



**EQUES**  
L A W G R O U P

# On the Matter of Death

Life (Estate) Planning and Probate Court

Presented by Attorney Robert M. Barga

# About the Presenter

- Eques Law Group
- Attorney Robert M. Barga
- Quinnipiac University School of Law, JD 2013
- Practicing for 7 years
- Practice Statewide, mainly in Franklin, Delaware, Holmes, Knox, Licking, Fairfield, Muskingum, Coshocton, Perry
- Generalist, mainly in Domestic, Juvenile, Probate, Civil Litigation, Life Planning, Business/Contracts, Agritourism
- Licking County Chamber of Commerce - committee member of Thrive Event, speaker; Reynoldsburg City School Board - former elected member; Eastland Fairfield Career and Technical Schools Board - former appointed member; Ohio School Boards Association - former member and delegate; Reynoldsburg Arts Forum - current member, vice president; Ohio State Bar Association - current member.
- 505 Mt Vernon Rd # 200, Newark, Ohio 43055, [rmb@eques.law](mailto:rmb@eques.law) , 614.324.3653
- Instagram - [attorney\\_rmb](#) , Facebook - [AttorneyRMB](#)



# Today's Focus

- General Overview
  - Probate Court
  - The Right Forms and Process
  - The Internal Flow
  - The External Flow
- Guiding your Clients in Life Planning
  - If you don't Plan
  - The Simple Will
  - The Simple Trust
  - Complete Life Planning
  - Complex Life Planning Examples
- The Devil is in the Details
  - Interested Witness Rule
  - Elections and Allowances
  - Dower
- War Stories and Examples (sprinkled throughout)



# General Overview:

## What is Probate Court?

- ORC 2101.24
- “(A)(1) Except as otherwise provided by law, the probate court has exclusive jurisdiction:
- (a) To take the proof of wills and to admit to record authenticated copies of wills executed, proved, and allowed in the courts of any other state, territory, or country. If the probate judge is unavoidably absent, any judge of the court of common pleas may take proof of wills and approve bonds to be given, but the record of these acts shall be preserved in the usual records of the probate court.\*\*\*”



# General Overview:

## What is Probate Court?

- While we think of Probate as relating to estates alone, it actually covers over two hundred separate kinds of cases. These include: administration of decedent's estates; consent for medical treatment; guardianships; civil involuntary commitments; adoptions; birth record corrections and registrations; changes of name; marriage licenses; testamentary and inter vivos trusts; land appropriations; etc.
- The best way to consider Probate is “those who can not represent themselves, or paperwork”.



# General Overview:

## The Right Forms and Process

- The Supreme Court has standardized forms, yet some Counties will use there own. Make sure you use the right forms!
- Generally, to open you want: Cover Sheet (depends on County); Next of Kin (1.0); Will Probation (2.0-2.4); Administration Authority (4.0-4.8); Assets/Inventory (6.0-6.5, may not be ready at opening); attachments.
- Additional forms are needed as the matter progresses.
- There are specialized areas where entirely different, fewer, or more, forms are needed. Likewise different facts will require different combinations of forms.
- Fees are approved at set points or the end.
- Check Local Rules for fee agreements and other concerns!



# General Overview:

## Building an Internal Flow

- Checklist for your specific County practice areas.
- Folder holding the standard forms.
- Checklist to use at intake and/or consultation.
- Conflict check and preparing for contesting.
- Examples of how Robert does this.



# General Overview:

## Building an External Flow

- Checklist to provide to client, along with timeline, for getting information and documents.
- Automating death certificate and other original document collection and retention.
- Waivers, Waivers, Waivers.
- Relationship with the Court Clerks.
- Document carefully.
- Examples of how Robert does this.





