cally bequeathed is sold, is there to be a compensating cash bequest from the residuary estate? Note the provisions of R.C. 2107.501 which provide that specifically bequeathed or devised gifts sold prior to death under a power of attorney or by a guardian give the beneficiary the right to a compensating cash bequest.

Careful questioning of your client coupled with precise drafting will ensure that your client's wishes are honored. You will also minimize the chances of later controversy among beneficiaries and avoid court involvement.

OSBA SEMINAR NOTICE

By Ginger F. Mlakar, Esq.

The Cleveland Foundation
Cleveland, Ohio
Chair, EPTPL Section Committee on OSBA Convention Seminar

The Estate Planning, Trust and Probate Law Section of the Ohio State Bar Association (OSBA) will present its annual CLE program in conjunction with the annual OSBA Convention on Friday, May 10, 2013 from 1:00 p.m. to 4:15 p.m. at the Renaissance Cleveland Hotel, 24 Public Square, Cleveland, Ohio 44113. All attorneys and subscribers to PLJO are welcome; special discounts are available for OSBA members. The program agenda is as follows:

- **Charitable Planning in the New Tax Environment: The Sun is Still Shining on the Parade of Planned Gifts,** to be presented by Stephen H. Gariepy, Esq., Hahn Loeser & Parks LLP, Cleveland, Ohio.
- **The Necessary Party—The Role of the Attorney General in Charity Regulation and Charitable Trust Cases,** to be presented by Daniel J. Buckley, Esq., Vorys, Sater, Seymour and Pease LLP, Cincinnati, Ohio; Lisa Babish Forbes, Esq., Vorys, Sater, Seymour and Pease LLP, Cleveland, Ohio; and Meghan K. Fowler, Esq., Ohio Attorney General, Columbus, Ohio.
- **A Private Foundation Top Ten List,** to be presented by John E. Christopher, Esq., Manley Burke, Cincinnati, Ohio.
- **Roundtable Discussion on Charitable Vehicles: Determining the Right Fit for a Client,** to be presented by William J. Culbertson, Esq., Baker & Hostetler LLP, Cleveland, Ohio; Ginger F. Mlakar, Esq., The Cleveland Foundation, Cleveland, Ohio; and Thomas M. Turner, Esq., Mansour, Gavin, Gerlack & Manos Co. L.P.A., Cleveland, Ohio.

Additional information and registration materials for this seminar will be disseminated to all OSBA members for this spring. Attorneys can register online through the Ohio State Bar Association's Web site, www.ohiobar.org, or by calling the OSBA Member Service Center at (800) 232-7124 or (614) 487-8585.

ESTATE PLANNING FOR NON-TRADITIONAL FAMILIES

By Susan L. Racey, Esq.

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Based on the presentation by Susan L. Racey at the Seventh Annual Estate Planning Seminar, sponsored by Boy Scouts of America, Greater Cleveland Council, on September 12, 2012.

OVERVIEW

The number of non-traditional families in the United States has dramatically increased.

A "family" is no longer exclusively defined as

a married opposite-sex couple with two naturally born children. The days of Ozzie and Harriett no longer epitomize the American family but rather today's American family often resembles more the characters of the hit show "Modern Family." Despite the growing number of non-traditional families, many institutions, including private companies, courts and legislative bodies, have been reluctant and in some instances have aggressively refused to recognize cohabiting same-sex and unmarried opposite-sex couples ("non-traditional couples") as family units. Additionally, legislation has not kept pace with changes in assisted reproductive services which now allow children to be conceived by or for reproductively challenged couples, same-sex couples, uncoupled individuals, and even deceased individuals ("non-traditional children"). Also, serious practical issues exist for married couples with children from prior relationships which require creative solutions in order to assure "blended family" harmony after the death of one of the spouses. For the estate planner, these family dynamics present unique challenges in preparing an estate plan that not only effectuates the intent of the non-traditional family, but also minimizes estate and gift taxes. Although many of the issues involved and planning techniques utilized with traditional families will be the same for non-traditional families, there are many issues and concerns that are unique to non-traditional families. This article attempts to address many of those unique issues and concerns.

