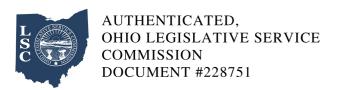# Ohio Revised Code

Section 2121.05 Proceedings for probating will.

Effective: January 13, 2012

Legislation: Senate Bill 124 - 129th General Assembly

(A) Except as provided otherwise in this chapter, all of the proceedings for the probate of the decedent's will, if any, and all the proceedings, domiciliary or ancillary, for the administration of the decedent's estate that are set forth in the Revised Code for use upon the death of a decedent, shall upon the signing of the decree of presumed death be instituted and carried on in the same manner as if the presumed decedent were in fact dead. All acts pursuant to these proceedings shall be as valid as if the presumed decedent were in fact dead.

(B) Following the decree the court may make any supplementary orders that in its discretion are necessary to consummate any right or interest arising by reason of the death of the presumed decedent under any contract, trust, or other nonprobate property interest of any person or entity who was a party to the proceedings. The court may condition the granting of that order by requiring any person or entity who would benefit by the order to furnish bond for a three-year period after the decree in the form and amount, with or without sureties, as the court shall order. If any supplementary order is directed to the holder of assets of the presumed decedent that were created by the decree of presumed death, the court, at the request of the party defendant to whom the order is directed, shall condition the granting of that order by requiring any person or entity who would benefit by the order to furnish a suretyship bond for a three-year period after the decree in the amount of the assets so created by the decree with interest for the period of the bond at the rate specified in the order.

(C) The term "assets of the presumed decedent that were created by the decree of presumed death" as used in division (B) of this section and division (D) of section 2121.08 of the Revised Code, means those potential assets of the presumed decedent in which the presumed decedent had a contractual or other right, contingent upon the presumed decedent's death, to have those assets paid to the presumed decedent's designee and the decree of presumed death would fulfill the contingency. Only that portion of the proceeds of life insurance policies on the life of the presumed decedent that exceeds any net cash surrender value of the policies on the date of the decree is within the definition of the term "assets of the presumed decedent that were created by the decree of presumed death."

(D) The bond shall provide that, if within the three-year period after the decree is entered by the court it is established that the presumed decedent is alive, the person or entity shall on the subsequent order of the court refund or return any sums, with interest as provided in the court order, or property received by virtue of the order, to the presumed decedent or to the person or entity who, by reason of the erroneous finding of death of the presumed decedent, made the payment or delivered the property. The bond shall be further conditioned on returning the fair value of the property if the same shall have been sold or otherwise disposed of in the interim.

(E) If the person or entity who would benefit by an order, as provided in division (B) of this section, fails to provide a bond for the amount of the assets of the presumed decedent that were created by the decree, with interest as specified in the order, the holder shall hold those assets for the three-year period they would have been bonded. In that event, the holder shall pay interest at the same rate specified in the order as a condition of the bond and the interest shall accumulate and be held throughout that period.

(F) Nothing in this section shall preclude the person or entity from selling, encumbering, or otherwise disposing of any property so received and any purchaser, transferee, or mortgagee acquires good title to the property free and clear of any claim of the presumed decedent.