# Guiding your Clients in Life Planning: If you don't Plan

- ORC 2105.06
  - “When a person dies intestate having title or right to any personal property, or to any real property or inheritance, in this state, the personal property shall be distributed, and the real property or inheritance shall descend and pass in parcenary, except as otherwise provided by law, in the following course:
  - (A) If there is no surviving spouse, to the children of the intestate or their lineal descendants, per stirpes;
  - (B) If there is a spouse and one or more children of the decedent or their lineal descendants surviving, and all of the decedent's children who survive or have lineal descendants surviving also are children of the surviving spouse, then the whole to the surviving spouse;
  - (C) If there is a spouse and one child of the decedent or the child's lineal descendants surviving and the surviving spouse is not the natural or adoptive parent of the decedent's child, the first twenty thousand dollars plus one-half of the balance of the intestate estate to the spouse and the remainder to the child or the child's lineal descendants, per stirpes;
  - (D) If there is a spouse and more than one child or their lineal descendants surviving, the first sixty thousand dollars if the spouse is the natural or adoptive parent of one, but not all, of the children, or the first twenty thousand dollars if the spouse is the natural or adoptive parent of none of the children, plus one-third of the balance of the intestate estate to the spouse and the remainder to the children equally, or to the lineal descendants of any deceased child, per stirpes;
  - (E) If there are no children or their lineal descendants, then the whole to the surviving spouse;
  - (F) Except as provided in section 2105.062 of the Revised Code, if there is no spouse and no children or their lineal descendants, to the parents of the intestate equally, or to the surviving parent;
  - (G) Except as provided in section 2105.062 of the Revised Code, if there is no spouse, no children or their lineal descendants, and no parent surviving, to the brothers and sisters, whether of the whole or of the half blood of the intestate, or their lineal descendants, per stirpes;
  - (H) Except as provided in section 2105.062 of the Revised Code, if there are no brothers or sisters or their lineal descendants, one-half to the paternal grandparents of the intestate equally, or to the survivor of them, and one-half to the maternal grandparents of the intestate equally, or to the survivor of them;
  - (I) Except as provided in section 2105.062 of the Revised Code, if there is no paternal grandparent or no maternal grandparent, one-half to the lineal descendants of the deceased grandparents, per stirpes; if there are no such lineal descendants, then to the surviving grandparents or their lineal descendants, per stirpes; if there are no surviving grandparents or their lineal descendants, then to the next of kin of the intestate, provided there shall be no representation among the next of kin;
  - (J) If there are no next of kin, to stepchildren or their lineal descendants, per stirpes;
  - (K) If there are no stepchildren or their lineal descendants, escheat to the state.”



# Guiding your Clients in Life Planning: The Simple Will

- ORC 2107.03
  - “Except oral wills, every will shall be in writing, but may be handwritten or typewritten. The will shall be signed at the end by the testator or by some other person in the testator's conscious presence and at the testator's express direction. The will shall be attested and subscribed in the conscious presence of the testator, by two or more competent witnesses, who saw the testator subscribe, or heard the testator acknowledge the testator's signature.\*\*\*”
- ORC 2107.24
  - “(A) If a document that is executed that purports to be a will is not executed in compliance with the requirements of section 2107.03 of the Revised Code, that document shall be treated as if it had been executed as a will in compliance with the requirements of that section if a probate court, after holding a hearing, finds that the proponent of the document as a purported will has established, by clear and convincing evidence, all of the following:
    - (1) The decedent prepared the document or caused the document to be prepared.
    - (2) The decedent signed the document and intended the document to constitute the decedent's will.
    - (3) The decedent signed the document under division (A)(2) of this section in the conscious presence of two or more witnesses. As used in division (A)(3) of this section, "conscious presence" means within the range of any of the witnesses' senses, excluding the sense of sight or sound that is sensed by telephonic, electronic, or other distant communication.\*\*\*”



# Guiding your Clients in Life Planning: The Simple Will

- Designed for simple matters to be handled in Probate.
- Must be intentionally designed for any non-standard changes.
- Be careful of traps.



# Guiding your Clients in Life Planning: The Simple Trust

- Passes outside of Probate and can be limited to specific concerns.
- Operates in many ways like a business, including ownership and buying/selling of properties or assets.
- Special needs, drug-abuse, dynastic, specialized trusts. Do not dabble, become an expert if you wish to go this route.



# Guiding your Clients in Life Planning: Complete Life Planning

- Should be done in conjunction with experts in other fields.
- Can be both a Probate or a Trust style.
- Planning document (Will/Trust), pour-over document, insurance and financial plans, financial and health care powers of attorney, living will, directives, business operating agreements, TODDs/Survivorships.



# Guiding your Clients in Life Planning: Complex Life Planning Examples

- Wrongful death and why plans are needed for all.
- Dynastic trusts handling charities, family college concerns, and multi-million-dollar businesses.
- Saving the farm.



