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# Updates to Wrongful Death Beneficiary Claims and Notice Provisions to HB279

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Reference Manual  
Volume No. 23-W010



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# Updates to Wrongful Death Beneficiary Claims and Notice Provisions to HB279

Vol. # 23-W010

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# HB279: Updates to Wrongful Death Beneficiary Claims and Notice Provisions

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## I. House Bill 279

Amends Ohio Rev. Code § 2125.02 to establish a requirement that “other next of kin” shall file a notice of claim to remain an interested person and to eliminate the notice requirement of Sup. R.70 (B) to such “other next of kin” who fail to do so.

## II. Issues with the Prior Law

When a claim for wrongful death is presented to probate court for approval, the Ohio Rules of Civil Procedure and the Ohio Rules of Superintendence, along with local probate rules set forth the notice requirements. However, who should receive the notice still remained unclear among most practitioners.

- A. Section 2125.02 defines two classes of parties damaged by the wrongful death of the decedent—the first class being the surviving spouse, children and parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death and the second class being “other next of kin” of the decedent.
- B. The term “other next of kin” was not defined in the statute and thus, the “other next of kin” provision of 2125.02 was subject to wide and varying interpretations among the 88 probate courts. Accordingly, difficulties arose for practitioners during the settlement approval process in applying the notice requirements under Sup.R.70 (B) with respect to “other next of kin” and determining who is considered an interest person entitled to notice of the settlement proceedings under the Rule.

- C. Lack of uniformity: Although various courts have attempted to clarify this statute by way of case law, there was no uniformity as to the application of the notice requirements among the various probate courts in Ohio and the matter has not been addressed by the Ohio Supreme Court. In the past, the requirements for notifying the “other next of kin” depended heavily on local practice and/or local probate court rule, if any. Practitioners often failed to notice the proper “other next of kin” or unnecessarily noticed a larger group of “other next of kin” than needed. This uncertain notice requirement is often tedious, expensive and unnecessarily delays the approval process of the claim and exposes attorneys and others to potential claims.

### **III. The New Law Purpose and Solutions**

The purpose of this revision is to eliminate confusion as to the application of the notice requirements to the Wrongful Death statute and to rectify inconsistent practices of notice to interested persons under Ohio Rule of Superintendence 70(B). The surviving spouse, parents and children of the decedent are always interested persons entitled to notice. Now under the new law, whether the “other next of kin” are interested persons entitled to notice depends upon the timing of the filing of the application to settle the wrongful death and survival claims.

#### **A. *Defines “Other Next of Kin.”***

Practitioners no longer need to be unclear about defining “other next of kin.” The revision defines “other next of kin” to mean the nearest surviving relatives to the decedent after accounting for the parents, children, or spouse.<sup>1</sup> This change in the law now codifies the 2005 leading case on this issue, *In Re Estate of Payne*, 2005-Ohio-2391.

#### **B. *Clarifies Interested Persons Entitled to Notice.***

The new law clarifies who is an interested person entitled to notice pursuant to Ohio Rule of Superintendence 70(B) depending upon when the settlement application is filed.

### **IV. Implementation and Effect**

#### **A. *Presumed Interested Persons.***

Any surviving spouse, children, and parents of the decedent are always interested persons entitled to notice, regardless of when the application to approve the settlement is filed. (This is not a change in the law.)

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<sup>1</sup> Ohio Rev. Code § 2125.02(I)(7).

***B. Notice to “Other Next of Kin” Depends upon Timing of the Filing of the Application.***

1. If an application to approve settlement and distribution of wrongful death and survival claims is filed with the probate court prior to or on the date that is two years after the decedent’s death, then all “other next of kin” are interested persons entitled to notice.<sup>2</sup>
2. If an application to approve settlement and distribution of wrongful death and survival claims is filed with the probate court after the date that is two years after the date of decedent’s death, no “other next of kin” are interested persons entitled to notice, unless they have filed a notice of claim to remain an interested person.

***C. How to File a Notice of Claim.***

A person who is among the “other next of kin” may remain an interested person by filing a written notice of claim with the probate court prior to or on the date that is two years from the date of the decedent’s death.<sup>3</sup> The written notice shall include the claimant’s name, address, telephone number and relation to the decedent.

***D. Eliminates Confusion on Who Shall Be Noticed.***

By defining “other next of kin” and eliminating the notice requirement to such “other next kin” who fail to file a notice of claim, attorneys can more efficiently obtain settlement approvals and prevent potential claims.

