



Ohio Revised Code

Section 2106.16 Purchase of property by surviving spouse.

Effective: March 11, 1996

Legislation: House Bill 156 - 121st General Assembly

A surviving spouse, even though acting as executor or administrator, may purchase the following property, if left by the decedent, and if not specifically devised or bequeathed:

(A) The decedent's interest in the mansion house, including the decedent's title in the parcel of land on which the mansion house is situated and lots or farm land adjacent to the mansion house and used in conjunction with it as the home of the decedent, and the decedent's title in the household goods contained in the mansion house, at the appraised value as fixed by the appraisers;

(B) Except for any automobile that passes to the surviving spouse of the decedent under division (A) of section 2106.18 of the Revised Code, any other real or personal property of the decedent not exceeding, with the decedent's interest in the mansion house and the decedent's title in the land used in conjunction with it, and the decedent's title in the household goods the spouse elects to purchase, one-third of the gross appraised value of the estate, at the appraised value as fixed by the appraisers.

A spouse desiring to exercise this right of purchase with respect to personal property shall file in the probate court an application setting forth an accurate description of the personal property and the election of the spouse to purchase it at the appraised value. No notice is required for the court to hear the application insofar as it pertains to household goods contained in the mansion house. If the application includes other personal property, the court shall cause a notice of the time and place of the hearing of the application with respect to the other personal property to be given to the executor or administrator, the heirs or beneficiaries interested in the estate, and to any other interested persons as the court determines.

A spouse desiring to exercise this right of purchase with respect to an interest in real property shall file in the court a petition containing an accurate description of the real property and naming as defendants the executor or administrator, the persons to whom the real property passes by inheritance or residuary devise, and all mortgagees and other lienholders whose claims affect the real property or any part of it. Spouses of defendants need not be made defendants. The petition shall set forth the



election of the surviving spouse to purchase the interest in real property at the appraised value and shall contain a prayer accordingly. A summons upon that petition shall be issued and served on the defendants in the same manner as provided for service of summons in actions to sell real property to pay debts.

No hearing on the application or petition shall be held until the inventory is approved. On the hearing of the application or petition, the finding of the court shall be in favor of the surviving spouse, unless it appears that the appraisal was made as a result of collusion or fraud or that it is so manifestly inadequate that a sale at that price would unconscionably prejudice the rights of the parties in interest or creditors. The action of the court shall not be held to prejudice the rights of lienholders.

Upon a finding in favor of the surviving spouse, the court shall make an entry fixing the terms of payment to the executor or administrator for the property, having regard for the rights of creditors of the estate, and ordering the executor or administrator, or a commissioner who may be appointed and authorized for the purpose, to transfer and convey the property to the spouse upon compliance with the terms fixed by the court. If the court, having regard for the amount of property to be purchased, its appraised value, and the distribution to be made of the proceeds arising from the sale, finds that the original bond given by the executor or administrator is sufficient, the court may dispense with the giving of additional bonds. If the court finds that the original bond is insufficient, as a condition to transfer and conveyance, the court shall require the executor or administrator to execute an additional bond in an amount as the court may fix, with proper surety, conditioned and payable as provided in section 2127.27 of the Revised Code. This section does not prevent the court from ordering transfer and conveyance without bond in cases where the will of a testator provides that the executor need not give bond. The executor or administrator, or a commissioner, then shall execute and deliver to the surviving spouse a proper bill of sale or deed, as the case may be, for the property, and shall make a return to the court.

The death of the surviving spouse prior to the filing of the court's entry fixing the terms of payment for property elected to be purchased shall nullify the election. The real or personal property then shall be free of the right granted in this section.

The application or petition provided for in this section shall not be filed prior to filing the inventory required by section 2115.02 of the Revised Code or later than one month after the approval of that



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inventory. Failure to file an application or petition within that time nullifies the election with respect to the property required to be included, and the real or personal property then shall be free of the right granted in this section.