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CIVIL LAND SALE CHECKLIST

• JURISDICTION FOR COMPLAINT

- § 2101.24. (A) (1) (i) Jurisdiction of probate court To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;
- Probate Court v. Common Pleas Foreclosure - Government Nat. Mortg. Ass'n v. Smith, 28 Ohio App.2d 300, 277 N.E.2d 233 (App. 1 Dist. 1971)
 - 'The Probate Court and the Court of Common Pleas have concurrent jurisdiction of an action to foreclose a [28 Ohio App.2d 302] mortgage on the real estate of a deceased mortgagor of whose estate an administrator or executor has been appointed and qualified, when it is necessary to sell the real estate to pay decedent's debts, and the court which first acquires jurisdiction thereof retains it to the exclusion of the other.' This same rule was stated and followed in Home Owners' Loan Corp. v. Roth (1937), 24 Ohio Law Abs. 693.
- Summit County local rule 65.1
- Ohio Rule of Superintendence Rule 65
- ORC 2127 Sale of Lands

• GUARDIANSHIP

- Contact title company and order preliminary judicial title report
- Complaint to Sell Real Estate
 - Must name as defendants
 - All title holders
 - All lienholders
 - Name as a party the company issuing the mortgage bill who may not be same as on title
 - County tax assessor
 - All associations or HOAS
 - All parties listed on "Exceptions page" title report
 - Known next of kin
 - **(Directly from Judge Stormer) PRAYER FOR RELIEF** – if you desire a discharge of a lien in default situations, you must include that in the prayer
 - Please let them know that if the prayer only asks for permission to sell, they cannot ask for a default which terminates liens on the property. In other words, the request

for sale only protects the lien. If you want to discharge the lien, you have to put the lien holder(s) on notice in your original complaint and prayer.

- Please note that the template on the Summit County website does NOT include this language
- Application for Guardian ad litem
 - Guardian not impartial as plaintiff in this case Court must appoint neutral guardian ad litem to determine if sale necessary
- Return of guardian ad litem – guardian ad litem files report finding sale necessary
- Judgment Entry finding Sale Necessary and Ordering Appraisement (NOT REQUIRED IN ALL COUNTIES)
- Order Appointing Appraiser Appraisement (NOT REQUIRED IN ALL COUNTIES....Might be able to use auditor value)
 - Sales must be at or above the appraised value, otherwise motion to fix price is required
 - Often times since 2008, the auditor’s value may not reflect true value of the property
 - Consider paying for an appraisal that reflects market value and property condition to save the time of filing a motion to fix price
- Return of Appraiser – Oath of Appraiser reporting appraisal price to Court
- Judgment Entry Confirming Appraisement, Dispensing with Bond and Ordering Sale
 - Bond of the guardian must be sufficient to account for the proceeds of sale of real property
- Order of Sale – Court commands Guardian to sell property at appraisal value
 - Return of Sale – Guardian reports sale of property, name Buyer and sale price
- Application for Attorney Fees/guardian fees – apply to court for fees related to work on property sale
 - Fiduciary Fee – only related to property sale not entire estate
 - Follow local rule on extraordinary fees in necessary
- Judgment Entry Confirming Sale, Ordering Deed and Distribution
 - Court order to sell property at the value and give the guardian authority to sign the deed and distribute payments as per the closing statement from the title company
 - Recommend itemizing all closing statement fees
 - If short sale, recommend drafting “court ordered release of all encumbrances” in order
- **ADDITIONAL FORMS**
 - Motion-Order to Fix Price
 - If sale price is less than appraisal, the Guardian must obtain Court order to Fix the price below the appraisal value

