



Ohio Revised Code

Section 2121.08 Administering estate when decree vacated.

Effective: January 13, 2012

Legislation: Senate Bill 124 - 129th General Assembly

(A) The probate court may at any time within a three-year period from the date of the decree establishing the death of a presumed decedent, upon proof satisfactory to the court that the presumed decedent is in fact alive, vacate the decree establishing the presumption of death. After the decree has been vacated all the powers of the executor or administrator of the presumed decedent cease, but all proceedings had and steps taken with respect to the administration of the estate of the presumed decedent prior to the vacating of the decree remain valid. The executor or administrator of the estate of the presumed decedent who is found to be alive shall settle the account of the executor's or administrator's administration down to the time of the vacating of the decree and shall transfer all assets remaining in the possession or under the control of the executor or administrator to the person for whom the executor or administrator is acting, or to that person's authorized agent or attorney.

(B) The title of any person to any money, property, right, or interest as surviving spouse, next of kin, heir, legatee, devisee, co-owner with right of survivorship, beneficiary or other contractual payee, successor to a trust interest, or otherwise of the presumed decedent shall be subject to this section, and upon vacating of the decree as provided in this section any property, money, right, or interest, or its fair value if the same shall have been sold or otherwise disposed of, may be recovered from the person who had received that property, money, right, or interest.

(C) Except as provided in division (D) of this section, in any action against a beneficiary for the recovery of property or the value of the property, or upon the bond given as condition for delivery of money, other personal property, or sale or encumbrance of real property, the beneficiary may set off as against that claim, an allowance for services rendered in maintaining or preserving the property, and for any moneys or other considerations made or given by the beneficiary for the preservation, care, or maintenance of the property during the period of absence of the person erroneously presumed to be dead, and the reasonable value of any part of the property used for support by those whom the person erroneously presumed to be dead had a legal obligation to support during the person's absence.



(D) There shall be no set off as against those assets defined in division (C) of section 2121.05 of the Revised Code to be assets of the presumed decedent that were created by the decree of presumed death. Those assets created by the erroneous decree of presumed death shall be returned with interest to the person entitled to them.

(E) Any net cash surrender value on any policies of life insurance on the life of a person erroneously presumed to be dead are subject to the set off provision in division (C) of this section. The person erroneously presumed to be dead, or persons claiming under the person erroneously presumed to be dead, may recover whatever remains of cash values from the person to whom paid. The claimants have no recourse against the insurance company that made the payments, and it is discharged from liability on the policies affected.