent's funeral and burial expenses.

## **A CITIZEN’S GUIDE TO COMMUNICATING WITH THE JUDGE AND MAGISTRATES**

### **Why can’t I communicate directly with the judge or magistrate on my case?**

If the matters are contested, judges and magistrates are not allowed to communicate with individual parties. This is what the law calls an *ex-parte* communication (this is when a judge or magistrate only communicates with an individual party, on their own, without the knowledge of all parties to a case). In order to keep the court process as fair, equal and as transparent as possible, *ex-parte* communication is strictly forbidden. It is unfair for the court to share information without all of the parties present.

You cannot email the judge or magistrate, as the email is considered an *ex-parte* communication. In addition, emails are not pleadings (motions.) You cannot write a personal letter to the judge or magistrate as this may be considered an *ex-parte* communication.

### **How can I speak to the judge or magistrate on my case?**

Typically, to speak to the judge or magistrate on your case, you must file a written motion with the court explaining what you want the court to do and all motions become part of the public record. You also have to send a copy of whatever you file to the other parties, or their attorney if they are represented by an attorney (this is called “service”). A motion is not considered an *ex-parte* communication because all parties are officially notified. You may be required to pay a filing fee when you file your written motion. Please note, there is no fee if you wish to speak to the magistrate in an uncontested matter, on their assigned walk-in days.

### **I’ve heard there’s always a magistrate on duty to hear arguments immediately – what does that mean?**

There is a magistrate on duty every business day. The on-duty magistrate may answer generic procedural questions. The on-duty magistrate may also discuss matters in an uncontested case. For all other matters, the on-duty magistrate is prohibited from speaking with you. To address the court for these matters, you must file a written motion. The on-duty magistrate will set the matter for hearing before the magistrate assigned on your case or the judge.

### **What if I need to tell the judge or magistrate something I don’t want the other party to know about?**

Unfortunately, you cannot withhold information from another party to your case. In order to keep the case fair to everyone involved, as soon as you tell the judge or magistrate something, you must also tell the other parties. All sides must have an opportunity to respond to the information that you have shared with the court.