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ADVANCED ISSUES IN PROBATE LAW:

Top Ten List: Hot Topics in Probate Law

Chief Magistrate George R. Wertz

TOP TEN LIST

THAT SOMEONE DIDN'T READ THE ORC, RULES OF SUPER INTENDENCE OR LOCAL RULES

Question and Answer

Samples and Techniques

10. A Preliminary Judicial report is mandatory in all civil land sales.

TRUE or FALSE?

RULE 65. Land Sales - R.C. Chapter 2127.

(A) In all land sale proceedings, the plaintiff, prior to the issuance of an order finding the sale necessary, shall file with the court evidence of title showing the record condition of the title to the premises described in the complaint and prepared by a title company licensed by the state of Ohio, an attorney's certificate, or other evidence of title satisfactory to the court. Evidence of title shall be to a date subsequent to the date on which the complaint was filed.

9. What is a Disclaimer?

5815.36 Disclaiming testamentary and nontestamentary succession to real and personal property.

- (F)(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidences ownership of the motor vehicle, watercraft, or outboard motor that is transferable on death pursuant to section 2131.13 of the Revised Code, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.
- (F)(4) If an interest in real estate is disclaimed, an executed copy of the disclaimer instrument also shall be recorded in the office of the recorder of the county in which the real estate is located. The disclaimer instrument shall include a description of the real estate with sufficient certainty to identify it, and shall contain a reference to the record of the instrument that created the interest disclaimed...
- (G) If a donative instrument expressly provides for the distribution of property, part of property, or interest in property if there is a disclaimer, the property, part of property, or interest disclaimed shall be distributed or disposed of, and accelerated or not accelerated, in accordance with the donative instrument. In the absence of express provisions to the contrary in the donative instrument, the property, part of property, or interest in property disclaimed, and any future interest that is to take effect in possession or enjoyment at or after the termination of the interest disclaimed, shall descend, be distributed, or otherwise be disposed of, and shall be accelerated, in the following manner:
- (1) If intestate or testate succession is disclaimed, as if the disclaimant had predeceased the decedent;

8. How do I sell or transfer tangible personal property?

2113.55 Distribution in kind.

Before making distribution in kind of property which is not specifically bequeathed, an executor or administrator shall obtain the approval of the probate court or the consent of all of the legatees or distributees whose interests may be affected by such distribution. A distribution in kind may be made to any beneficiary, including an executor, administrator, trustee, guardian, and the surviving spouse.

Summit County Probate Form ES 4 - Specifically bequeathed in will, sole intestate heir, purchase with power to sell in will.

RULE 63. Application to Sell Personalty.

An application to sell personal property shall include an adequate description of the property. Except for good cause shown, an order of sale shall not be granted prior to the filing of the inventory.

7. *What does a Certificate of Transfer do?*

- A.** There's a used car salesman, a lawyer and a real estate agent. You have a gun with only two bullets. What do you do?
Shoot the real estate agent twice to make sure.
- B.** My real estate agent did such a good job describing my house in their listing that I've decided to keep it.
- C.** What's the difference between a real estate agent and sperm?
Sperm has a 1 in 250,000 chance of becoming human.
- D.** What does a real estate agent use for birth control?
Their personality.
- E.** When real property passes by the laws of intestate succession or under a will, ORC 2113.61 (A) (1)
The name and date of death of the decedent ORC 2113.61 (C)(1)
A description of each parcel of real property being transferred ORC 2113.61 (C)(5)
The certificate itself also shall recite that the real property described in the application or certificate is subject to a written contract for its sale and conveyance. ORC 2113.61 (F)

6. *Copy of Death Certificate*

- A.** There are worse things in life than death. Have you ever spent an evening with an insurance salesman? Woody Allen
- B.** I saw an ad for burial plots, and thought to myself this is the last thing I need.
- C.** Why do they use sterilized needles for death by lethal injection?
Local Rule 57.1(A) Requirements for Acceptance:
- D.** (3) Upon the initial filing of any matter captioned in the name of a deceased person, the applicant shall submit a certified copy of the deceased person's death certificate
- E.** Life is full of misery, loneliness, and suffering - and it's all over much too soon. Woody Allen

5. Original signatures

- A.** (A) Requirements for Acceptance:
(1) All filings must contain original signatures. At least one (1) fiduciary must sign the filing when multiple fiduciaries have been appointed.
- B.** Save time: See it my way.
- C.** The "ORB"
- D.** Spit Test
- E.** If you can't convince them, confuse them.

4. Paid Funeral bill

- A.** According to most studies, people's number one fear is public speaking. Number two is death. Death is number two. Does that sound right? This means to the average person, if you go to a funeral, you're better off in the casket than doing the eulogy.
- B.** I had a friend who was a clown and when he died, all his friends went to the funeral in one car.
- C.** They throw a great party for you on the one day they know you can't come.
- D.** A funeral eulogy is a belated plea for the defense delivered after the evidence is all in.

LOCAL RULE 57.3 RELEASE FROM ADMINISTRATION
- E.** (A) A copy of decedent's paid funeral bill or a Waiver of Notice of Application for Release (Form 5.2) signed by a funeral home representative shall be filed with any Application for Release from Administration. If no paid funeral bill or Waiver is filed, the Application shall be set for hearing, and the Applicant shall give certified mail notice to the funeral provider. (Form 5.3)

3. Proof of Service

Rule 57(B) Fiduciaries appointed to administer testate estates shall file a Certificate of Service of Notice of Probate of Will (Standard Probate Form 2.4) within two months of their appointment or be subject to removal proceedings. If required by the court, proof of service shall consist of either waivers of notice of the probate of will or certified mail return receipt cards as provided under Civil Rule 73(E)(3), or if necessary, under Civil Rule 73(E)(4) and (5). A waiver of notice may not be signed by any minor, or on behalf of a minor sixteen or seventeen years of age. See Civil Rule 4.2.

2. Non resident fiduciary

LOCAL RULE 60.1 APPLICATION FOR LETTERS OF AUTHORITY TO ADMINISTER ESTATE AND NOTICE OF APPOINTMENT

(A) Estate Administration.

Appointment of Non-resident Fiduciaries An applicant to be appointed fiduciary of a decedent's estate or trust, who is not a resident of this state, must be in compliance with Section 2109.21 O.R.C. and use as the attorney of record an attorney licensed to practice law in this State. To assure the assets remain in Summit County, Ohio, during the administration of the estate or trust, the applicant should meet one or more of the following criteria as the Court may require: (1) Place a substantial amount of the decedent's personal assets in a custodial depository in this county, pursuant to Section 2109.13 O.R.C.; (2) Have a co-fiduciary who is a resident of this State; (3) Post a bond in compliance with Section 2109.04 O.R.C. In cases where a trustee named in the Will is a non-resident of this state, the Court reserves the right to appoint a local resident co-trustee, with or without bond, who will insure that all assets pertaining to said trust remain in this county until distribution, or until the Court determines that the property may be removed from the county in accordance with R.C. 2109.21.

1. *What's in a name?*

- A.** The beginning of wisdom is to call things by their correct name - Proverb
- B.** My one regret in life is that I am not someone else. Woody Allen
- C.** The author of the Iliad is either Homer or, if not Homer, somebody else of the same name. – Aldous Huxley
- D.** People's fates are simplified by their names. – Elias Canetti
- E.** Sometimes I lie awake at night and ask why me? Then a voice answers nothing personal, your name just happened to come up.– Charles M. Schulz

