

XVII. Procedural Outline

- A. Prepare a Preliminary Title Search
- B. Obtain, if possible, waivers from named defendants
- C. Prepare and file the Complaint
- D. Prepare and file Application to Appoint a GAL, Judgment Entry Appointing GAL
- E. File Answer of GAL
- F. File Evidence of Title
- G. After “Answer Day” file Judgment Entry Finding Sale Necessary
- H. File Judgment Entry for Appointment of Appraiser
- I. After the appointment, File Appraiser’s Oath & Return, or in the alternative
 - 1. File Motion to Dispense With Further Appraisal, with proposed Entry
- J. File additional Bond, or Motion to Dispense with Additional Bond with proposed Entry
- K. File Judgment Entry Confirming Appraisal, Approving Bond, and Order of Public or Private Sale
- L. Give timely Notice of Sale to all Defendants
- M. After the sale, file Return of Sale
- N. Prior to the closing, file Judgment Entry Confirming Sale, and Ordering Deed, and Distribution

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

	:	CASE NO.
	:	JUDGE CURT WERREN
Plaintiff	:	<u>GUARDIAN’S COMPLAINT TO</u>
	:	<u>SELL REAL ESTATE</u>
vs.	:	
	:	
	:	
AND	:	
	:	
	:	
AND	:	
	:	
	:	
AND	:	
	:	
Defendant(s)	:	

CASE NO. _____

1. The plaintiff__ represents that, _____,
is the duly appointed and qualified Guardian of
_____,

a(n) (minor / incompetent) who is _____ years old, having been duly appointed by the
_____ County Probate Court, on _____, 20____, in Case
No. _____.

2. The plaintiff__ further represents that the Ward is seized of an interest in the
following real estate proposed to be sold and described as follows:

CASE NO. _____

3. The Plaintiff_ further represents that the Ward has the following interest in the real estate:

☐ Entire;

☐ _____ Fractional; or

☐ Other interest (*describe*) _____

4. The value of the real estate is estimated at _____ Dollars.

5. ☐ The Defendant, _____, is the spouse of the Ward.

☐ The Defendant(s), _____

are all the persons who are entitled to inheritance from the Ward in such real estate and who are known to reside in Ohio.

6. The Defendant(s), _____

are lien holders or mortgagors whose claims affect the real estate or a part thereof.

7. The Defendant(s), _____

are all of the other persons holding any right, title or interest in or to the real estate or any part thereof, who are necessary parties to this action.

8. It is necessary to sell said real estate for the education, support, or the payment of the just debts of the ward, or for the discharge of liens on the real estate of the ward, or wherever the real estate of the ward is suffering unavoidable waste, or a better investment

Case No. _____

of its value can be made, or whenever it appears that a sale of the real estate will be for the benefit of the ward or the ward's children.

WHEREFORE, the plaintiff prays that the Guardian may be authorized and ordered to sell the Ward's entire interest in the real estate; to pay a reasonable real estate commission not to exceed _____ if needed in the sale of the real estate herein described, and for all other proper orders and relief to which plaintiff may be entitled in the premises. Further, that the rights and interests of all parties be fully determined, adjusted and protected; and for other further relief as they may be entitled.

Attorney for Plaintiff

Address

Phone Number _____

Attorney Registration No. _____

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

You are instructed to make service upon the above listed Defendant(s) by certified mail, return receipt requested.

Special instructions for service: _____

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

: CASE NO.

: JUDGE CURT WERREN

Plaintiff,

**: WAIVER OF SUMMONS
AND CONSENT TO SELL**

$$\vdots$$

VS.

$$\vdots$$

•

•

Defendant(s)

We, the undersigned defendants named in the Complaint to Sell Real Estate, hereby waive the issuing and service of summons, consent to the sale, and voluntarily enter our appearance as defendants.

[illegible]

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

	:	CASE NO.
	:	JUDGE CURT WERREN
Plaintiff	:	APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM
vs.	:	
	:	
Defendant(s)	:	

Now comes the Guardian of the Estate of _____ by and through counsel and makes application for the appointment of a Guardian Ad Litem for _____, a (minor / incompetent) defendant for the purpose of a land sale proceeding. It is suggested that _____ is a suitable person to be appointed as the Guardian Ad Litem.

Respectfully submitted,

Attorney for Guardian

JUDGMENT ENTRY

Upon the application of the Guardian and it appearing to the Court that it is proper under Civ. Rule 17(B) that a Guardian Ad Litem be appointed to represent and protect the interests of _____ a(n) (minor / incompetent) defendant; Therefore, it is ORDERED that _____ is hereby appointed Guardian Ad Litem for the Defendant.

