INSTRUCTIONS FOR ESTABLISHING A TESTAMENTARY TRUST

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

A testamentary trust is established through a Last Will and Testament of a decedent.

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. **We accept cash, cashier's checks or all major credit/debit cards as payment for the fee. No personal checks or money orders will be accepted.**

The forms may be obtained from the Information 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	
Self-Representation Form (270.01) - Sign and Complete information if you **do not** have legal representation	At the time of filing
Trust Beneficiaries (H.C. 54.0) - Complete form. - Be sure to specify *complete* addresses of all of those listed.	At the time of filing
Application for Appointment of a Trustee (H.C. 54.1) - Complete form. - Attach copy of will to application. - **This application will be given a new case number.** - If the applicant is not named in the will then attach or file a separate Memorandum in support of the application prior to hearing before the magistrate.	At the time of filing
Entry Setting Hearing (H.C. Form 202.00) - Only required if applicant is not named in the will. Hearing will be set before the magistrate. - Fill in the name of the decedent only. - The magistrate will fill in the hearing date & time and initial the entry.	At the time of filing, if needed
Trustee's Bond (H.C. 54.3) - When applying to be appointed trustee, the applicant is required to execute a bond unless applicant is named in the will and the bond is waived by the testator. - 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.	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. May be left with the Court anytime prior to the hearing.
Application for Release of Funds to Custodial Depository in Lieu of Bond	Normally the day of the

(H.C.204.05) - 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 yearly accounts.	hearing
Entry Releasing Funds to Custodial Depository in Lieu of Bond (H.C. 204.06) - Complete form. - Make sure you have obtained an account number from the bank.	Normally the day of the hearing
Verification of Receipt and Deposit of Custodial Depository (H.C. 204.07) - A bank clerk completes form once the funds are in the account. - Normally the bank sends the form to the court.	Filed by the bank, normally within 30 days from filing of Entry Releasing Funds to Custodial Depository
Entry Appointing Trustee; Letters of Authority (H.C. 54.4) - Complete form. - If the magistrate grants the application and everything is in order, he/she will sign the letters.	Preferably at the time of initial filing. Otherwise, the day of the hearing.
THE NEXT GROUP OF FORMS IS NOT NEEDED AT THE INITIAL FILING.	
Trustee's Inventory (H.C. Form 54.5) - 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) - 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) - 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) - 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) - 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) - When filing a *current* account, all *income* beneficiaries are entitled to be notified of the hearing on the account. - When filing a *final* account, all *trust* 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) - Fill in name of the decedent 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 all forms have been completed, present them to the magistrate's assistant at the information desk on the 9th Floor of Probate Court where the clerk will write the initials of the magistrate who has been handling the estate on the form. If the appointment is for a successor trustee and a magistrate is already assigned, you may take the forms directly to the assigned magistrate to be reviewed.	
STEP 3: FILING OF FORMS WITH CASHIER	
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 take it to the Issue Desk. If the magistrate approved the letters; the clerk will certify a letter of appointment and return it to you. If the application was set for hearing the clerk will docket the appropriate pleadings.	
STEP 4: THE HEARING – WHAT TO EXPECT (IF NEEDED)	
At the date and time of the hearing, you (and your attorney, if 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 magistrate will conduct the hearing, and if he/she approves the appointment, he/she will sign the Entry Appointing Trustee; Letters of Authority (H.C. 54.4). If the bond is signed, depository is set up (if not posting a bond) or the applicant is a bank. You will then go to the Issue Desk and have the clerk certify a copy of the Entry Appointing Trustee;Letters of Authority signed by the magistrate or if unable to issue on the day of the hearing the file will be returned to the clerk until the letters are able to be issued.	

Ralph Winkler
JUDGE, PROBATE COURT
HAMILTON COUNTY, OH

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.

PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE

IN THE MATTER OF: _____

CASE NO. _____

SELF-REPRESENTATION ACKNOWLEDGMENT

I acknowledge that I have read, understand and agree with all of the following statements:

1. The Court has recommended that I hire an attorney to represent me in this case. However, I have chosen to proceed with this case without the assistance of an attorney.

2. The Court and its Deputy Clerks are prohibited by law from providing legal advice. I will follow the instructions provided in the form packets and on the Court's website, www.probatect.org.

