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**Am. Sub. H. B. No. 416**

**Representatives Wagoner, Gilb, Coley, Seitz, Reidelbach, Ujvagi, Webster,  
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Otterman, Patton, T., Perry, Sayre, Schaffer, Schlichter, Schneider,  
Willamowski, Yuko**

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**A B I L L**

To amend sections 1111.13, 1111.15, 1151.191,	1
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2305.22, 5111.15, 5111.151, 5119.01, 5119.17, 21  
5121.04, 5121.10, 5121.30, 5121.52, 5123.04, 22  
5123.28, and 5123.40; to amend, for the purpose of 23  
adopting new section numbers as indicated in 24  
parentheses, sections 1339.01 (5815.02), 1339.02 25  
(5815.03), 1339.03 (5815.04), 1339.031 (5815.01), 26  
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(5812.46), 1340.86 (5812.47), 1340.90 (5812.51), 62  
1340.91 (5812.52), and 2305.121 (5806.04); to 63  
enact sections 2109.69, 5801.01, 5801.011, 5801.02 64  
to 5801.10, 5802.01 to 5802.03, 5803.01 to 65  
5803.05, 5804.01 to 5804.18, 5805.01 to 5805.07, 66  
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5808.02, 5808.04, 5808.06, 5808.08 to 5808.17, 68  
5809.06, 5810.01 to 5810.13, and 5811.01 to 69  
5811.03; and to repeal sections 1335.01, 1339.14, 70  
1339.66, 1339.67, 1339.69, 1340.21, 1340.22, and 71  
1340.23 of the Revised Code to adopt an Ohio trust 72  
code. 73

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1111.13, 1111.15, 1151.191, 1161.24, 74  
1319.12, 1339.01, 1339.02, 1339.03, 1339.04, 1339.08, 1339.09, 75  
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5123.40 be amended; that sections 1339.01 (5815.02), 1339.02	90
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(5812.46), 1340.86 (5812.47), 1340.90 (5812.51), 1340.91 121  
(5812.52), and 2305.121 (5806.04) be amended for the purpose of 122  
adopting new section numbers as indicated in parentheses; and that 123  
sections 2109.69, 5801.01, 5801.011, 5801.02, 5801.03, 5801.04, 124  
5801.05, 5801.06, 5801.07, 5801.08, 5801.09, 5801.10, 5802.01, 125  
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5810.12, 5810.13, 5811.01, 5811.02, and 5811.03 of the Revised 136  
Code be enacted to read as follows: 137

**Sec. 1111.13.** (A)(1) Except as provided in divisions (A)(2) 138  
and (G) of this section or as otherwise provided by the instrument 139  
creating the trust, a trust company acting as fiduciary under any 140  
instrument and having funds of the trust which are to be invested 141  
may, in addition to any other investments authorized to a trust 142  
company by law, invest them in any of the following: 143

(a) Forms of investments enumerated or described in, or made 144  
eligible for investment by, the Ohio Uniform Prudent Investor Act 145  
and sections ~~1339.44, 1339.52 to 1339.61~~, 2109.37, 2109.371, and 146

2109.372, and 5815.26 of the Revised Code, including, but not 147  
limited to, securities, stocks, bonds, or certificates of deposit 148  
issued by the trust company or any bank owned or controlled by the 149  
bank holding company that owns or controls the trust company. 150  
Investment authority granted under division (A)(1)(a) of this 151  
section is subject to the limitations on investments specified in 152  
division (B) of section 2109.371 of the Revised Code. 153

(b) Any collective investment fund established and maintained 154  
by the trust company or by an affiliate of the trust company; 155

(c) The securities of any investment company, including any 156  
affiliated investment company, whether or not the trust company 157  
has invested other funds held by it in an agency or other 158  
nonfiduciary capacity in the securities of the same investment 159  
company or affiliated investment company. 160

(2) A trust company acting as fiduciary may not invest its 161  
trust funds in stock issued by the fiduciary itself except under 162  
one of the following circumstances: 163

(a) In the case of a testamentary instrument, when expressly 164  
permitted by the instrument creating the relationship and 165  
authorized by court order; 166

(b) In the case of an inter vivos instrument, when expressly 167  
permitted by the instrument or authorized by court order and in 168  
either case, only when directed to purchase or invest in the stock 169  
by a cofiduciary or other person other than the trust company who 170  
has the right under the terms of the instrument to direct the 171  
investment; 172

(c) When exercising rights to purchase its own stock or to 173  
purchase or convert securities convertible into its own stock if 174  
the rights were offered pro rata to the shareholders; 175

(d) To complement fractional shares acquired when the 176  
exercise of rights or receipt of a stock dividend results in 177

fractional shareholdings.

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(3) If the law or the instrument creating a trust expressly permits investment in direct obligations of the United States or an agency or instrumentality of the United States, unless expressly prohibited by the instrument, a trust company also may invest in no front end load money market mutual funds consisting exclusively of obligations of the United States or an agency or instrumentality of the United States and in repurchase agreements, including those issued by the trust company itself, secured by obligations of the United States or an agency or instrumentality of the United States, or in securities of other no load money market mutual funds whose portfolios are similarly restricted; and in collective investment funds established in accordance with section 1111.14 of the Revised Code or by an affiliate of the trust company and consisting exclusively of any direct obligations of the United States or an agency or instrumentality of the United States, notwithstanding division (A)(1)(c) of that section.

