

## **VENUE** [R.C. 2127.09]

1. County in which the executor, administrator, or guardian was appointed.
2. County where real estate located.

## **DECEDENT ESTATE COMPLAINT** [R.C. 2127.10]

1. Basis for Sale: [R.C. 2127.02 to 2127.04]
  - a. To pay debts [R.C. 2127.02]
  - b. To pay legacies [R.C. 2127.03]
  - c. Other circumstances [R.C. 2127.04]
2. Necessary Parties: [R.C. 2127.12]
  - a. Surviving spouse
  - b. All persons entitled to inherit
  - c. Mortgage and lienholders
  - d. All persons holding title
  - e. All other persons who have interest

## **GUARDIANSHIP COMPLAINT** [R.C. 2127.10]

1. Basis for Sale: [R.C. 2127.05]
  - a. Education of the ward
  - b. Support of the ward
  - c. Payment of debts
  - d. Discharge liens
  - e. Avoid waste
  - f. Better investment
  - g. Benefit the ward
  - h. Lay out in town lots [R.C. 2127.21]
2. Necessary Parties: [R.C. 2127.13]
  - a. The ward
  - b. The ward's spouse
  - c. The ward's next of kin residing in Ohio
  - d. All lienholders
  - e. All other persons who have interest

## **BOTH COMPLAINTS** [R.C. 2127.10]

1. Legal description
2. Statement of value



- Request to hire and pay realtor and/or auctioneer. [R.C. 2127.28]
- Serve the county treasurer.

## **REAL PROPERTY SUBJECT TO SALE**

1. Legal or equitable interests in real property including mineral rights. [R.C. 2127.07]
2. Undivided fractional or entire interest may be sold. [R.C. 2127.08]

## **SERVICE** [R.C. 2127.14]

1. Defendants must be served with summons and complaint per Civ.R. 4.
2. Competent persons may waive service and consent to the sale. If all parties consent to the sale, an order of sale may be issued.

## **GUARDIAN AD LITEM**

Upon motion, the court will appoint a Guardian ad litem to represent the interest of the minor or incompetent and to file an answer. [R.C. 2111.23]; [Civ.R. 17(B)]

## EVIDENCE OF TITLE

Evidence of title, to a date subsequent to the filing of the complaint, is required to be filed prior to the issuance of an order of sale, subject to local rules.

[Sup.R. 65(A)]

## ENTRY FINDING SALE NECESSARY

1. Court may grant the relief if all necessary parties are properly before the court. [R.C. 2127.18]
2. Court may determine equities among parties and priorities of liens. [R.C. 2127.18]
3. Order should find and include the following:
  - a. All parties properly before the court.
  - b. Allegation in Complaint is true.
  - c. Proper basis to bring land sale action under Chapter 2127. [R.C. 2127.02 to 2127.05]
  - d. Requirement of title evidence has been met. [Sup.R. 65(A)]
  - e. Appraisal of property or is appraisal dispensed with. [R.C. 2127.22]
  - f. Need for additional bond. [R.C. 2127.27]
  - g. Approval of realty commissions.
  - h. Order of sale to be issued or deferred for appraisal. [R.C. 2127.29]

## APPRAISEMENT [R.C. 2127.22]

1. If real property was appraised in the Inventory of the fiduciary the court may approve the use of the appraised value for the real property set forth in the Inventory.
2. The court may order an appraisal if the real property was not appraised in the Inventory or if the court determines that a new appraisal should be ordered. Oath of Appraiser is required. [R.C. 2127.23] The court shall set the compensation for the appraiser. [R.C. 2127.25]

3. Upon the return and approval of the appraisal the appraised value shall be the appraised value of the real property.

## ADDITIONAL BOND [R.C. 2127.27]

Upon approval of the appraisal the court shall require the executor, administrator, or guardian to post additional bond, unless testator has waived.

## ORDER OF SALE [R.C. 2127.29]

1. The court will issue an order of public or private sale that sets forth terms of sale. [R.C. 2127.34]
2. A private sale order requires the real property to be sold for the appraised value. [R.C. 2127.33] Order of private sale shall be returned and if returned unsold the court may order the real property sold at public sale [R.C. 2127.32] or the court may fix the price for sale or order the real property reappraised. [R.C. 2127.33]
3. The real property may be sold at public sale for not less than two-thirds of the appraised value if improved or for not less than one-half of appraised value if property is not improved. [R.C. 2127.33] Real property sold at public sale must be sold at a fixed place, day, and hour ordered by the court. Notice of the time and place of sale shall be advertised at least three successive weeks in a newspaper of general circulation in the county where the real property is situated. [R.C. 2127.32]
4. Sup.R. 65(B) requires the Plaintiff to give notice of the place and time of sale to all defendants at least three week prior to the sale. The Plaintiff is required to file a certificate of service with the court prior to the sale.

## **CONFIRMATION OF SALE** [R.C. 2127.35]

1. Upon return of the order of sale, and upon motion, the court may confirm the sale if the court finds that the sale in all respects has been legally made.
2. The order to confirm the sale will authorize the Plaintiff to issue a fiduciary deed, and may order distribution of sale proceeds and release of liens under R.C. 2127.19 and R.C. 2127.38.
3. The entry confirming sale shall include the gross amount of the sale proceeds and include a copy of the proposed closing statement itemizing all proposed disbursements. [Sup.R. 65(C)]
4. Property may be sold subject to a mortgage with consent of the mortgagee. [R.C. 2127.20] Sale is free of dower. Payment for dower interest shall be ordered unless waived. [R.C. 2127.16]
5. Costs of certificate of title or policy of title insurance may be allowed by the court. [R.C. 2127.28] Real estate commissions may be allowed after notice to all parties in interest. [R.C. 2127.28] The executor, administrator, or guardian may be allowed fiduciary fees and reasonable attorney fees. [R.C. 2127.37 and 2127.38]

## **OTHER CONSIDERATIONS**

1. Summary Proceeding - market value of real property is less than \$3,000.00 [R.C. 2127.11]
2. Objection to Sale [R.C. 2127.31 and 2127.17]; [Sup.R. 65(D)]

