

# PL-2421: WILLS, TRUSTS, AND ESTATES

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## Cuyahoga Community College

**Viewing: PL-2421 : Wills, Trusts, and Estates**

**Board of Trustees:**

March 2022

**Academic Term:**

Fall 2022

**Subject Code**

PL - Paralegal Studies

**Course Number:**

2421

**Title:**

Wills, Trusts, and Estates

**Catalog Description:**

Overview of paralegal concepts and tasks associated with pre-mortem estate planning and post-mortem estate administration. Covers forms of property ownership and documentation utilized to manage property before and after death. Discuss available assistance for older individuals and legal forms utilized to empower third parties assistance regarding management of health and financial matters. Explain post-mortem estate administration procedures including discovery of assets, appointment of fiduciaries, taxation, and property transfer. Also covers advantages/disadvantages of avoiding probate and tax impact on estate planning and administration. Complete paralegal tasks associated with full probate administration.

**Credit Hour(s):**

4

**Lecture Hour(s):**

4

## Requisites

**Prerequisite and Corequisite**

PL-1001 Introduction to Paralegal Profession or concurrent enrollment.

## Outcomes

**Course Outcome(s):**

Explain the ethical guidelines that govern probate paralegals and the role of the paralegal in assisting their supervising attorney with all stages of pre-mortem and post-mortem estate administration and guardianship matters, including client interviewing and client communication.

**Essential Learning Outcome Mapping:**

Critical/Creative Thinking: Analyze, evaluate, and synthesize information in order to consider problems/ideas and transform them in innovative or imaginative ways.

**Objective(s):**

1. Create and maintain docket ("tickler") systems for each estate, including tax deadlines and probate court filing deadlines.
  2. Collect information needed for transfer of estate assets.
  3. Identify the identity of the client and understand the role, both formal and informal, of family members.
  4. Define the role of the paralegal in assisting the attorney with estate administration, including communicating with client and family members and conducting client interviews to gather information and other materials necessary to represent the estate in probate proceedings.
  5. Define the parameters of client confidentiality and identify the range of possible conflicts of interest in multiparty situations.
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**Course Outcome(s):**

Complete all required Probate Court forms and required federal and Ohio tax forms that are required to successfully complete a full probate administration or a Release From Administration.

**Essential Learning Outcome Mapping:**

Written Communication: Demonstrate effective written communication for an intended audience that follows genre/disciplinary conventions that reflect clarity, organization, and editing skills.

**Objective(s):**

1. Initiate probate proceedings and prepare all documents required for the administration of a testate estate, from opening the estate and appointment of fiduciary to filing of final account and distribution of assets.
2. Create and maintain an account system for estate transactions and for use with probate accounts and tax returns.
3. Complete all Probate Court forms needed to obtain a Release From Administration.
4. Initiate probate administration proceedings and prepare all required documents and Probate Court forms for needed for administration of an intestate estate.

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**Course Outcome(s):**

Complete all required Probate Court forms needed to successfully establish and maintain a guardianship for an individual who lacks mental capacity.

**Essential Learning Outcome Mapping:**

Written Communication: Demonstrate effective written communication for an intended audience that follows genre/disciplinary conventions that reflect clarity, organization, and editing skills.

**Objective(s):**

1. Identify information needed to establish and maintain a guardianship.
2. Complete Probate Court forms and other documents associated with establishing and maintaining guardianships.

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**Course Outcome(s):**

Discuss Ohio Probate Code provisions, asset valuation procedures, and Probate Court rules associated with a full probate administration.

**Essential Learning Outcome Mapping:**

Information Literacy: Acquire, evaluate, and use information from credible sources in order to meet information needs for a specific research purpose.

**Objective(s):**

1. Explain Ohio Probate Code provisions relating to testacy and intestacy and knowledge of county Probate Court rules and procedures.
2. Discuss the tax implications arising from the probate process and know how to prepare necessary tax forms in keeping with deadlines.
3. Restate the fiduciary responsibilities of both attorney and personal representative of an estate.

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**Course Outcome(s):**

Distinguish the filing requirements that pertain to whether or not the decedent created a valid Last Will and Testament (Testate) versus a lack of a valid Last Will and Testament (Intestate) and whether the decedent requires Full Administration or a Release from Administration.

**Essential Learning Outcome Mapping:**

Information Literacy: Acquire, evaluate, and use information from credible sources in order to meet information needs for a specific research purpose.