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(B) A trust company acting in any fiduciary capacity or under any instrument has the right to retain any part of the trust or estate it receives, whether from the creator of the trust or the estate, at its inception or by later addition, or by addition by any other person who is authorized to make additions to the trust or estate, and any investments the trust company makes.

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(C) Except as otherwise expressly provided by the instrument creating the fiduciary relationship, any trust company may exercise all voting, consenting, and dissenting rights, including the right to vote for the election of directors, pertaining to stocks, bonds, or other securities held by it in any fiduciary capacity, including rights pertaining to stocks, bonds, or other securities issued by the trust company in its individual corporate capacity and held by it in any fiduciary capacity, provided:

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(1) In the case of any fiduciary relationship created prior 209  
to January 1, 1968, voting rights pertaining to any shares of a 210  
trust company's own stock held by it in a fiduciary relationship, 211  
if exercised, shall be exercised with respect to the election of 212  
directors, only in accordance with any provisions of law 213  
applicable to that election and without regard to the first 214  
paragraph of division (C) and divisions (C)(2)(a), (b), and (c) of 215  
this section, and those portions of division (C) of this section 216  
shall not be construed to be determinative of the voting rights or 217  
to be declaratory of a public policy with respect to the voting 218  
rights. 219

(2) In the case of any fiduciary relationship created on or 220  
after January 1, 1968, voting rights pertaining to any shares of a 221  
trust company's own stock held by it in a fiduciary relationship 222  
shall be exercised by it with respect to the election of 223  
directors, only if and as directed in writing by any person 224  
described in division (C)(2)(a), (b), or (c) of this section, 225  
provided that the person may not be the trust company, or a 226  
director, officer, or employee of the trust company except as to 227  
fiduciary relationships in which the director, officer, or 228  
employee is a settlor or beneficiary, or a nominee, agent, 229  
attorney, or subsidiary of the trust company: 230

(a) Any person, including a settlor or beneficiary, who has 231  
the right under the terms of the instrument under which shares are 232  
held to determine the manner in which shares shall be voted, or if 233  
there is no such person; 234

(b) Any person acting as cofiduciary under the instrument 235  
under which such shares are held, or if there is no such person; 236

(c) Any person, having the right of revocation or amendment 237  
of the instrument under which the shares are held. 238

(D) If there is more than one person having power to direct 239



voting under division (C)(2)(a), (b), or (c) of this section and 240  
they fail to agree, each person shall have the right to direct 241  
voting with respect to the election of directors as to an equal 242  
number of shares. 243

(E) As used in this section: 244

(1) "Affiliated investment company" means any investment 245  
company that is any of the following: 246

(a) Sponsored by the trust company that is acting as 247  
fiduciary or by a trust company, bank, bank subsidiary 248  
corporation, or other corporation owned or controlled by the bank 249  
holding company that owns or controls the trust company that is 250  
acting as fiduciary; 251

(b) The result of any agreement with a trust company, bank, 252  
bank subsidiary corporation, or other corporation owned or 253  
controlled by the bank holding company that owns or controls the 254  
trust company that is acting as fiduciary; 255

(c) Established exclusively for the customers or accounts of 256  
the trust company that is acting as fiduciary or of a trust 257  
company, bank, bank subsidiary corporation, or other corporation 258  
owned or controlled by the bank holding company that owns or 259  
controls the trust company that is acting as fiduciary; 260

(d) Provided with investment advisory, brokerage, transfer 261  
agency, registrar, management, shareholder servicing, custodian, 262  
or any related services by the trust company that is acting as 263  
fiduciary or by a trust company, bank, bank subsidiary 264  
corporation, or other corporation owned or controlled by the bank 265  
holding company that owns or controls the trust company that is 266  
acting as fiduciary. 267

(2) "Cofiduciary" includes, but is not limited to, a 268  
cotrustee, coexecutor, coadministrator, coguardian, co-agent, and 269

any person who, under the terms of the instrument creating the  
fiduciary relationship, has the right or power to direct, approve  
or consent to, or be consulted with respect to, the making,  
retention, or sale of investments under the instrument.

(3) "Instrument" includes, but is not limited to, any will,  
declaration of trust, agreement of trust, agency, or  
custodianship, or court order creating a fiduciary relationship.

(4) "Reasonable fee" means compensation or payment, the  
receipt of which would not constitute a breach of fiduciary duty  
under section 36 of the "Investment Company Act of 1940," 54 Stat.  
789, 15 U.S.C.A. 80a-35.

(F) Shares as to which the voting rights with respect to the  
election of directors may not be exercised under this section  
shall not be considered as outstanding for the purpose of  
computing the voting power of the corporation or of its shares of  
any class with respect to the election of directors.