3. I am responsible for understanding and correctly applying any statutes, case law, rules, regulations, policies, and procedures that relate to this case, including, but not limited to, the Ohio Revised Code, Rules of Superintendence for the Courts of Ohio, Hamilton County Probate Court Local Rules of Practice, and the Ohio Rules of Civil Procedure.

4. The same standards that apply to attorneys and persons represented by attorneys in similar probate hearings will apply to myself.

5. If I do not fulfill my responsibilities in this case as required by law, I may be subject to sanctions or penalties as provided by law, which may include removal as fiduciary or being required to be represented by an attorney.

6. I may be personally liable to any person or entity that suffers damages as a result of anything I do or fail to do in this case that does not comply with the legal requirements.

_____
Fiduciary/Applicant/Guardian

_____
Typed Printed Name

_____
Address

_____
City/State/Zip

_____
Telephone Number (include area code)

_____
Email

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 has 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. _____

TRUST BENEFICIARIES

The following are beneficiaries of the trust:

Name	Residence Address	I = Income Beneficiary R= Remainder Beneficiary	Birthdate of Minor

[Check whichever of the following is applicable]

[ ] The Will contains a charitable trust or a bequest or devise to a charitable trust, subject to Revised Code Section 109.23 and 109.41.

[ ] The Will is not subject to Revised Code Sections 109.23 and 109.41, relating to charitable trusts.

_____ _____

Date Applicant (or give other title)

_____

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)]
( ) minor trust [R.C. 2111.182]

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 ..... $ _____

OtherAnnual 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 _____ (Number) partial account for the period from _____ 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

CASE NO._____

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 _____

FOR THE BENEFIT OF _____

CASE NO. _____

RECEIPTS AND DISBURSEMENTS

[Attach to trustee's account]

Following is an itemized statement of receipts and disbursements by the trustee in the administration of the trust.

Item	Voucher No.	Value or Amount	Value or Amount
		$	$

_____
Fiduciary

CASE NO. _____

Page _____ of _____ pages

Item	Voucher No.	Value or Amount	Value or Amount
		$	$

_____
Trustee

PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE

TRUST OF _____

FOR THE BENEFIT OF _____

CASE NO. _____

ASSETS REMAINING IN TRUSTEE'S HANDS

[Attach to partial account of trustee]

Page _____ of _____ pages

The trust assets remaining in the trustee' s hands are recapitulated as follows:

Tangible personal property ..... $ _____

Intangible personal property ..... $ _____

Total personal property ..... $ _____

Real Estate ..... $ _____

Total assets remaining in trustees's hands ..... $ _____

Following is an itemized statement of trust assets remaining in the trustee's hands.

Item	Value or Amount	Value or Amount
	$	$

CASE NO. _____

Page _____ of _____ pages

Item	Value or Amount	Value or Amount
	$	$

_____
Trustee

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. _____

WAIVER OF NOTICE OF HEARING ON ACCOUNT

The undersigned, who are interested in the estate, waive notice of the hearing on the account.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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. in Room _____ 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

IN RE: _____

CASE NO. _____

NOTICE OF RETRIEVING DOCUMENTATION FOR ACCOUNTS

Check the box indicating how the supporting documentation, copies and/or account forms left with the accounting department should be handled after the account is reviewed.

- ☐ Mail back documents in enclosed self-addressed stamped envelope. If no envelope – will be charged to mail back
- ☐ Place documents in the Attorney Mailbox (will pick up within 30 days).

  Mailbox No. _____
- ☐ Destroy documents (shred).

THESE ARE THE MOST COMMON REASONS FOR REJECTIONS SO PLEASE MAKE SURE THESE REQUIREMENTS HAVE BEEN COMPLETED
(If pertains to the type of Account being filed)

- ☐ Starting balance matches Inventory/most recent Partial/Current Account
- ☐ Original Signature on Account
- ☐ Total Receipts and Distributions balance
- ☐ Newly Discovered Asset (Form 106.11)
- ☐ Attorney Fees (Consents - Form 210.05 or Application and Entry with timesheets for fees over $2,000)
- ☐ Paid funeral bill

_____ _____

Signature Date

PROBATE COURT OF HAMILTON COUNTY, OHIO
RALPH WINKLER, JUDGE

MATTER 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.

Name of Fiduciary: _____

_____ _____
Date Ralph Winkler, Probate Judge