NON-TRADITIONAL COUPLES

There are several types of nontraditional couples. These include unmarried opposite-sex partners,[1] same-sex partners, and single adults such as siblings or friends living together. The Defense of Marriage Act ("DOMA") was enacted in 1996. Section III of DOMA amended Chapter 1 of Title 1 U.S. Code by adding new Section 7, which when defining "marriage" and "spouse" states that the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite-sex who is a husband or wife. Based on this law, the federal government prevents any statutory rights or privileges that are available to married couples from being available to gay couples irrespective of whether the state in which the couple resides recognizes same sex marriages. Most states (including Ohio) have followed the statute and passed their own laws that only recognize marriages between a man and a woman.

Ohio's position on same-sex marriages is set forth in Article XV, Section 11 of the Ohio Constitution, which was approved on November 2, 2004. Only a union between one man and one woman may be a marriage valid in or recognized by Ohio and its political subdivisions. Ohio and its political subdivisions may not create or recognize a legal status for relations of unmarried individuals that intend to approximate the design, qualities, significance or effect of marriage. The Ohio Revised Code ("R.C.") addresses this matter at Chapter 3101.

PLANNING FOR NON-TRADITIONAL COUPLES

Planning for non-traditional couples presents unique issues. The issues that arise with estate planning for traditional clients such as the disposition of assets, minimization and deferral of taxes and expenses, lifetime planning for incapacity, and disposition of their remains for funeral and burial arrangements exist for non-traditional couples. However, non-traditional couples have several unique issues as a result of not being "married." These additional issues require special attention and creativity. They arise because of lack of rights provided by law to the surviving life partner, greater probability of challenge by family members, and unfavorable tax implications that apply to estate planning techniques customarily used by married couples. The estate planner's goal for the non-

traditional couples will be to ensure that the couple's property will pass to the intended beneficiaries in the most desirable and tax efficient way without challenge.

There are general estate planning concerns for non-traditional couples. Under Ohio law, the intestacy laws do not provide for life partners.[2] A life partner is not a relative designated in the statute to receive assets in the absence of a Will. Family members of a non-traditional couple may be unaware or unaccepting of the life style that has been chosen. Dissatisfaction by family members may result in a challenge to the disposition of the decedent's assets to the life partner on the grounds of undue influence, incapacity, duress or fraud. Most health and pension benefits available to a surviving spouse are not available to an unmarried life partner. Special or additional provisions may be needed to make up for the loss of benefits. A pension may provide a retirement benefit to a surviving spouse of a former employee but the benefits may not be available to a surviving life partner. Many of the property rights and tax benefits available to a married couple are not available to non-traditional couples.[3] As a result, planning for the termination of the relationship during lifetime or upon death of one of the life partners must be carefully analyzed. With respect to children from same-sex couples, the child will not be the biological offspring of at least one of the parents. Careful planning must be done to ensure that the child is not excluded from taking property intended to be allocated to such child. Also, attention must be given to plan for the care for the children of a non-traditional couple where only one life partner is the natural parent and legal guardian of the minor child being raised by the non-traditional couple. Complications may arise in having the other life partner become the legal guardian of the minor child upon the death of the biological parent or legal guardian. Naming the other life partner as the guardian in a Will and/or Durable Power of Attorney will be helpful. However, the Probate Court is not obligated to honor the wishes of the deceased's life partner. Also, a Co-Parenting Agreement can be helpful.