(G) This section does not authorize a trust company acting as  
a probate fiduciary to perform any act prohibited by section  
2109.44 of the Revised Code, unless the act is authorized by the  
instrument creating the trust.

(H) A trust company making an investment of trust funds in an  
affiliated investment company, or a bank or other corporation  
owned or controlled by the bank holding company that owns or  
controls the trust company, may charge a reasonable fee for  
investment advisory, brokerage, transfer agency, registrar,  
management, shareholder servicing, custodian, or any related  
services provided to an affiliated investment company. The fee may  
be in addition to the compensation that the trust company is  
otherwise entitled to receive from the trust, provided that the  
fee is charged as a percentage of either asset value or income  
earned or actual amount charged and is disclosed at least annually

by prospectus, account statement, or any other written means to 301  
all persons entitled to receive statements of account activity. 302

(I) A trust company making an investment of trust funds in 303  
the securities of an affiliated investment company pursuant to 304  
division (A)(1)(c) of this section shall, when providing any 305  
periodic account statements to the trust fund, report the net 306  
asset value of the shares comprising the investment of the trust 307  
fund in the affiliated investment company. 308

(J) If a trust company making an investment of trust funds in 309  
the securities of an affiliated investment company pursuant to 310  
division (A)(1)(c) of this section invests the funds in any mutual 311  
fund, the trust company shall disclose, in at least ten-point 312  
boldface type, by prospectus, account statement, or any other 313  
written means to all persons entitled to receive statements of 314  
account activity, that the mutual fund is not insured or 315  
guaranteed by the federal deposit insurance corporation or by any 316  
other government agency or government-sponsored agency of the 317  
federal government or of this state. 318

**Sec. 1111.15.** (A) A trust company acting in any fiduciary 319  
capacity, including, but not limited to, the capacities described 320  
in section 1111.11 of the Revised Code, may purchase any service 321  
or product, including, but not limited to, insurance or securities 322  
underwritten or otherwise distributed by the trust company or by 323  
an affiliate, through or directly from the trust company or an 324  
affiliate or from a syndicate or selling group that includes the 325  
trust company or an affiliate, provided that the purchase is 326  
otherwise prudent under ~~sections 1339.52 to 1339.61~~ of the Revised 327  
Code Ohio Uniform Prudent Investor Act and the compensation for 328  
the service or product is reasonable and is not prohibited by the 329  
instrument governing the fiduciary relationship. The compensation 330  
for the service or product may be in addition to the compensation 331

that the trust company is otherwise entitled to receive from the 332  
fiduciary account. 333

(B) A trust company shall disclose at least annually any 334  
purchase authorized by this section that was made by the trust 335  
company during that reporting period. The disclosure shall be 336  
given, in writing or electronically, to all persons entitled to 337  
receive statements of account activity, and shall include any 338  
capacities in which the trust company or an affiliate acts for the 339  
issuer of the securities or the provider of the products or 340  
services and the fact that the trust company or an affiliate may 341  
have an interest in the products or services. 342

(C) This section shall apply to the purchase of securities 343  
made at the time of the initial offering of the securities or at 344  
any time thereafter. 345

**Sec. 1151.191.** (A) A building and loan association may serve 346  
as trustee of any trust which qualifies, at the time the 347  
association becomes trustee, for tax treatment under section 401 348  
or 408 of the Internal Revenue Code. The association may invest 349  
the funds of any such trust in savings accounts or deposits of a 350  
domestic building and loan association or in equity or debt 351  
securities issued by a domestic building and loan association. 352

(B) Whenever any deposit or stock deposit is made in a 353  
building and loan association by any person in trust for another 354  
and no further notice of the existence and terms of a legal and 355  
valid trust is given in writing to such association, such deposit 356  
or stock deposit or any part thereof together with the dividends 357  
or interest thereon may in the event of the death of the trustee 358  
be paid to the person for whom the deposit or stock deposit was 359  
made. 360

~~Whenever any deposit or stock deposit is made in the name of 361  
another as trustee for the depositor accompanied by a declaration 362~~

~~of trust, any trust created thereby shall not be invalid by reason  
of section 1335.01 of the Revised Code.~~ 363  
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(C) Any funds held in trust as authorized by division (A) or 365  
(B) of this section may be commingled by the trustee association 366  
in one or more accounts. Whenever individual trust funds are 367  
commingled, separate records shall be maintained by the trustee 368  
association for each trust account comprising the commingled fund. 369

(D) Exercise of the limited trust power granted associations 370  
by this section shall not be subject to regulation other than by 371  
the superintendent of building and loan associations pursuant to 372  
Chapters 1151., 1153., 1155., and 1157. of the Revised Code. 373

**Sec. 1161.24.** (A) A savings bank may serve as trustee of any 374  
trust that qualifies, at the time the savings bank becomes 375  
trustee, for tax treatment under section 401 or 408 of the 376  
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as 377  
amended. The savings bank may invest the funds of any such trust 378  
in savings accounts or deposits of a domestic savings bank or in 379  
equity or debt securities issued by a domestic savings bank. 380

