



Ohio Revised Code

Section 2109.59 Failure of fiduciary to make payment or distribution.

Effective: January 13, 2012

Legislation: Senate Bill 124 - 129th General Assembly

If a fiduciary, upon demand, refuses or neglects to pay any creditor whose claim has been allowed by the fiduciary and not subsequently rejected or to pay any creditor or make distribution to any person interested in the estate whose claim or interest has been established by judgment, decree, or order of court, including an order of distribution, the creditor or other person may file a petition against the fiduciary in the probate court from which the fiduciary received the fiduciary's appointment to enforce the payment or distribution, briefly setting forth in the petition the amount and nature of the creditor's or other person's claim or interest. The petition shall not be filed against an executor or administrator until the expiration of the period prescribed in section 2117.30 of the Revised Code.

When the petition is filed, the probate court shall issue a citation to the fiduciary setting forth the filing of the petition and the nature of the claim of the petitioner and commanding the fiduciary to appear before the court on the return day to answer and show cause why a judgment should not be rendered or order entered against the fiduciary. The citation shall be returnable not less than twenty nor more than forty days from its date and shall be served and returned by an officer as in the case of summons. The citation may issue to any county in the state.

On the return of the citation, the cause shall be set for hearing, unless for good cause shown it is continued. The probate court may hear and determine all questions necessary to ascertain and fix the amount due from the fiduciary to the petitioner and render the judgment or make the order that may be proper. If necessary, the court may hear, determine, and settle the rights and claims of all parties interested in the subject matter of the petition. For that purpose the probate court may allow all parties in interest to be made parties to the petition by amended, supplemental, or cross-petition. The court shall cause notice to be served on all the parties in the manner provided in this section for service of the citation upon the fiduciary.

In any proceeding under this section, the sureties on the bond of the fiduciary, if made parties to the proceeding, may make any defense that the fiduciary could make and the court may render the



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judgment or make the order with respect to the sureties that may be proper.