SATISFYING DISPOSITIVE INTENT

Planning to satisfy the dispositive intent of non-traditional couples and avoid challenges requires special planning. Use of a Will will prevent a life partner from being disinherited which would occur under intestacy laws. However, Wills can be challenged by objecting family members and the objection is in a public Probate Court proceeding. When a Will is being used, Ohio law permits a no contest provision so that a bequest to a person that may challenge the Will is lost if the challenge is filed. Use of this technique requires a large enough gift to "buy peace." Having a series of changes to the Will handled by Codicils is helpful. If there is a challenge, the most recent Codicil must be successfully challenged and then all of the preceding Codicils must also be successfully challenged before the original Will can be attacked. A simple statement without any derogatory libelous comments can be inserted in the Will that specifies who is being disinherited so that it is clear that the testator knew the "natural objects of his bounty." Since the probate of the Will is a public proceeding, naming the life partner as the beneficiary under a Will may be an unattractive approach if confidentiality is a concern to the couple. An alternate approach is to not name any beneficiaries in the Will other than the Trustee of a Trust that has been previously established. This technique is referred to as a "pour over" Will. By using this approach, names of the beneficiaries will remain confidential. Ohio law also provides additional mechanisms that can be used to protect a life partner. First, Ohio law is unique in that it permits the pre-validation of a Will by the Probate Court.[4] Also, Ohio law permits a person to designate another person as an heir. A person so designated will be considered in the same relationship as a child born in lawful wedlock.[5]

To avoid a challenge of a Will and related public probate proceedings, a non-traditional couple's estate plan could use non-probate vehicles rather than a Will for the disposition of assets. Use of non-probate vehicles must be done with a full understanding of the potential gift and estate tax consequences and whether the transfers create immediate property rights in the transferee. A lifetime Trust provides privacy and can specify the disposition of assets upon death. The trust can be revocable and changed up until the death of the trust settlor. It can include provisions for the surviving life partner and for children of the couple. The use of a lifetime irrevocable trust may be appropriate in certain situations where there is exposure to estate taxes and gifting is desired. However, caution should be exercised concerning irrevocable transfers between life partners. The irrevocable trust could purchase life insurance on the life of the life partner establishing the trust after confirming with the life insurance company that an insurable interest exists. Ownership of assets by the non-traditional couple as joint tenants with right of survivorship avoids the probate process upon the death of the first joint tenant to die. Absent proof by clear and convincing evidence of incapacity, undue influence, duress or fraud, ownership of the jointly held asset passes upon death to the surviving joint tenant.[6] However, there can be federal gift tax consequences when creating a joint and survivorship arrangement. Establishing a joint tenancy with right of survivorship for real property creates an immediate gift. Establishing a joint tenancy in a bank account where either party can withdraw all of the assets avoids a gift until such time as the joint owner who did not contribute the funds withdraws the assets from the account. Also, with a non-traditional couple the full value of the property is included in a taxable estate for estate tax purposes of the deceased joint tenant unless the surviving joint tenant can prove that he or she contributed to the purchase price of the assets.[7]

The use of beneficiary designations for assets that are not subject to the probate process is a convenient way to provide post-death benefits. The beneficiary designation could be on life insurance policies, retirement plan death benefits, and the title to assets (e.g., ban or brokerage accounts, stock certificates) such as payable on death or transfer on death. The advantages of this approach include the avoidance of probate, the designations are more difficult to challenge than in a Will, and the owner retains control over the assets during the owner's lifetime. The disadvantages include potential exposure of the relationship, inability to make flexible dispositive provisions, and adverse estate tax consequences. Having a trust as the beneficiary of the death benefits can reduce the adverse consequences.