- Must have notice of hearing to all parties or consent
 - Motion for Default Judgment
 - Must default out non-answering parties from litigation
 - Praecipe for Service
 - If service on party as addressed in complaint must file a “Praecipe” with instructions to the Court on how to serve the party
 - Motion for Publication
 - If parties, interest holders are unknown must ask Court’s permission to publish the complaint and notice of said complaint in the legal news publication
 - Requires an affidavit that reasonable diligence was used in trying to locate unknown addresses or unknown parties
- Consent to Sell in Guardianship – DOES NOT PRE-EMPT FORECLOSURE
- **ESTATE LAND SALE**
 - Contact title company and order preliminary judicial title report
 - File estate inventory with auditor value or appraisal to identify the asset the asset for the Court
 - Complaint to Sell Real Estate to Pay Debts or Sale in Other Circumstances
 - Must name as defendants
 - All title holders
 - All lienholders
 - Name as a party the company issuing the mortgage bill who may not be same as on title
 - County tax assessor
 - All associations or HOAS
 - All parties listed on “Exceptions page” title report
 - Known next of kin
 - Judgment Entry Dispensing with a New Appraisal and Bond And Ordering Sale (Summit County CV 26)
 - Bond of the fiduciary must be sufficient to account for the proceeds of sale of real property
 - Sales must be at or above the appraised value, otherwise motion to fix price is required
 - Often times since 2008, the auditor's value may not reflect true value of the property
 - Consider paying for an appraisal that reflects market value and property condition to save the time of filing a motion to fix price
 - Order of Sale – Court commands Fiduciary to sell property at appraisal value
 - Return of Sale – Fiduciary reports sale of property, name Buyer and sale price
 - Application for Attorney Fees/executor fees – apply to court for fees related

to work on property sale

- Fiduciary Fee – only related to property sale not entire estate
 - Follow local rule on extraordinary fees in necessary
- Judgment Entry Confirming Sale, Ordering Deed and Distribution
 - Court order to sell property at the value and give the guardian authority to sign the deed and distribute payments as per the closing statement from the title company
 - Recommend itemizing closing statement fees
 - If short sale, recommend drafting “court ordered release of all encumbrances” in order
- **ADDITIONAL FORMS**
 - Motion-Order to Fix Price
 - If sale price is less than appraisal, the Fiduciary must obtain Court order to Fix the price below the appraisal value
 - Must have notice of hearing to all parties or consent
 - Motion for Default Judgment
 - Must default out non-answering parties from litigation
 - Praecipe for Service
 - If service on party as addressed in complaint must file a “Praecipe” with instructions to the Court on how to serve the party
 - Motion for Publication
 - If parties, interest holders are unknown must ask Court’s permission to publish the complaint and notice of said complaint in the legal news publication
 - Requires an affidavit that reasonable diligence was used in trying to locate unknown addresses or unknown parties
- Consent to Sell in Estate – DOES NOT PRE-EMPT FORECLOSURE
- **ADVANCED STRATEGIES**
 - Pre-empting foreclosure
 - See above
 - Utilize resources of items on things like funeral bill
 - Fiduciary fee out of proceeds to Guardian/Executor/Administrator
 - Preserving assets if short sale
 - Preserve estate assets for family – spousal allowance
 - Once Land Sale is filed don’t pay any additional bills to preserve assets items that cannot come out of sale
 - Funeral bill- pre-need
 - See if bank will agree to pay insurance expenses out of closing
 - Cleanout expenses out of closing
 - Lien for legal fees
 - If you’re in a guardianship may consider obtaining a lien for your fees to protect yourself if sale cannot be completed in the guardianship
 - Lien puts you toward the front of the line ahead of the

following:

- general creditors
- Medicaid
- Before 2117.25 – payment of debts
- If no lien, post death you're a general creditor behind Medicaid
- Medicaid - 5162.211 Lien against property of recipient or spouse as part of estate recovery program.
 - 5162.211(D) The department may waive the priority of its lien to provide for the costs of the last illness as determined by the department, administration, attorney fees, administrator fees, a sum for the payment of the costs of burial, which shall be computed by deducting from five hundred dollars whatever amount is available for the same purpose from all other sources, and a similar sum for the spouse of the decedent.
- Conservatorship Strategy
 - Utilize the conservatorship process to appoint a conservator to file a land sale in order to preempt a foreclosure
 - Why do this?
 - Preserve equity by obtaining market value
 - Utilize resources of items on things like, nursing home/assisted living placement or pre-need funeral rather than property taxes and mortgage payments
 - Fiduciary fee out of proceeds to Conservator
- Fractional ownership - 2127.08 Fractional interests - sale of entire interest.
 - Must specifically plead to sell the entire interest if, Plaintiff only owns a fractional share

* Please email me if you need any templates for any of the above. I am happy help.