**Objective(s):**

1. Explain Ohio Probate Code provisions relating to Release From Administration.
  2. Differentiate between Summary Release From Administration and Release From Administration.
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**Course Outcome(s):**

Distinguish the nature of assets owned by a decedent in determining whether the asset is a probatable asset or a non-probatable asset and complete tasks needed for transfer of assets.

**Essential Learning Outcome Mapping:**

Information Literacy: Acquire, evaluate, and use information from credible sources in order to meet information needs for a specific research purpose.

**Objective(s):**

1. Prepare and file forms and documents associated with transfer of non-probate and probate assets.
2. Explain asset valuation procedures for assets commonly held in estates and distinguish between probate and non-probate property.

**Course Outcome(s):**

Draft professional-quality legal instruments and documents commonly utilized in pre-mortem estate planning—such as wills, various types of trusts, and advance directives—for a supervising attorney's review.

**Essential Learning Outcome Mapping:**

Written Communication: Demonstrate effective written communication for an intended audience that follows genre/disciplinary conventions that reflect clarity, organization, and editing skills.

**Objective(s):**

1. Identify suitable situations for usage of advance directives such as a Health Care Power of Attorney, a Financial Power of Attorney, and a Living Will and understand how to utilize facts provided by a supervising attorney to draft these documents for a supervising attorney's review.
2. Identify suitable situations in which a Last Will and Testament can be created and understand how to utilize facts provided by a supervising attorney to draft these documents for a supervising attorney's review.
3. Identify purposes and legal effects of various types of trusts and situations in which a trust can be created and understand how to utilize facts provided by a supervising attorney to draft trust language for a supervising attorney's review.

**Methods of Evaluation:**

1. Weekly Quizzes
2. Surviving Spouse Rights Quiz
3. Federal Estate Tax Quiz
4. Midterm Examination
5. Final Examination
6. Will Drafting Assignment
7. Irrevocable Living Trust Assignment
8. Deed Preparation Assignment
9. Conveyance Form Assignment
10. Transfer on Death (Automobile) Affidavit Assignment
11. Gift Tax Assignment
12. Advance Directives Assignment
13. Guardianship Creation Assignment
14. Guardianship Maintenance Assignment
15. Life Insurance Benefits Assignment
16. Affidavit of Survivor Assignment
17. Full Probate Administration Assignment
18. Release From Administration Assignment
19. Lost Will Assignment
20. Insolvency Assignment
21. Missing Beneficiary Assignment
22. Medicaid Estate Recovery Program Assignment

**Course Content Outline:**

1. Introduction to Elder Law, Estate Planning, and Probate Law
  - a. Role of Probate Court in Ohio, Jurisdiction, and Venue
  - b. Role of Probate Paralegal

- i. Importance of Supervising Attorney \ Avoiding Unauthorized Practice of Law
    - 1. Ethical Considerations
      - a. Fees for Attorneys, Executors, Guardians, and Trustees
        - i. Client confidentiality
        - ii. Handling client funds and assets
        - iii. Time Recording and Billing Issues
      - 2. Paralegal's Role in Elder Law, Pre-Mortem Estate Planning, and Post-Mortem Estate Administration
      - 3. Attributes and "Soft Skills" Needed For Paralegal Success In An Elder Law\Probate Law Firm
  - c. Considerations for Working With Older Individuals
    - i. Financial Concerns of Older Individuals
    - ii. Social Concerns of Older Individuals
    - iii. Medical Concerns of Older Individuals
    - iv. Elder Abuse and Neglect
      - 1. Statutory Definitions
      - 2. Obligations of the Paralegal
        - a. Attorney as Mandated Reporter
        - b. Consequences of Non-Reporting
- 2. Inter Vivos Transfers
    - a. Gifts
      - i. Legal Definition of a "Gift"
      - ii. Beneficiaries
        - 1. Spouse
        - 2. Charities
        - 3. Others
    - b. Property
      - i. Real Property
        - 1. Deed Preparation
        - 2. Conveyance Forms
        - 3. Transfer on Death Designation Affidavits
      - ii. Tangible Personal Property
        - 1. Transfer on Death Affidavits (Automobiles; Form BMV 3811)
    - c. Tax Implications
      - i. Transfers Greater Than \$15,000
        - 1. IRS Form 709 (Gift Tax)
      - ii. Capital Gains Taxes
        - 1. Determination of Basis
          - a. Inter Vivos Transfer
- 3. Testamentary Instruments, Trust Instruments, and Advance Directives
    - a. Last Will and Testament
      - i. Provisions for Minors
        - 1. Testamentary Trusts
        - 2. Nomination of Guardian
      - ii. Specific Gifts
      - iii. Residuary Clause
      - iv. Nomination of Executor
      - v. Will Formalities
        - 1. Testator Capacity
        - 2. Witnesses
        - 3. Testator's Signature
    - b. Trusts
      - i. Trust-Related Terminology
        - 1. Settlor
        - 2. Trustee
        - 3. Beneficiary
        - 4. Trust Res
      - ii. Revocable Trust
        - 1. Tax Implications
        - 2. EIN for Trusts (IRS Form SS-4)
      - iii. Irrevocable Trusts