TRANSFERS BETWEEN LIFE PARTNERS

The goal of many non-traditional couples is to establish a true partnership between the couple similar to the partnership formed by the union of marriage. The establishment of the partnership often involves the commingling of both life partners' assets. In addition, as with married couples, a non-traditional couple will be concerned with minimizing estate taxes which may include fully using both life partners' applicable exemption amounts and reducing the taxable estates of one or both life partners. In situations in which one partner owns a disproportionate amount of the assets, an equalization of the estates of the life partners may be necessary to minimize the overall estate taxes of the non-traditional couple. However, neither Ohio property law nor federal estate tax law affords the non-traditional couple the same flexibility available to married couples to freely transfer assets between them to equalize their estates. With the lack of the estate tax unlimited marital deduction, no unlimited gift tax exemption and no gift-splitting, a non-traditional couple must be creative and careful in transferring the prop-

erty between them and in structuring their estate plans to create their desired partnership and to guarantee the use of both life partners applicable exemption amounts and avoid gift tax.[8]

While married couples may transfer assets between them free of gift tax, a non-traditional couple will incur a taxable gift if transfers between them exceed $14,000 per year and are not a direct payment of medical expenses or tuition. Sharing living expenses and payment of expenses or debt of the other life partner can result in taxable gifts. Having assets passing to a surviving life partner without the availability of a marital deduction can result in payment of federal estate tax if the transfer exceeds the amount exempt from federal estate tax (currently, $5,250,000). However, recent federal litigation has resulted in successful challenge and the allowance of a federal estate tax marital deduction to a same-sex couple married under applicable state law.[9] Also, the increased federal exemption provided for by The American Taxpayer Relief Act of 2012 and the abolishment of the Ohio Estate Tax in 2013 will reduce the estate and gift tax concerns of many non-traditional couples.

TRANSFER TAX MINIMIZATION

Several steps can be taken to avoid adverse tax consequences and minimize gift and estate taxes. Leave a detailed paper trail concerning contributions to joint expenditures to reduce the Internal Revenue Service from asserting taxable gifts were made. There should be utilization of the available gift tax exclusions such as the annual gift tax exclusion, and exclusions for direct payment of medical expenses and tuition. Estate planning documents can include provisions concerning the possible future marriage of the couple under applicable state law.

INCAPACITY

For a non-traditional couple, planning for the incapacity of one or both of the life partners is of particular importance. If one life partner is the preferred decision maker in the event of incapacity of the other life partner, affirmative action will have to be taken through the use of powers of attorney and health care directives to give decision making authority to the other life partner. Non-traditional partners can name each other as their agent under a Durable Power of Attorney. This can allow the other partner to act as an agent for financial and health care matters.[10] Also, a person can set forth their wishes concerning the use, continuation, withholding or withdrawal of life-sustaining treatment in a Living Will.[11] A waiver of the federal HIPAA laws in a written document that states that each life partner may receive protected health information concerning the other is important. If an anatomical gift is desired, appropriate documents may be signed.[12] It is important to determine who will make funeral and burial arrangements. If no action is taken, family members will make the decision pursuant to Ohio law. A non-traditional couple may want to name each other as agent for such matters pursuant to a written document authorized by Ohio law.[13]

DISINHERITANCE

Various federal and state laws protect a spouse from being disinherited or treated unfairly upon termination of a marriage. However, such legal protection is generally not afforded unmarried persons. Therefore, a life partner of a non-traditional couple must take affirmative action to protect himself from intentional or unintentional acts of the other life partner which could result in him being disinherited or treated unfairly at the time of termination of the relationship. Often, protecting the client in this respect will include having the client take steps to obtain legal property rights which would not otherwise be currently available to a client. There are several ways legal rights can be obtained for the non-traditional couple.