***E. Damages Must Still Be Presented by “Other Next of Kin.***

HB279 does not eliminate any “other next of kin’s” burden to prove damages under 2125.02 (D).<sup>4</sup> Further, this change in the law does not eliminate the ability to allocate damages to “other next of kin” or allow them to participate in the proceedings on damages. The revision merely eliminates the requirement of counsel to provide notice of the settlement hearing to them unless they have filed to remain an interested person.

***F. Presumption Not Affected.***

The presumption, established by 2125.02 (A), that a decedent’s surviving spouse, children, or parents suffered damages by reason of the decedent’s wrongful death is not affected by this statute revision.

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<sup>2</sup> Ohio Rev. Code § 2125.02(B)(2).

<sup>3</sup> Ohio Rev. Code § 2125.02 (B)(3)(b).

<sup>4</sup> Ohio Rev. Code § 2125.02(B)(4)(a).

***G. Effective Date.***

The change applies only with respect to deaths after the act's effective date or April 3, 2023.

**PROBATE COURT OF \_\_\_\_\_ COUNTY, OHIO**

IN THE MATTER OF \_\_\_\_\_  
CASE NO. \_\_\_\_\_

## **NOTICE OF CLAIM OF INTERESTED PERSON**

[R.C. 2125.02 (B)(3)(b)]

The claimant hereby gives Notice to the Probate Court that he/she is an interested person entitled to notice of any Application To Approve Settlement and Distribution of Wrongful Death and Survival Claims pursuant to Rule 70 of the Rules of Superintendence for the Courts of Ohio.

Signature

Printed Name

## Address

## Telephone Number

## Relation to Decedent



# Updates to Wrongful Death Beneficiary Claims and Notice Provisions

Presented by:  
Amy L. Papesh & Susan Priest Richlak

## PROBLEM

- Who is an interested person entitled to notice of the settlement hearing?

## NEW SOLUTION

- The surviving spouse, parents and children of the decedent are always interested persons entitled to notice and whether the “other next of kin” are interested persons entitled to notice depends upon the timing of the filing of the application to settle the wrongful death and survival claims.

## Problems with the Past

- Lack of Uniformity
- Unnecessary Delays
- Additional Costs
- Potential Claims

## Past Issues

- Local rules varied
- Missing next of kin
- Notice was costly
- Information unreliable
- Publication required

## What has changed?



“Other Next of Kin” defined



Interested Persons clarified

## Reminders

Surviving Spouse, children, and parents of the decedent are always interested persons entitled to notice (no change)

Notice to “ONOK” now depends on **timing** of filing of the settlement application

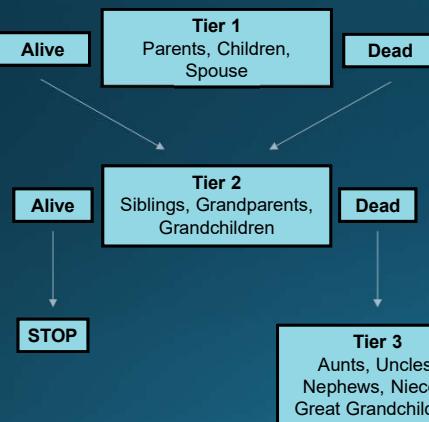
# HOW IT WORKS

Application Filed Before 2  
Years from Date of Death  
(no changes)

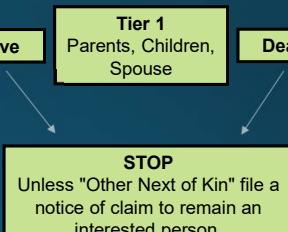
Application Filed After 2 Years  
from Date of Death  
(only required to notice those ONOK  
who have filed to remain interested  
persons)

## WRONGFUL DEATH NOTICE REQUIREMENTS

### APPLICATION FILED ON OR BEFORE 2 YEARS FROM DATE OF DEATH



### APPLICATION FILED AFTER 2 YEARS FROM DATE OF DEATH



# House Bill 279

- Requires "other next of kin" to file a notice of claim to remain an interested person, if the application is filed after 2 years from date of death.
- Eliminates the notice requirement of Sup. R.70 (B) to such "other next of kin" who fail to do so.