- 1. Irrevocable Living Trusts
- 2. Special Needs Trusts
- 3. Charitable Remainder Trusts
- c. Advance Directives
  - i. Financial Power of Attorney
  - ii. Health Care Power of Attorney
  - iii. Living Will
- 4. Guardianships and Conservatorships
  - a. Relevant Terminology
    - i. Guardian
    - ii. Ward
    - iii. Incompetency\Lack of Mental Capacity
  - b. Types of Guardianships
    - i. Person
    - ii. Estate
    - iii. Person and Estate
    - iv. Non-Limited\Limited
  - c. Applying for Guardianship \ Establishment Process
    - i. Eligibility Requirements
    - ii. Fiduciary Duties\Responsibilities
    - iii. Bond Requirements
    - iv. Management of Ward's Assets and Inventory
    - v. Relevant Probate Court Forms: 17.0, GA.15.0, 15.1, 15.2, 15.3, GA.6, 17.1, 17.1A, GA-M.10, GA-M.12
  - d. Post-Appointment Responsibilities for Guardians \ Maintaining Guardianships
    - i. Accounting Requirements
    - ii. Reporting Requirements
    - iii. Relevant Probate Court Forms: GA.7, GA.8, 15.5, 15.6, 15.7, GA.18, 15.8, 17.7, GA.1, GA.3, GA.4, GA.5, GA.12, GA.9
  - e. Conservatorships
    - i. Eligibility Requirements
    - ii. Relevant Probate Court Form: Form 20.0
- 5. Post-Mortem Estate Administration
  - a. Determining Probable Property
    - i. Tenancy in Common
    - ii. Sole Ownership
  - b. Determining Non-Probable Property
    - i. Life Insurance and Beneficiary Designation Assets
      - 1. Application for Benefits
      - 2. Transfer on Death
      - 3. Payable on Death
    - ii. Real Property
      - 1. Joint Tenancy With Rights of Survivorship
      - 2. Affidavit of Survivor
  - c. Asset Valuation Procedures
    - i. Brokerage and Bank Accounts
    - ii. Real Property
    - iii. Savings Bonds
    - iv. Life Insurance and Pension Benefits
    - v. Jewelry, Art, Collectibles
    - vi. Automobiles
    - vii. Businesses and Business Assets
  - d. Determining Eligibility for Release From Administration
  - e. Determining if Estate is Testate or Intestate
    - i. Terminology Differences Between Testate and Intestate Estates
      - 1. Fiduciary
        - a. Executor - Testate Estate
        - b. Administrator - Intestate Estate
      - 2. Property Recipients
        - a. Beneficiaries - Testate Estate
        - b. Heirs - Intestate Estate