# The Devil is in the Details: Interested Witness Rule

- ORC 2107.15
  - “If a devise or bequest is made to a person who is one of only two witnesses to a will, the devise or bequest is void. The witness shall then be competent to testify to the execution of the will, as if the devise or bequest had not been made. If the witness would have been entitled to a share of the testator's estate in case the will was not established, the witness takes so much of that share that does not exceed the bequest or devise to the witness. The devisees and legatees shall contribute for that purpose as for an absent or afterborn child under section 2107.34 of the Revised Code.”



# The Devil is in the Details: Interested Witness Rule

- *In re Estate of Shaffer*, 163 Ohio St.3d 487, 2020-Ohio-6672
  - D had a proper formal will, but also drafted a notecard, signed by nobody but D, granting property to a caregiver; the notecard was witnessed but not signed by an interested witness. Does the notecard count as a will under the savings statute, and does the voiding statute remove the benefit?
  - “We hold that R.C. 2107.15 controls the testamentary dispositions to essential witnesses as a matter of law after a will is admitted to probate regardless of whether it is admitted pursuant to R.C. 2107.03 or 2107.24.”
  - “The voiding provision of R.C. 2107.15 therefore applies equally to essential witnesses to both formally compliant and remediated wills.”
  - “The court’s role at the point of admission to probate is not to examine the validity of the will’s contents but to verify that the document was validly executed. \*\*\* Accordingly, the validity of the contents of the will, including devises or bequests to any particular person, does not dictate whether a will may be admitted to probate. ”





# The Devil is in the Details: Elections and Allowances

- ORC 2106 governs rights of surviving spouses. Make sure to issue proper notice (form and green card) as the timing is dependent on these. Waivers as well if possible.
- These take regardless of/against the will.
- ORC 2106.10
  - “A surviving spouse may elect to receive, as part of the surviving spouse's share of an intestate estate under section 2105.06 of the Revised Code and the allowance for support under section 2106.13 of the Revised Code, the entire interest of the decedent spouse in the mansion house. The interest of the decedent spouse in the mansion house shall be valued at the appraised value with the deduction of that portion of all liens on the mansion house existing at the time of death and attributable to the decedent's interest in the mansion house.\*\*\*”
- ORC 2106.13
  - “(A) If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive, subject to division (B) of this section, in money or property the sum of forty thousand dollars as an allowance for support. If the surviving spouse selected more than one automobile under section 2106.18 of the Revised Code, the allowance for support prescribed by this section shall be reduced by the value of the automobile having the lowest value of the automobiles so selected. The money or property set off as an allowance for support shall be considered estate assets.\*\*\*”



# The Devil is in the Details: Dower

- Ohio is one of three remaining states with dower rights.
- ORC 2103.02
  - “A spouse who has not relinquished or been barred from it shall be endowed of an estate for life in one third of the real property of which the consort was seized as an estate of inheritance at any time during the marriage. Such dower interest shall terminate upon the death of the consort except:
  - (A) To the extent that any such real property was conveyed by the deceased consort during the marriage, the surviving spouse not having relinquished or been barred from dower therein;
  - (B) To the extent that any such real property during the marriage was encumbered by the deceased consort by mortgage, judgment, lien except tax lien, or otherwise, or aliened by involuntary sale, the surviving spouse not having relinquished or been barred from dower therein. If such real property was encumbered or aliened prior to decease, the dower interest of the surviving spouse therein shall be computed on the basis of the amount of the encumbrance at the time of the death of such consort or at the time of such alienation, but not upon an amount exceeding the sale price of such property.
  - In lieu of such dower interest which terminates pursuant to this section, a surviving spouse shall be entitled to the distributive share provided by section 2105.06 of the Revised Code.
  - Dower interest shall terminate upon the granting of an absolute divorce in favor of or against such spouse by a court of competent jurisdiction within or without this state.”



# The Devil is in the Details: War Stories

- There is an estate:
  - D is remarried, with adult children from the first marriage
  - D has an inherited (after marriage) family farm
  - D has parceled off land from the farm without having dower waived
  - D has a purported will witnessed but not signed by two parties, which has abnormal terms
  - One of the witnesses is his new wife
  - The heirs do not agree on divisions
- A simple life plan becomes worth quite a bit, and you didn't plan for that





[Rmb@eques.law](mailto:Rmb@eques.law)

614.324.3653

[www.eques.law](http://www.eques.law)