(B)~~(1)~~ Whenever any deposit or stock deposit is made in a 381  
savings bank by any person in trust for another and no further 382  
notice of the existence and terms of a legal and valid trust is 383  
given in writing to the savings bank, the deposit or stock deposit 384  
or any part thereof together with the dividends or interest 385  
thereon, in the event of the death of the trustee, may be paid to 386  
the person for whom the deposit or stock deposit was made. 387

~~(2) Whenever any deposit or stock deposit is made in the name  
of another as trustee for the depositor accompanied by a  
declaration of trust, any trust created thereby shall not be  
invalid by reason of section 1335.01 of the Revised Code.~~ 388  
389  
390  
391

(C) Any funds held in trust as authorized by division (A) or 392

(B) of this section may be commingled by the trustee savings bank 393  
in one or more accounts. Whenever individual trust funds are 394  
commingled, separate records shall be maintained by the trustee 395  
savings bank for each trust account comprising the commingled 396  
fund. 397

(D) Exercise of the limited trust power granted savings banks 398  
by this section is not subject to regulation other than by the 399  
superintendent of savings banks pursuant to this chapter and 400  
Chapters 1163. and 1165. of the Revised Code. 401

**Sec. 1319.12.** (A)(1) As used in this section, "collection 402  
agency" means any person who, for compensation, contingent or 403  
otherwise, or for other valuable consideration, offers services to 404  
collect an alleged debt asserted to be owed to another. 405

(2) "Collection agency" does not mean a person whose 406  
collection activities are confined to and directly related to the 407  
operation of another business, including, but not limited to, the 408  
following: 409

(a) Any bank, including the trust department of a bank, trust 410  
company, savings and loan association, savings bank, credit union, 411  
or fiduciary as defined in section ~~1339.03~~ 5815.04 of the Revised 412  
Code, except those that own or operate a collection agency; 413

(b) Any real estate broker or real estate salesperson, as 414  
defined in section 4735.01 of the Revised Code; 415

(c) Any retail seller collecting its own accounts; 416

(d) Any insurance company authorized to do business in this 417  
state under Title XXXIX of the Revised Code or a health insuring 418  
corporation authorized to operate in this state under Chapter 419  
1751. of the Revised Code; 420

(e) Any public officer or judicial officer acting under order 421  
of a court; 422

(f) Any licensee as defined either in section 1321.01 or	423
1321.71 of the Revised Code, or any registrant as defined in	424
section 1321.51 of the Revised Code;	425
(g) Any public utility;	426
(h) Any person registered to sell interment rights under	427
section 4767.031 of the Revised Code.	428
(B) A collection agency with a place of business in this	429
state may take assignment of another person's accounts, bills, or	430
other evidences of indebtedness in its own name for the purpose of	431
billing, collecting, or filing suit in its own name as the real	432
party in interest.	433
(C) No collection agency shall commence litigation for the	434
collection of an assigned account, bill, or other evidence of	435
indebtedness unless it has taken the assignment in accordance with	436
all of the following requirements:	437
(1) The assignment was voluntary, properly executed, and	438
acknowledged by the person transferring title to the collection	439
agency.	440
(2) The collection agency did not require the assignment as a	441
condition to listing the account, bill, or other evidence of	442
indebtedness with the collection agency for collection.	443
(3) The assignment was manifested by a written agreement	444
separate from and in addition to any document intended for the	445
purpose of listing the account, bill, or other evidence of	446
indebtedness with the collection agency. The written agreement	447
shall state the effective date of the assignment and the	448
consideration paid or given, if any, for the assignment and shall	449
expressly authorize the collection agency to refer the assigned	450
account, bill, or other evidence of indebtedness to an attorney	451
admitted to the practice of law in this state for the commencement	452

of litigation. The written agreement also shall disclose that the  
collection agency may consolidate, for purposes of filing an  
action, the assigned account, bill, or other evidence of  
indebtedness with those of other creditors against an individual  
debtor or co-debtors.

(4) Upon the effective date of the assignment to the  
collection agency, the creditor's account maintained by the  
collection agency in connection with the assigned account, bill,  
or other evidence of indebtedness was canceled.

(D) A collection agency shall commence litigation for the  
collection of an assigned account, bill, or other evidence of  
indebtedness in a court of competent jurisdiction located in the  
county in which the debtor resides, or in the case of co-debtors,  
a county in which at least one of the co-debtors resides.

(E) No collection agency shall commence any litigation  
authorized by this section unless the agency appears by an  
attorney admitted to the practice of law in this state.

(F) This section does not affect the powers and duties of any  
person described in division (A)(2) of this section.

(G) Nothing in this section relieves a collection agency from  
complying with the "Fair Debt Collection Practices Act," 91 Stat.  
874 (1977), 15 U.S.C. 1692, as amended, or deprives any debtor of  
the right to assert defenses as provided in section 1317.031 of  
the Revised Code and 16 C.F.R. 433, as amended.