MARRIAGE

Where marriage is possible, the non-traditional couple may be able to obtain legal and tax benefits. A surviving spouse has many rights granted under Ohio law to probate assets.[14] Additional rights include Social Security benefits, pension benefits, marital rights, such as property settlement, alimony and/or dower, Medicaid rules (which can be advantageous or disadvantageous), and spousal rollover of retirement assets. The extent to which estate and gift tax benefits will be available is still developing. Ohio does not recognize common law marriages on or after October 10, 1991, but a common law marriage could have existed based on a relationship that occurred before this date.[15]

For unmarried cohabitants where marriage is either not desired or not possible, *Marvin v. Marvin,* 18 Cal. 3d 660 (1976), established contract rights and equitable remedies to persons from a nonmarital but intimate cohabitating relationship. This is the view adopted in the majority of the states today. Ohio takes the minority view on the Marvin case, rejecting its application because it "recognizes a new legal status for persons living together without the benefit of marriage." *Lauper v. Harold*, 23 Ohio App. 3d 168, 492 N.E.2d 472 (12th Dist. Butler County 1985). In addition, in some states, the Marvin view has been applied to same-sex cohabitating couples. *Whorton v. Dillingham*, 202 Cal. App. 3d 447, 248 Cal. Rptr. 405 (1988) and *Crooke v. Gilden,* 262 Ga. 122, 414 S.E.2d 645 (1992). Still, the best alternative to ensure contractual rights and equitable remedies to unmarried cohabitating couples (same-sex or opposite sex) is to establish a cohabitation agreement.

COHABITATION AGREEMENT

If marriage is not an option, a non-traditional couple should consider a cohabitation agreement which addresses the same concerns as an antenuptial agreement does for a married couple as well as additional issues which exist because they are not recognized as a married couple under the law. In addition, although Ohio does not permit "postnuptial agreement" for married couples, there is no limitation for unmarried couples to negotiate between themselves. As with married couples, there will be a wide range of attitudes and desires toward the sharing of assets. The purpose of the agreement is to remove any ambiguity as to the ownership of assets during the relationship and the division and disposition of assets upon the termination of the relationship during lifetime or at death. The exact terms of the agreement will differ based on the non-traditional couple's specific circumstances (i.e., wanting to keep assets separate vs. sharing most property; long term vs. short term relationship). Generally, a cohabitation agreement will set forth provisions explaining the handling of the property owned by each partner prior to the agreement, such property's appreciation and the income earned from such property during the relationship; the income earned by each partner during the relationship; the property acquired during the relationship by purchase, gift, inheritance, etc.; the change of ownership which always should be in writing; a joint purchase; debts of each partner; living expenses; allocation of responsibilities for certain household tasks (be careful of income tax consequences); agreement to transfer property at death; division of property if partnership terminates during lifetime of both life partners; law to control; and arbitration.

CREATING LEGAL RIGHTS IN LIFE PARTNER

The use of an adult adoption as a technique is available only in limited situations. It is unlikely that this will be a technique that can be used by most non-traditional couples.[16] Use of a limited liability company or a general or limited partnership is one way to create legally

enforceable rights between life partners. Use of these vehicles provide advantages of the ability to obtain life insurance on the other partner, reducing taxes, deferral of income, valuation discounts, and enforceable property rights.

BLENDED FAMILIES—MULTIPLE MARRIAGES

In the 1970s, the blended family portrayed in The Brady Bunch was an exceptional situation worthy of a TV sitcom. Today, it is very common. Divorce, death, and increased life expectancy result in many persons being available for remarriage. In many of these situations, one or both may have children from a prior relationship and the couple may also have children together. Also, the couple often may have significant assets titled in their individual names.

With 60% of all second marriages ending in divorce, a Prenuptial Agreement should be strongly considered. Often, in a second marriage situation, the couple will not want their spouse to be entitled to the spousal rights granted by law, but instead will want to agree in advance as to the disposition of their assets and their obligations upon divorce or death. To ensure the validity of a Prenuptial Agreement, the couple will need to engage separate counsel and full disclosure of their assets is mandatory. It is important to note that Ohio does not currently permit Postnuptial Agreements. Therefore, any agreement to alter the couple's legal rights must be done prior to the marriage.[17]

ACCOMPLISHING ESTATE PLAN GOALS

Complexities of the blended family often include additional issues that must be balanced to satisfy everyone's needs. Even with a blended family that functions as a family unit without much discord while the spouses are both living, an inappropriately designed estate plan can create disharmony after the death of one or both spouses. The goal of the estate planner will be to structure an estate plan for the blended family that will ensure financial security for the surviving spouse while satisfying the wishes of each spouse as to the disposition of the assets following the death of the second to die, preserving family harmony, avoiding challenge and minimizing and deferring taxes.