HON. CURT WERREN
PROBATE JUDGE

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

Plaintiff : CASE NO.
: JUDGE CURT WERREN
: **ANSWER OF GUARDIAN**
: **AD LITEM**
: [R.C. 2111.23, 2307.16-.17, 2309.24]
vs. :
Defendant(s) :

Now comes _____, and being duly appointed by the
Court as Guardian Ad Litem for _____,
(an incompetent / a minor) defendant(s) and answering the Complaint says that the Guardian Ad
Litem (is / is not) informed as to the truth of the matter as set forth in said Complaint and
therefore, on behalf of said defendant(s) (admits / denies) the same. Further, the Guardian Ad
Litem submits the interests of the defendant(s) to the care and protection of this Court to order as
justice and the interests of the defendant(s) shall require.

Guardian Ad Litem

Address

Phone

PROOF OF SERVICE

A copy of this answer has been served upon all defendants that are not in default.

Guardian Ad Litem

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

Plaintiff, : CASE NO.
: JUDGE CURT WERREN
: **JUDGMENT ENTRY FINDING**
: **SALE NECESSARY**
vs. : [R.C. 2127.22]
: Defendant(s)

Upon the pleadings and the evidence, the Court finds all the defendants herein have been duly served with process, or have voluntarily entered their appearance, or consented to the sale, and are properly before the Court.

Further, it is necessary to sell the real estate for: *(check all applicable boxes)*

- ☐ The education of the ward;
- ☐ The support of the ward;
- ☐ The payment of the just debts of the ward;
- ☐ Discharge of liens on the real estate of the ward;
- ☐ The real estate of the ward is suffering unavoidable waste, or a better investment of its value can be made;
- ☐ A sale of the real estate will benefit the ward or the ward's children

☐ Further, it appearing to the Court that an appraisal is necessary, the entire real estate shall be appraised by a qualified and disinterested person of the vicinity; and the guardian shall file a bond with the Court that is twice the appraised value of the real estate; OR

☐ Further, it appearing to this Court that an appraisal has been filed, the guardian shall file a bond with the Court that is twice the appraised value of the real estate.

Dated _____

HON. CURT WERREN
PROBATE JUDGE

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

	:	CASE NO.
	:	JUDGE CURT WERREN
Plaintiff,	:	APPLICATION FOR THE
	:	APPOINTMENT OF APPRAISER
	:	
vs.	:	
	:	
	:	
Defendant(s)	:	

The Plaintiff requests that _____, a judicious and disinterested person of the vicinity, not next of kin of the complainant, be appointed to appraise the real estate at its true value in money.

Attorney for Plaintiff

JUDGMENT ENTRY

It appearing to the Court that a new appraisalment should be made, it is ORDERED that _____ be and is hereby appointed to appraise the real estate.

It is further ORDERED that the appraiser be sworn, as required by law, to truly and impartially appraise the real estate upon actual view of its fair cash value, and discharge the duties required of the appraiser according to law, and to make a return of the proceedings in writing to the Court.

Date

HON. CURT WERREN
PROBATE JUDGE

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

	:	CASE NO.
	:	JUDGE CURT WERREN
Plaintiff,	:	ORDER OF APPRAISEMENT
	:	[R.C. 2127.22]
	:	
vs.	:	
	:	
Defendant	:	

TO: THE GUARDIAN

Pursuant to the order of this Court, you are commanded to cause a just valuation and appraisement to be made, according to law, of the entire following described premise:

(Attached hereto as Exhibit A)

You are ordered to file the Appraiser's Return with this Court upon its completion.

HON. CURT WERREN
PROBATE JUDGE

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

Plaintiff, : CASE NO.
 : JUDGE CURT WERREN
 : OATH OF APPRAISER
vs. :
 :
 :
Defendant

THE STATE OF OHIO, STARK COUNTY.

I, the undersigned appraiser, a judicious and disinterested person of the vicinity, not the next of kin to the Complainant, do make solemn oath that I will upon actual view, truly and impartially appraise the within described real estate at its true value in money, and perform the duties required of me pursuant to an order of this Court.

Address

Appraiser

Sworn to and subscribed in my presence this ____ day of _____, 20____.