- ii. Determining Validity of Will
  - iii. Laws of Intestacy in Ohio
  - f. Rights of Surviving Spouse
    - i. Relevant Probate Court Forms: 8.1, 8.3, 8.6
  - g. Full Probate Administration Process
    - i. All Estates (Testate and Intestate)
      - 1. Death Certificate, Paid Funeral Home Bill, Probate Court Form 1.0
    - ii. Testate Estates – Relevant Probate Court Forms: 2.0, 2.1, 2.2, 2.4
    - iii. Fiduciary Forms
      - 1. Relevant Probate Court Forms: 4.0, ES.1, 3.0, 4.2, 4.3, 8.6
      - 2. Letters of Authority
      - 3. EIN for Estates (IRS Form SS-4)
    - iv. Probate Inventory
      - 1. Relevant Probate Court Forms: 3.0, 6.0, 6.1, 6.2.a, 6.3.a, ES.5
    - v. Payment of Estate Debts
      - 1. Presentation of Claims
      - 2. Relevant Probate Court Form: 24.4
    - vi. Sale of Estate Assets and Distribution to Beneficiaries\Heirs
      - 1. Sale of Estate Assets
        - a. Relevant Probate Court Forms: 9.0, 11.0
      - 2. Distribution of Estate Assets to Beneficiaries\Heirs
        - a. Transfer of Real Property
        - b. Transfer of Tangible and Intangible Personal Property
      - 3. Relevant Probate Court Forms: 10.0, 12.0, 12.1, ES.4
    - vii. Estate Accounting
      - 1. Types of Accounts
        - a. Partial Account
        - b. Final Account
        - c. Account of Distribution
        - d. Final and Distributive Account
        - e. Supplemental Final Account
        - f. Certificate of Termination
      - 2. Relevant Probate Court Forms: 13.0, 13.1, 13.2, 13.3.a, 13.5, 13.6, 13.8, 13.9.a, ES.8, ES.9, ES.10
  - h. Release From Administration
    - i. Summary Release From Administration
      - 1. Eligibility Requirements
      - 2. Relevant Probate Court Forms: 5.10, 5.11
    - ii. Release From Administration
      - 1. Eligibility Requirements
      - 2. Relevant Probate Court Forms: ER.7, 5.0, 5.1, 5.2, 5.3, 5.6, ER.8, ER.6
6. Special Circumstances
- a. Lost Will
    - i. Appropriate Circumstances
    - ii. Relevant Probate Court Form: ES.15
  - b. Insolvency
    - i. Grounds for Insolvency
    - ii. Relevant Probate Court Forms: 24.0, 24.3, 24.4, 24.6
  - c. Missing Beneficiaries and Heirs
    - i. Tools Used to Locate Missing Beneficiaries and Heirs
    - ii. Relevant Probate Court Form: ES.19
  - d. Medicaid Estate Recovery Program
    - i. Appropriate Circumstances
    - ii. Relevant Probate Court Form: 7.0
  - e. Will Contests
    - i. Grounds for Will Contest
      - 1. Incapacity of Testator
      - 2. Undue Influence\Undue Restraint
      - 3. Failure to Comply With Statutory Requirements and Formalities
7. Taxes Associated With Estate Administration

- a. Decedent's Personal Income Tax
  - i. Federal Income Tax
  - ii. Ohio Income Tax
- b. Federal Estate Tax
  - i. Estates Subject to Federal Estate Tax
  - ii. IRS Form 706
- c. Federal Income Tax for Trusts and Estates
  - i. Circumstances in Which Tax Must be Paid
  - ii. IRS Form 1041
- d. Ohio Estate Tax – Repealed January 1, 2013

## Resources

Anderson, Diana. *Wills Trusts, and Estates for Paralegals*. 1st ed. Wolters Kluwer Law & Business, 2015.

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Beyer, Gerry W.; Hanft, John K. *Wills, Trusts, and Estates for Legal Assistants*. 6th Ed. New York: Wolters Kluwer, 2019.

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Walter, Janis; Fletcher, Emma Wright. *Wills, Trusts, and Estate Administration*. 9th Ed. Cengage Learning, 2021.

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Kabb-Effron, Rachel. *Anderson's Ohio Elder Law Practice Manual*. 2022 Ed. Matthew Bender Elite Products, 2022.

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Publisher's Editorial Staff. *Ohio Elder Law*. 2021 Ed. Thomson West, 2021.

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Helewitz, Jeffrey A. *Basic Wills, Trusts, and Estates for Paralegals*. 8th Ed. New York: Wolters Kluwer, 2019.

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## Resources Other

1. Cuyahoga County Probate Court's Website
  - a. <http://probate.cuyahogacounty.us/>
2. Cuyahoga County Fiscal Officer's Website
  - a. <https://fiscalofficer.cuyahogacounty.us/>
3. Standardized Probate Court Forms on The Supreme Court of Ohio's Website:
  - a. [https://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/probate\\_forms/](https://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/probate_forms/)
4. IRS Forms Website:
  - a. <https://www.irs.gov/forms-instructions> (<https://www.irs.gov/forms-instructions/>)

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