Typically the blended family's desired basic estate plan can be categorized in one of three ways. The first plan involves providing that all assets be distributed to the surviving spouse and then to both of their descendants. This type of plan could result in inequities in second marriage situations where the surviving spouse decides after the death of the first spouse to disinherit the descendants of the first spouse to die. The couple could enter into a contract and make reciprocal Wills.[18] However, very little case law exists to give guidance on the enforceability of such contracts. Reciprocal trusts or joint trusts could be used by the couple. A second plan involves having the deceased spouse's assets held for the surviving spouse, then only to the deceased spouse's descendants. The surviving spouse would be free to leave all of the surviving spouse's assets to the surviving spouse's descendants. This type of plan can be accomplished with the use of a Qualified Terminable Interest Trust. Where a trust is used, careful consideration should be given to the choice of the Trustee and Successor Trustee. A third plan involves keeping the couple's assets separate ("what is mine is mine and what is yours is yours") so that each spouse's assets pass to their respective descendants in lieu of the other spouse. This type of plan can be accomplished by having assets pass at death pursuant to non-probate vehicles so as to avoid the right of the surviving spouse to probate assets under Ohio law. This plan will require placing assets into the trust prior to death or having the assets pass to the trust or directly to the descendant outside the probate process such as through a beneficiary designation or payable on death or transfer on death designation. A downside of this approach is that the assets

would not be available for the support of the surviving spouse during the surviving spouse's lifetime.

CONFLICT CONSIDERATIONS

Whether one attorney should represent both parties in a non-traditional relationship or in a second marriage requires consideration of the applicable ethical rules. The engagement letter upon commencement of representing the parties should set forth the extent of the representation and should indicate when representation may be required to terminate due to conflicting interests.

NON-TRADITIONAL CHILDREN

Non-traditional families frequently have non-traditional children. A non-traditional child may include an adopted child, stepchild, or child conceived through use of assisted reproductive technology ("ART"). Ohio law defines the parent and child relationship.[19] Also, Ohio law defines the rights of an adopted child.[20] A stepchild is not considered a "child" for inheritance purposes but does have limited rights of inheritance by intestacy from a step-parent.[21] With respect to a child conceived through ART, various provisions of R.C. Chapter 3111 describe the parent and child relationship.[22]

A child conceived before a father's death but born thereafter inherits as a legal child.[23] A man is presumed to be the legal father of a child if "(t)he man and the child's mother are or have been married to each other, and the child is born during the marriage or is born within three hundred days after the marriage is terminated by death, annulment, divorce, or dissolution or after the man and child's mother separate pursuant to a separation agreement."[24]

If an individual who produced genetic material used in creating the child dies before conception, that individual is not the resulting child's legal parent unless there is consent for posthumous use and evidence that the individual intended to be treated as a parent.[25]

In situations involving non-traditional children, referring to the child or descendant by name in the estate planning documents, rather than reference to a class of persons such as children or grandchildren, can eliminate confusion over whether a non-traditional child and such child's descendants qualify as beneficiaries.

Stored gametic material and its transferability on death are currently in flux. Estate planning documents can include a severability clause and describe issues that can be anticipated regarding its use and disposition.[26]

CONCLUSION

In conclusion, the non-traditional family has many issues and concerns, some of which they share with traditional families and some of which are unique to them which require careful planning to avoid unfair and unintended results, family discord and adverse tax consequences.

ENDNOTES:

Note: The authors wish to thank Stephanie Rzepka, Katherine Hitlan, Patricia Stauffer, Kathleen Kiss and Gwenee Walton for their assistance.

