

# WAYNE COUNTY PROBATE COURT

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## LAND SALE CHECKLIST

Filing Fee: \$75.00

### INITIATION REQUIREMENTS

- Make sure venue is proper (i.e. filed in county in which executor/administrator/guardian appointed OR county in which real estate located).
- Complaint filed with instructions for service to the clerk.
  - Must ensure that all necessary parties are named as defendants on the complaint (i.e. surviving spouse, all persons entitled to inherit, mortgage and lienholders, all persons holding title, and any other person who may have an interest).
  - Must include appropriate legal description
  - Must include a statement of value
  - Must include basis for sale (see below)

### BASIS FOR SALE IN ESTATE PROCEEDINGS

- Determine appropriate basis for sale (RC 2127.02 to 2127.04)
  - To pay debts under RC 2127.02
  - To pay legacies under RC 2127.03
  - Other circumstances under RC 2127.04

### BASIS FOR SALE IN GUARDIANSHIP PROCEEDINGS

- Determine appropriate basis for sale (RC 2127.05)
  - Education of the ward
  - Support of the ward
  - Payment of debts
  - Discharge liens
  - Avoid waste
  - Better investment
  - Benefit the ward
  - Lay out in town lots

### SERVICE

- Defendants must be served with a summons and copy of the complaint pursuant to Civ.R. 4
  - Competent persons (not minors, not wards) may waive service and consent to sale.
- If defendant is a minor, plaintiff must file motion for a guardian ad litem to be appointed to protect their interest.
- If defendant is a ward, plaintiff must file a motion for a guardian ad litem to be appointed if the ward's interest and the guardian's interest are different.

## **JUDGMENT**

- \_\_\_\_\_ Subsequent to filing of complaint, plaintiff must file Certificate of Title or Preliminary Judicial Report. Evidence of title shall be to a date subsequent to the date on which the complaint was filed.
- \_\_\_\_\_ Parties should file motion for judgment (could be motion for default judgment or motion for summary judgment) and judgment entry for judge's signature. Motion and proposed judgment entry should reflect service on all parties (or their attorneys, if represented).
- \_\_\_\_\_ Judgment Entry should address:
  - \_\_\_\_\_ Proper basis for land sale is indicated in entry (i.e. which criteria is met)
  - \_\_\_\_\_ Appraisal of property or appraisal is dispensed with (RC 2127.22)
  - \_\_\_\_\_ Is there need for additional bond? (RC 2127.27)
  - \_\_\_\_\_ Approval of realty commissions
  - \_\_\_\_\_ Order of sale to be issued or deferred for appraisal (RC 2127.29)

## **APPRAISEMENT** (RC 21217.22)

- \_\_\_\_\_ Using amount shown on inventory; or
- \_\_\_\_\_ Court must order appraisal after requiring oath of appraiser (RC 2127.23) and setting compensation (RC 2127.25).
  - \_\_\_\_\_ Upon approval of the appraisal, the Court may require fiduciary post additional bond unless testator waived.

## **ORDER OF SALE** (RC 2127.29)

- \_\_\_\_\_ Private sale: must be sold for appraised value. Return shall be made and if returned unsold, court may order sold at public sale (RC 2127.32) or Court may fix price or order property reappraised (RC 2127.33).
- \_\_\_\_\_ Public sale: must be sold for not less than two-thirds of appraised value if improved or for not less than one-half of appraised value if property not improved (RC 2127.33).
  - \_\_\_\_\_ Notice of public sale must be made in newspaper for 3 successive weeks.
- \_\_\_\_\_ Notice of sale to all defendants at least three weeks prior to sale (Sup.R. 65(B)). Plaintiff must file certificate of service with Court prior to sale.

## **CONFIRMATION OF SALE** (RC 2127.35)

- \_\_\_\_\_ Motion and Proposed Entry to confirm sale filed. Motion should reflect service on all parties (or counsel if represented) and Proposed Entry should contain signatures of all parties/counsel who filed an answer or claim.
- \_\_\_\_\_ Entry should include the following:
  - \_\_\_\_\_ Authorize plaintiff to prepare fiduciary deed and distribute proceeds
  - \_\_\_\_\_ Gross amount of sale proceeds

- Copy of proposed closing statement
- Itemization of expenses to be paid
- Release of any liens