(H) For purposes of filing an action, a collection agency  
that has taken an assignment or assignments pursuant to this  
section may consolidate the assigned accounts, bills, or other  
evidences of indebtedness of one or more creditors against an  
individual debtor or co-debtors. Each separate assigned account,  
bill, or evidence of indebtedness must be separately identified  
and pled in any consolidated action authorized by this section. If



a debtor or co-debtor raises a good faith dispute concerning any 484  
account, bill, or other evidence of indebtedness, the court shall 485  
separate each disputed account, bill, or other evidence of 486  
indebtedness from the action and hear the disputed account, bill, 487  
or other evidence of indebtedness on its own merits in a separate 488  
action. The court shall charge the filing fee of the separate 489  
action to the losing party. 490

**Sec. 1775.03.** (A) The rule that statutes in derogation of the 491  
common law are to be strictly construed has no application to 492  
~~section~~ sections 1775.01 to 1775.42 of the Revised Code. 493

(B) The law of estoppel applies under such sections. 494

(C) The law of agency applies under this chapter, but, if a 495  
provision of section ~~1339.65~~ 5815.35 of the Revised Code conflicts 496  
with that law, the provision of that section controls. 497

(D) Such sections shall be interpreted and construed so as to 498  
effectuate their general purpose to make the law of this state 499  
uniform with the law of those states which enact similar 500  
legislation. 501

(E) Sections 1775.01 to 1775.42 of the Revised Code do not 502  
impair the obligations of any contract existing on September 14, 503  
1949, or affect any action or proceedings begun or right accrued 504  
before such date. 505

**Sec. 1775.14.** (A) Subject to section ~~1339.65~~ 5815.35 of the 506  
Revised Code and except as provided in division (B) of this 507  
section, all partners are liable as follows: 508

(1) Jointly and severally for everything chargeable to the 509  
partnership under sections 1775.12 and 1775.13 of the Revised 510  
Code. This joint and several liability is not subject to section 511  
2307.22 or 2315.36 of the Revised Code with respect to a tort 512

claim that otherwise is subject to either of those sections. 513

(2) Jointly for all other debts and obligations of the 514  
partnership, but any partner may enter into a separate obligation 515  
to perform a partnership contract. 516

(B) Subject to divisions (C)(1) and (2) of this section or as 517  
otherwise provided in a written agreement between the partners of 518  
a registered limited liability partnership, a partner in a 519  
registered limited liability partnership is not liable, directly 520  
or indirectly, by way of indemnification, contribution, 521  
assessment, or otherwise, for debts, obligations, or other 522  
liabilities of any kind of, or chargeable to, the partnership or 523  
another partner or partners arising from negligence or from 524  
wrongful acts, errors, omissions, or misconduct, whether or not 525  
intentional or characterized as tort, contract, or otherwise, 526  
committed or occurring while the partnership is a registered 527  
limited liability partnership and committed or occurring in the 528  
course of the partnership business by another partner or an 529  
employee, agent, or representative of the partnership. 530

(C)(1) Division (B) of this section does not affect the 531  
liability of a partner in a registered limited liability 532  
partnership for that partner's own negligence, wrongful acts, 533  
errors, omissions, or misconduct, including that partner's own 534  
negligence, wrongful acts, errors, omissions, or misconduct in 535  
directly supervising any other partner or any employee, agent, or 536  
representative of the partnership. 537

(2) Division (B) of this section shall not affect the 538  
liability of a partner for liabilities imposed by Chapters 5735., 539  
5739., 5743., and 5747. and section 3734.908 of the Revised Code. 540

(D) A partner in a registered limited liability partnership 541  
is not a proper party to an action or proceeding by or against a 542  
registered limited liability partnership with respect to any debt, 543

obligation, or other liability of any kind described in division 544  
(B) of this section, unless the partner is liable under divisions 545  
(C)(1) and (2) of this section. 546

**Sec. 1775.15.** (A) Subject to section ~~1339.65~~ 5815.35 of the 547  
Revised Code, when a person, by words spoken or written or by 548  
conduct, represents ~~himself~~ self, or consents to another 549  
representing ~~him~~ the person to anyone, as a partner in an existing 550  
partnership or with one or more persons not actual partners, ~~he~~ 551  
that person is liable to any such person to whom such 552  
representation has been made, who has, on the faith of such 553  
representation, given credit to the actual or apparent 554  
partnership, and if ~~he~~ the person has made such representation or 555  
consented to its being made in a public manner ~~he~~ the person is 556  
liable to ~~such~~ the person to whom such representation has been 557  
made, whether the representation has or has not been made or 558  
communicated to such person so giving credit by or with the 559  
knowledge of the apparent partner making the representation or 560  
consenting to its being made. 561

(1) When a partnership liability results, ~~he~~ the person who 562  
represented self as a partner or consented to another's making 563  
such representation is liable as though ~~he~~ the person were an 564  
actual member of the partnership. 565

(2) When no partnership liability results, ~~he~~ the person who 566  
represented self as a partner or consented to another's making 567  
such representation is liable jointly with the other persons, if 568  
any, so consenting to the contract or representation as to incur 569  
liability, otherwise separately. 570

