

INSTRUCTIONS TO ADMIT A LOST, SPOILIATED, OR DESTROYED WILL TO PROBATE

These instructions are intended as a guideline only and should not be relied upon as a comprehensive list of fiduciary duties in the administration of a decedent's estate.

These instructions are being provided as a public service of the Butler County Probate Court, and are intended as a guideline only. Depending on the circumstances of each case, additional steps may be required that are not listed below.

The documents that you file *must* be typewritten, legible AND completed in their entirety (Forms on our web site may be filled in prior to printing). Illegible or incomplete documents may be refused for filing or if filed, could result in your application being denied, delayed or dismissed.

A deposit is required at the time of filing, please contact the court to determine the amount. This fee must be paid in cash, check or money order payable to Butler County Probate Court. **After the application is filed, your filing fees will not be refunded.**

Pursuant to R. C. 2107.26, when an original Will is lost, spoliated, or destroyed prior to or after the death of a decedent, the Probate Court shall admit the Will if the proponent of the Will establishes by clear and convincing evidence the contents of the Will and that the Will was executed with the formalities required at the time of execution by the jurisdiction in which it was executed.

Probate Court *requires* that a hearing be held on all Applications for Admission to Probate of Lost, Spoliated, or Destroyed Wills.

The following are necessary at the initial filing:

1. Classification Form (BCPC 412)
 - After reading and understanding form 412, please sign.
2. Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC form 470)
 - All names and addresses must be complete; P.O. boxes are not permitted for the next of kin or applicant's addresses.
 - Complete all fields except Entry Setting Hearing, the clerk will complete this.
3. Copy of Last Will and Testament of decedent.
4. Deposit for court costs - please contact the Court to determine the amount due.

After obtaining the hearing date from the clerk **the applicant** is required to issue Notice of Hearing on the Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC form 472). Ohio Revised Code does not allow for notice of hearing to be waived. The applicant must issue the notice by certified mail to the surviving spouse of the testator, to all persons who would be entitled to inherit from the testator under Chapter 2105 of the Revised Code if the testator had died intestate, to all legatees and devisees that are named in the most recent will prior to the lost, spoliated, or destroyed will that is known to the applicant or in the most recent will prior to the document that is treated as a will if the most recent will is known to the applicant.

Pursuant to R.C. 2107.27, the proponents and opponents of the Will shall cause the witnesses to the Will, and any other witnesses that have relevant and material knowledge about the Will to appear before the Court to testify.

The following are necessary at the hearing:

1. Notice of Hearing on Application for Admission to Probate of Lost, Spoliated, or Destroyed Will (BCPC form 472) with proof of service (green cards) attached.
2. Entry Admitting Lost, Spoliated, or Destroyed Will to Probate (BCPC form 473).

Legal Practice in the Probate Court is restricted by law to attorneys who are licensed by the Supreme Court of Ohio. If an individual wishes to handle his or her own case, that person may attempt to do so, however due to the complexity of the law and desire to avoid costly errors, most individuals who have matters before the Court are represented by an attorney.

Court employees including the Judge and Magistrate are prohibited by statute from giving you legal advice which includes selection and preparation of documents.

PROBATE COURT OF BUTLER COUNTY, OHIO

ESTATE OF _____, DECEASED

CASE NO. _____

**APPLICATION FOR ADMISSION TO PROBATE
LOST, SPOLIATED, OR DESTROYED WILL**

[RC §2107.26, and §2107.27]

Applicant states that decedent died on _____

Decedent's domicile was _____
Street Address

City or Village, or Township if unincorporated area County

Post Office State Zip Code

Applicant further states that on or about _____, _____

signed his/her Last Will and Testament, which Will was duly attested and subscribed by _____

_____ and _____ in the presence

of _____ . Applicant further states that the Will was in existence

and unrevoked at the time of the death of the testator, and either before or after the testator's death the Will

has become lost, spoliated, or destroyed and cannot be found, although a strict search has been made for the

Will, and that any facts known to the applicant as to how the Will became lost, spoliated, or destroyed are as

follows:

[ATTACH ADDITIONAL SHEETS IF NECESSARY]

A copy of the lost, spoliated, or destroyed Will is attached.

The applicant asks that the Will be established and admitted to probate pursuant to the provisions of sections §2107.26 and §2107.27 of the Revised Code.

Attorney for Applicant

Applicant

Typed or Printed Name

Typed or Printed Name

Address

Address

Phone Number (include area code)

Phone Number (include area code)

Attorney Registration No.

PROBATE COURT OF BUTLER COUNTY, OHIO

ESTATE OF _____, DECEASED

CASE NO. _____

**NOTICE OF HEARING ON APPLICATION FOR ADMISSION TO
PROBATE OF LOST, SPOLIATED, OR DESTROYED WILL**
[R.C. 2107.26 and 2107.27]

To: _____

You are hereby notified that an Application has been filed in the Probate Court of Butler County, Ohio asking the Court to establish and admit to Probate the Lost, Spoliated, or Destroyed Will of the above name decedent who died on _____

This notice is given to you as the surviving spouse of the testator, or a person who would be entitled to inherit from the testator under Chapter 2105. of the Revised Code if the testator had died intestate, a legatee or devisee that is named in the Will, or in the most recent Will prior to the lost, spoliated, or destroyed Will that is known to the applicant, or in the most recent Will prior to the document that is treated as a Will if the most recent Will is known to the applicant (See R.C. 2107.27).

The hearing on the application will be held on the _____ day of _____, _____ at _____ o'clock _____ in this Court.

The Court is located at the Butler County Courthouse, 101 High Street, 2nd Floor, Hamilton, OH 45011

If you know of any reason why the above application should not be granted, you should appear at the hearing and inform the court.

Date

Applicant for the Admission of this Will to Probate

Typed or Printed Name

Address

City/State/Zip Code

PROBATE COURT OF BUTLER COUNTY, OHIO

ESTATE OF _____, DECEASED

CASE NO. _____

ENTRY ADMITTING LOST, SPOLIATED, OR DESTROYED WILL TO PROBATE

This day this cause came to be heard on the application of _____
to establish and to admit to probate the Last Will and Testament of _____,
and the same was submitted to the Court.

Whereupon, the Court finds that:

1. _____, deceased, at the time of his death was domiciled in this County;
2. All persons who are entitled by law to notice of this proceeding have been duly notified thereof in accordance with the law and the former order of this Court or have waived such notice;
3. The decedent did on or about _____, duly execute his Last Will and Testament in the mode provided by law;
4. The same was unrevoked at the death of _____;
5. It became lost or spoliated subsequent to the death of the testator before the death of the testator but without his/her having knowledge of such loss;
6. The Court finds that the contents of the Will are as set forth in Exhibit 1 attached hereto;

IT IS THEREFORE ORDERED THAT:

A. The Last Will and Testament of _____ as set forth in Exhibit 1 is hereby established.

B. Said Last Will and Testament of _____ is admitted to probate and ordered recorded.

Date

Probate Judge