NOTARY PUBLIC

APPRAISERS' RETURN

Pursuant to Court order, after being first duly sworn, and upon actual view of the premises therein described, I, appraise the real estate at _____ Dollars.
(See attached appraisal report)

Given under my hand, this _____ day of _____, 20____

Appraiser

Appraisers' fees \$ _____

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

	:	CASE NO.
	:	JUDGE CURT WERREN
Plaintiff,	:	JUDGMENT ENTRY CONFIRMING
	:	APPRAISEMENT, AND BOND
vs.	:	
	:	[R.C. 2127.27] [R.C. 2127.32]
	:	
Defendant(s)	:	

The Court having received the Appraiser's Return, and it appearing upon examination that the Return is in all respects regular and correct, it is ORDERED that the appraisal is approved and confirmed.

The Court finds that a sufficient bond has been filed herein that is twice the appraised value of the real estate.

Date

HON. CURT WERREN
PROBATE JUDGE

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

	:	CASE NO.
	:	JUDGE CURT WERREN
Plaintiff,	:	ORDER OF SALE
	:	[R.C. 2127.29 - .34]
	:	
vs.	:	
	:	
Defendant(s)	:	

TO: THE PLAINTIFF:

It is ORDERED that the plaintiff is authorized to employ a real estate broker or auctioneer to assist in selling the real estate described in the complaint and to pay a commission customary in the vicinity of the real estate; subject to Court approval.

It is further ORDERED that the Plaintiff proceed according to law to sell the real estate:

- OR ☐ At Private Sale for no less than the appraised value thereof;
- OR ☐ At Public Sale for no less than 2/3 the appraised value if the real estate is improved;
- ☐ At Public Sale for no less than 1/2 the appraised value if the real estate is unimproved.

The real estate to be sold is described as follows:

(Attached hereto as exhibit "A")

The sale to be upon the following terms: _____
_____.

You are commanded to execute this order in all respects according to law, and of your proceedings herein make due return to this Court. Plaintiff is further ordered to file a report of sale with this Court.

Dated: _____

HON. CURT WERREN
PROBATE JUDGE

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

Plaintiff, : CASE NO.
: JUDGE CURT WERREN
: **REPORT OF SALE**
: [R.C. 2127.35]
:
vs. :
:
Defendant(s) :

Pursuant to an order of this Court, on the _____ day of _____,
20____, the real estate was sold to _____ at:
(Purchaser)

☐ At Private Sale for no less than the appraised value thereof;
OR
☐ At Public Sale for no less than 2/3 the appraised value if the real estate is improved;
OR
☐ At Public Sale for no less than 1/2 the appraised value if the real estate is unimproved.

The Plaintiff confirms that in all respects, this sale has been legally made.

Attached is a copy of the Purchase Agreement.

Dated: _____

Plaintiff

IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
STARK COUNTY, OHIO

	:	CASE NO.
	:	JUDGE CURT WERREN
Plaintiff,	:	JUDGMENT ENTRY CONFIRMING
	:	SALE, ORDERING DEED AND
	:	DISTRIBUTION
	:	[R.C. 2127.35 - .38]
vs.	:	
	:	
Defendant(s)	:	

This cause came on this day to be heard upon the Report of Sale filed with this Court by the Plaintiff. The Plaintiff has provided this Court the Closing Statement attached hereto as Exhibit "A" and after examination by this Court of the Report of Sale and Closing Statement, this Court finds that the proceedings to sell real estate in all respects are correct and in conformity with the law and the former orders of the Court, and the sale is hereby approved and confirmed.

The Plaintiff is ORDERED to execute and deliver to the purchaser a good and sufficient deed for the real estate.

It is further ORDERED that the Plaintiff shall apply and distribute the sale proceeds as follows:

1. To _____ (in payment of attorney fees for services rendered regarding this sale)

Fees	\$ _____
Costs	\$ _____
2. To *Fiduciary*
(compensation for services as fiduciary with respect to the sale)

\$ _____

Case No. _____

- | | | |
|----|---|----------|
| 3. | To the Treasurer of Stark County (for delinquent
Real Estate taxes and transfer taxes) | \$ _____ |
| 4. | To the Purchaser (for pro-rated Real Estate Taxes) | \$ _____ |
| 5. | All other expenses listed on the closing statement
attached hereto. | \$ _____ |

The remaining proceeds, amounting to \$ _____, shall be distributed to the
Guardian to be accounted for according to law.

Approved:

Attorney for the Guardianship

Date

HON. CURT WERREN
PROBATE JUDGE