(B) When a person has been thus represented to be a partner 571  
in an existing partnership, or with one or more persons not actual 572  
partners, ~~he~~ the person so represented is an agent of the persons 573  
consenting to such representation to bind them to the same extent 574

and in the same manner as though ~~he~~ the person so represented were 575  
a partner in fact, with respect to persons who rely upon the 576  
representation. Where all the members of the existing partnership 577  
consent to the representation, a partnership act or obligation 578  
results; but in all other cases it is the joint act or obligation 579  
of the person acting and the persons consenting to the 580  
representation. 581

**Sec. 1775.17.** The rights and duties of the partners in 582  
relation to the partnership shall be determined, subject to any 583  
agreement between them, by the following rules: 584

(A) Each partner shall be repaid the partner's contribution, 585  
whether by way of capital or advances, to the partnership property 586  
and share equally in the profits and surplus remaining after all 587  
liabilities, including those to partners, are satisfied; and each 588  
partner, subject to section ~~1339-65~~ 5815.35 of the Revised Code 589  
and to division (B) of section 1775.14 of the Revised Code, must 590  
contribute toward the losses, whether of capital or otherwise, 591  
sustained by the partnership according to the partner's share in 592  
the profits. 593

(B) The partnership must indemnify every partner in respect 594  
of payments made and personal liabilities reasonably incurred by 595  
the partner in the ordinary and proper conduct of its business, or 596  
for the preservation of its business or property. 597

(C) A partner, who in aid of the partnership makes any 598  
payment or advance beyond the amount of capital which the partner 599  
agreed to contribute, shall be paid interest from the date of the 600  
payment or advance. 601

(D) A partner shall receive interest on the capital 602  
contributed by the partner only from the date when repayment 603  
should be made. 604

(E) All partners have equal rights in the management and 605  
conduct of the partnership business. 606

(F) No partner is entitled to remuneration for acting in the 607  
partnership business, except that a surviving partner is entitled 608  
to reasonable compensation for the partner's services in winding 609  
up the partnership affairs. 610

(G) No person can become a member of a partnership without 611  
the consent of all the partners. 612

(H) Any difference arising as to ordinary matters connected 613  
with the partnership business may be decided by a majority of the 614  
partners; but no act in contravention of any agreement between the 615  
partners may be done rightfully without the consent of all the 616  
partners. 617

**Sec. 1775.33.** Where the dissolution is caused by the act, 618  
death, or bankruptcy of a partner, but subject to section ~~1339.65~~ 619  
5815.35 of the Revised Code and to division (B) of section 1775.14 620  
of the Revised Code, each partner is liable to the other partners 621  
for the partner's share of any liability created by any partner 622  
acting for the partnership as if the partnership had not been 623  
dissolved unless: 624

(A) The dissolution being by act of any partner, the partner 625  
acting for the partnership had knowledge of the dissolution; 626

(B) The dissolution being by the death or bankruptcy of a 627  
partner, the partner acting for the partnership had knowledge or 628  
notice of the death or bankruptcy. 629

**Sec. 1782.24.** (A) Except as otherwise provided in this 630  
chapter, the partnership agreement, or section ~~1339.65~~ 5815.35 of 631  
the Revised Code, a general partner of a limited partnership shall 632  
have all the rights and powers and be subject to all the 633

restrictions and liabilities of a partner in a partnership without 634  
limited partners. 635

(B) Except as otherwise provided in this chapter, a general 636  
partner of a limited partnership has the liabilities of a partner 637  
in a partnership without limited partners to persons other than 638  
the partnership and the other partners. Except as otherwise 639  
provided in this chapter or the partnership agreement, a general 640  
partner of a limited partnership has the liabilities of a partner 641  
in a partnership without limited partners to the partnership and 642  
to the other partners. 643

**Sec. 2101.24.** (A)(1) Except as otherwise provided by law, the 644  
probate court has exclusive jurisdiction: 645

(a) To take the proof of wills and to admit to record 646  
authenticated copies of wills executed, proved, and allowed in the 647  
courts of any other state, territory, or country. If the probate 648  
judge is unavoidably absent, any judge of the court of common 649  
pleas may take proof of wills and approve bonds to be given, but 650  
the record of these acts shall be preserved in the usual records 651  
of the probate court. 652

(b) To grant and revoke letters testamentary and of 653  
administration; 654

(c) To direct and control the conduct and settle the accounts 655  
of executors and administrators and order the distribution of 656  
estates; 657

(d) To appoint the attorney general to serve as the 658  
administrator of an estate pursuant to section 2113.06 of the 659  
Revised Code; 660

(e) To appoint and remove guardians, conservators, and 661  
testamentary trustees, direct and control their conduct, and 662  
settle their accounts; 663

(f) To grant marriage licenses;	664
(g) To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;	665 666 667 668 669
(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;	670 671 672
(i) 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;	673 674 675 676
(j) To authorize the completion of real estate contracts on petition of executors and administrators;	677 678
(k) To construe wills;	679
(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;	680 681 682
(m) To direct and control the conduct of fiduciaries and settle their accounts;	683 684
(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;	685 686
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	687 688
(p) To hear and determine actions to contest the validity of wills;	689 690
(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and	691 692

obligations of all parties affected by the presumption;	693
(r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;	694 695 696 697 698
(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	699 700
(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	701 702
(u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;	703 704 705
(v) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;	706 707 708
(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;	709 710 711
(x) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;	712 713 714 715 716 717
(y) To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;	718 719 720 721 722