[1]Nine states permit same sex marriage (Connecticut, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, and Washington). Rhode Island recognizes same sex marriages from other jurisdictions. California recognizes marriages established prior to November 5, 2008. Most states prohibit same-sex marriages in their constitution and some states prohibit it by statute.

[2]R.C. 2105.06.

[3]No rights under intestacy laws; no spousal elections; no marital property; no unlimited marital deduction; no unlimited gift tax exemption; no joint income tax filing; and in guardianship and in decisions as to the disposition of remains.

[4]R.C. 2107.084.

[5]R.C. 2105.15.

[6]*Wright v. Bloom*, 69 Ohio St. 3d 596, 1994-Ohio-153, 635 N.E.2d 31 (1994).

[7]I.R.C. 2040(a).

[8]I.R.C. §§ 2056, 2513, and 2523.

[9]*Windsor v. U.S.,* 833 F. Supp. 2d 394 (S.D. N.Y. 2012), judgment aff'd, 699 F.3d 169 (2d Cir. 2012), petition for cert. filed, 81 U.S.L.W. 3373 (U.S. Dec. 28, 2012), cert. granted, 133 S. Ct. 786, 184 L. Ed. 2d 527 (2012) and oral argument held on March 27, 2013.

[10]R.C. Ch. 1337.

[11]R.C. Ch. 2133.

[12]R.C. Ch. 2108.

[13]R.C. 2108.70 through 2108.90.

[14]R.C. 2108.70 through 2108.90.

[15]R.C. 3105.12.

[16]R.C. 3107.02.

[17]R.C. 3103.06.

[18]R.C. 2107.04.

[19]R.C. 3111.01.

[20]R.C. 3107.15.

[21]R.C. 2105.06.

[22]R.C. 3111.95 and 3111.97.

[23]R.C. 2105.14.

[24]R.C. 3111.03(A)(1).

[25]R.C. 3111.97

[26]Any permitted transfers to third parties; use for research or destruction; how long after death the material can be used; to whom it should be entrusted; whether any resulting children are included in the estate plan; who shall be appointed guardian of any posthumously created children

TRANSFERRING REAL PROPERTY OWNED BY A NON-RESIDENT DECEDENT: ALTERNATIVES TO ANCILLARY

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When the owner of real property located in Ohio dies domiciled in another state, it may not always be necessary to conduct an ancillary administration in order to transfer record title to those who inherit. This article will explore some possible alternatives to what may otherwise prove a cumbersome and expensive process.

Chapter 2129 of the Ohio Revised Code sets out the basic procedure for ancillary administration.[1] When a nonresident dies owning property in Ohio, any interested person may apply to be ancillary administrator in any county in Ohio where property of the decedent is located.[2] This property will almost always be real estate since in most cases personal property will simply be removed from Ohio by the domiciliary personal representative.[3] The process usually begins with the applicant filing authenticated copies of the will or other documents from the domiciliary estate proceedings. If there is no domiciliary estate, then the ancillary administration is conducted as if decedent were an Ohio resident.[4] Thereafter the ancillary administration generally follows the same procedure as any full Ohio administration. Resort to ancillary administration is likely inescapable if the Ohio property is to be sold during administration, if there are disputes or issues which must be resolved by the probate court, or if there is personal property in Ohio that cannot be removed by the domiciliary personal representative. If, however, the Ohio real estate is simply passing to heirs or devisees, so that the only concern is correctly reflecting title to those lands as a matter of record, and leaving the current owners with a marketable title they can convey, then ancillary administration may not be required.

Title to real estate is always vested in someone. Upon the death of its owner, title passes to devisees under the decedent's will, or to his or her heirs in the case of intestacy. In both cases title is subject to divestment at the hands of the fiduciary.[5] If the Ohio real estate owned by the non-resident decedent is simply passing

