



Ohio Revised Code

Section 2109.46 Mortgage by fiduciary.

Effective: January 13, 2012

Legislation: Senate Bill 124 - 129th General Assembly

When it appears to be for the best interests of the entrusted estate, a fiduciary other than an executor or administrator may, with the approval of the probate court, borrow money and mortgage real property belonging to the entrusted estate, whether the real property was acquired by purchase or by descent and distribution.

The fiduciary proposing to borrow money shall file in the probate court that appointed the fiduciary a complaint describing all of the real property in the trust and stating the nature and amount of the encumbrances on that real property, the date those encumbrances became or will become due, and the rate of interest on those encumbrances. The complaint shall also contain a statement of the personal property in the trust, the income from the personal property, and the income from the real property in the trust. The complaint if filed by a guardian shall state the names, ages, and residences of the ward and next of kin known to be a resident of this state, including the spouse of the ward and persons holding liens on the real property unless the liens will be extinguished, all of whom shall be made defendants and be notified of the pendency and prayer of the complaint in the manner that the court directs. In addition, the complaint shall contain a statement of the nature of the incompetency or incapacity, if any, of the ward, whether temporary or confirmed and its duration. Except as provided in this section, the defendants and notice to the defendants shall be the same as though the real property proposed to be mortgaged were being sold by the fiduciary. The complaint shall set forth the purpose of the loan, the amount required for the loan, and any other facts that may be pertinent to the question whether the money should be borrowed and shall contain a prayer that the fiduciary be authorized to mortgage so much of the ward's lands as may be necessary to secure the loan.

Upon the filing of the complaint, the proceedings as to pleadings and proof shall be the same as on a complaint to sell real property belonging to the trust.