(z) To hear and determine applications of attending physicians in accordance with division (B) of section 2133.15 of the Revised Code;

(aa) To hear and determine actions relative to the use or continuation of comfort care in connection with certain principals under durable powers of attorney for health care, declarants under declarations, or patients in accordance with division (E) of either section 1337.16 or 2133.12 of the Revised Code;

(bb) To hear and determine applications for an order relieving an estate from administration under section 2113.03 of the Revised Code;

(cc) To hear and determine applications for an order granting a summary release from administration under section 2113.031 of the Revised Code.

(2) In addition to the exclusive jurisdiction conferred upon the probate court by division (A)(1) of this section, the probate court shall have exclusive jurisdiction over a particular subject matter if both of the following apply:

(a) Another section of the Revised Code expressly confers jurisdiction over that subject matter upon the probate court.

(b) No section of the Revised Code expressly confers jurisdiction over that subject matter upon any other court or agency.

(B)(1) The probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the court of common pleas to issue writs and orders, and to hear and determine actions as follows:

(a) If jurisdiction relative to a particular subject matter is stated to be concurrent in a section of the Revised Code or has been construed by judicial decision to be concurrent, any action

that involves that subject matter; 753

(b) Any action that involves an inter vivos trust; a trust 754  
created pursuant to section ~~1339.51~~ 5815.28 of the Revised Code; a 755  
charitable trust or foundation; subject to divisions (A)(1)(u) and 756  
(z) of this section, a power of attorney, including, but not 757  
limited to, a durable power of attorney; the medical treatment of 758  
a competent adult; or a writ of habeas corpus. 759

(2) Any action that involves a concurrent jurisdiction 760  
subject matter and that is before the probate court may be 761  
transferred by the probate court, on its order, to the general 762  
division of the court of common pleas. 763

(C) The probate court has plenary power at law and in equity 764  
to dispose fully of any matter that is properly before the court, 765  
unless the power is expressly otherwise limited or denied by a 766  
section of the Revised Code. 767

(D) The jurisdiction acquired by a probate court over a 768  
matter or proceeding is exclusive of that of any other probate 769  
court, except when otherwise provided by law. 770

**Sec. 2107.33.** (A) A will shall be revoked in the following 771  
manners: 772

(1) By the testator by tearing, canceling, obliterating, or 773  
destroying it with the intention of revoking it; 774

(2) By some person, at the request of the testator and in the 775  
testator's presence, by tearing, canceling, obliterating, or 776  
destroying it with the intention of revoking it; 777

(3) By some person tearing, canceling, obliterating, or 778  
destroying it pursuant to the testator's express written 779  
direction; 780

(4) By some other written will or codicil, executed as 781

prescribed by this chapter; 782

(5) By some other writing that is signed, attested, and 783  
subscribed in the manner provided by this chapter. 784

(B) A will that has been declared valid and is in the 785  
possession of a probate judge also may be revoked according to 786  
division (C) of section 2107.084 of the Revised Code. 787

(C) If a testator removes a will that has been declared valid 788  
and is in the possession of a probate judge pursuant to section 789  
2107.084 of the Revised Code from the possession of the judge, the 790  
declaration of validity that was rendered no longer has any 791  
effect. 792

(D) If after executing a will, a testator is divorced, 793  
obtains a dissolution of marriage, has the testator's marriage 794  
annulled, or, upon actual separation from the testator's spouse, 795  
enters into a separation agreement pursuant to which the parties 796  
intend to fully and finally settle their prospective property 797  
rights in the property of the other, whether by expected 798  
inheritance or otherwise, any disposition or appointment of 799  
property made by the will to the former spouse or to a trust with 800  
powers created by or available to the former spouse, any provision 801  
in the will conferring a general or special power of appointment 802  
on the former spouse, and any nomination in the will of the former 803  
spouse as executor, trustee, or guardian shall be revoked unless 804  
the will expressly provides otherwise. 805

(E) Property prevented from passing to a former spouse or to 806  
a trust with powers created by or available to the former spouse 807  
because of revocation by this section shall pass as if the former 808  
spouse failed to survive the decedent, and other provisions 809  
conferring some power or office on the former spouse shall be 810  
interpreted as if the spouse failed to survive the decedent. If 811  
provisions are revoked solely by this section, they shall be 812

deemed to be revived by the testator's remarriage with the former spouse or upon the termination of a separation agreement executed by them. 813  
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(F) A bond, agreement, or covenant made by a testator, for a valuable consideration, to convey property previously devised or bequeathed in a will does not revoke the devise or bequest. The property passes by the devise or bequest, subject to the remedies on the bond, agreement, or covenant, for a specific performance or otherwise, against the devisees or legatees, that might be had by law against the heirs of the testator, or the testator's next of kin, if the property had descended to them. 816  
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(G) A testator's revocation of a will shall be valid only if the testator, at the time of the revocation, has the same capacity as the law requires for the execution of a will. 824  
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(H) As used in this section: 827