How to File  
a Notice of  
Claim  
(sample form)

PROBATE COURT OF \_\_\_\_\_ COUNTY, OHIO

IN THE MATTER OF \_\_\_\_\_  
CASE NO. \_\_\_\_\_

**NOTICE OF CLAIM OF INTERESTED PERSON**  
[R.C. 2125.02 (B)(3)(b)]

The claimant hereby gives Notice to the Probate Court that he/she is an interested person entitled to notice of any Application To Approve Settlement and Distribution of Wrongful Death and Survival Claims pursuant to Rule 70 of the Rules of Superintendence for the Courts of Ohio.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Relation to Decedent

## The Outcome

Uniformity Among Courts

More Efficient Process

Save Costs

Eliminate Confusion

Reduce Potential Claims

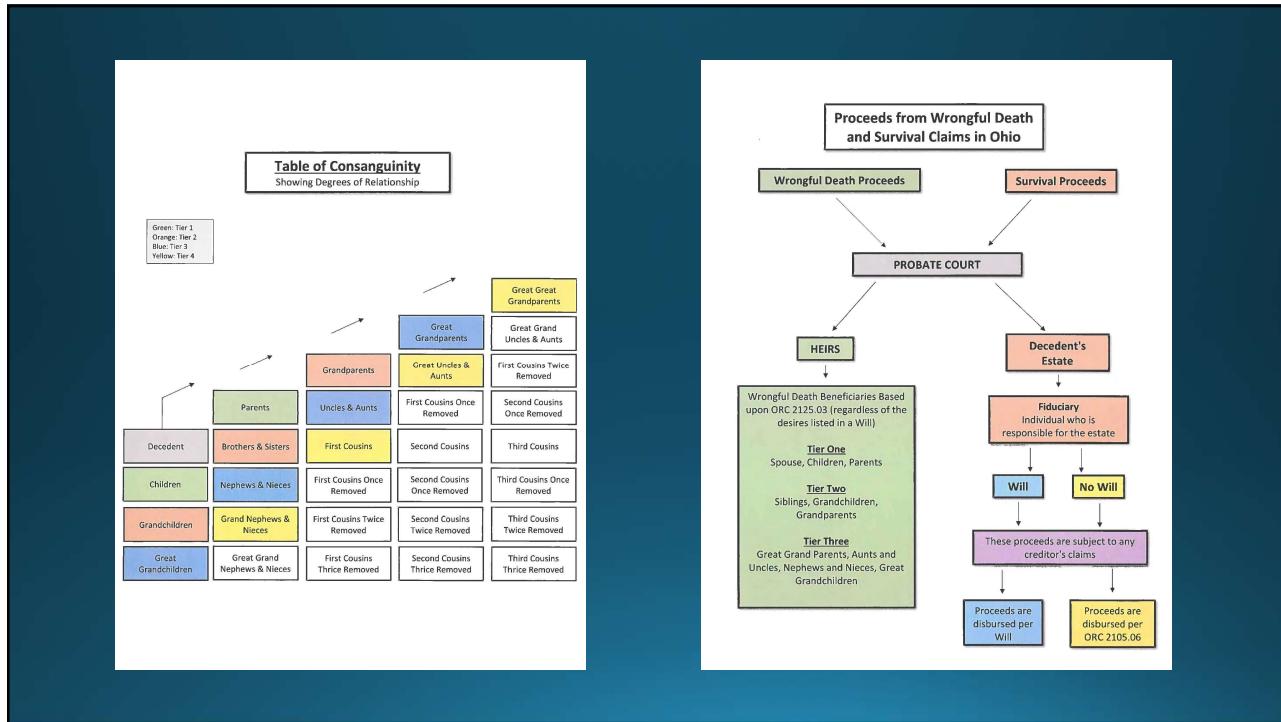
## THINGS TO REMEMBER

Presumed  
beneficiaries  
are not affected

Use application  
filing date to  
determine  
interested  
persons

Damages must  
still be  
presented by  
“ONOK”

Effective date –  
April 4<sup>th</sup>, 2023



## EXAMPLE 1:

- 3 children
- no spouse, 1 parent
- 2 siblings
- 1 grandchild
- filed before the 2 years → notice everyone (old law but now mandatory)
- filed after the 2 years → notice 3 children and parent and notice to the siblings/grandchild only if the claim to remain an interested person has been filed
- NOTE: If a second tier comes in near a 2-year time frame and you are not the fiduciary counsel—file a notice of appearance. Then the court will need to notice you anyways

## EXAMPLE 2:

- no parents, SS or children
- 2 siblings (1 is fiduciary)
- 1 grandparent
- filed before the 2 years → notice to siblings and grandparent
- filed after the 2 years → notice to siblings/ grandparent only if the claim to remain an interested person has been filed

## EXAMPLE 3:

- parents divorced (mom is fiduciary)
- no SS/ no children
- grandparents alive
- 1 full sibling, 1 half-sibling (from dad)
- filed before the 2 years → notice to parents, siblings and grandparents (all)
- filed after the 2 years → notice to siblings/ grandparents only if the claim to remain and interested person has been filed
- NOTE: If siblings do not formally file a claim to remain an interested person, parents could still argue a claim for their behalf