(1) "Trust with powers created by or available to the former spouse" means a trust that is revocable by the former spouse, with respect to which the former spouse has a power of withdrawal, or with respect to which the former spouse may take a distribution that is not subject to an ascertainable standard but does not mean a trust in which those powers of the former spouse are revoked by section ~~1339.62~~ 5815.31 of the Revised Code or similar provisions in the law of another state. 828  
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(2) "Ascertainable standard" means a standard that is related to a trust beneficiary's health, maintenance, support, or education. 836  
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**Sec. 2109.24.** The probate court at any time may accept the resignation of any fiduciary upon the fiduciary's proper accounting, if the fiduciary was appointed by, is under the control of, or is accountable to the court. 839  
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If a fiduciary fails to make and file an inventory as 843  
required by sections 2109.58, 2111.14, and 2115.02 of the Revised 844  
Code or to render a just and true account of the fiduciary's 845  
administration at the times required by section 2109.301, 846  
2109.302, or 2109.303 of the Revised Code, and if the failure 847  
continues for thirty days after the fiduciary has been notified by 848  
the court of the expiration of the relevant time, the fiduciary 849  
forthwith may be removed by the court and shall receive no 850  
allowance for the fiduciary's services unless the court enters 851  
upon its journal its findings that the delay was necessary and 852  
reasonable. 853

The court may remove any ~~such~~ fiduciary, after giving the 854  
fiduciary not less than ten days' notice, for habitual 855  
drunkenness, neglect of duty, incompetency, or fraudulent conduct, 856  
because the interest of the property, testamentary trust, or 857  
estate that the fiduciary is responsible for administering demands 858  
it, or for any other cause authorized by law. 859

The court may remove a testamentary trustee upon the written 860  
application of more than one-half of the persons having an 861  
interest in the estate controlled by the testamentary trustee, but 862  
the testamentary trustee is not to be considered as a person 863  
having an interest in the estate under the proceedings; except 864  
that no testamentary trustee appointed under a will shall be 865  
removed upon such written application unless for a good cause. 866

**Sec. 2109.37.** (A) Except as otherwise provided by law, 867  
including division (D) of this section, or by the instrument 868  
creating the trust, a fiduciary having funds belonging to a trust 869  
which are to be invested may invest them in the following: 870

(1) Bonds or other obligations of the United States or of 871  
this state; 872

(2) Bonds or other interest-bearing obligations of any 873  
county, municipal corporation, school district, or other legally 874  
constituted political taxing subdivision within the state, 875  
provided that such county, municipal corporation, school district, 876  
or other subdivision has not defaulted in the payment of the 877  
interest on any of its bonds or interest-bearing obligations, for 878  
more than one hundred twenty days during the ten years immediately 879  
preceding the investment by the fiduciary in the bonds or other 880  
obligations, and provided that such county, municipal corporation, 881  
school district, or other subdivision, is not, at the time of the 882  
investment, in default in the payment of principal or interest on 883  
any of its bonds or other interest-bearing obligations; 884

(3) Bonds or other interest-bearing obligations of any other 885  
state of the United States which, within twenty years prior to the 886  
making of such investment, has not defaulted for more than ninety 887  
days in the payment of principal or interest on any of its bonds 888  
or other interest-bearing obligations; 889

(4) Any bonds issued by or for federal land banks and any 890  
debentures issued by or for federal intermediate credit banks 891  
under the "Federal Farm Loan Act of 1916," 39 Stat. 360, 12 892  
U.S.C.A. 641, as amended; or any debentures issued by or for banks 893  
for cooperatives under the "Farm Credit Act of 1933," 48 Stat. 894  
257, 12 U.S.C.A. 131, as amended; 895

(5) Notes which are: (a) secured by a first mortgage on real 896  
estate held in fee and located in the state, improved by a unit 897  
designed principally for residential use for not more than four 898  
families or by a combination of such dwelling unit and business 899  
property, the area designed or used for nonresidential purposes 900  
not to exceed fifty per cent of the total floor area; (b) secured 901  
by a first mortgage on real estate held in fee and located in the 902  
state, improved with a building designed for residential use for 903  
more than four families or with a building used primarily for 904

business purposes, if the unpaid principal of the notes secured by  
such mortgage does not exceed ten per cent of the value of the  
estate or trust or does not exceed five thousand dollars,  
whichever is greater; or (c) secured by a first mortgage on an  
improved farm held in fee and located in the state, provided that  
such mortgage requires that the buildings on the mortgaged  
property shall be well insured against loss by fire, and so kept,  
for the benefit of the mortgagee, until the debt is paid, and  
provided that the unpaid principal of the notes secured by the  
mortgage shall not exceed fifty per cent of the fair value of the  
mortgaged real estate at the time the investment is made, and the  
notes shall be payable not more than five years after the date on  
which the investment in them is made; except that the unpaid  
principal of the notes may equal sixty per cent of the fair value  
of the mortgaged real estate at the time the investment is made,  
and may be payable over a period of fifteen years following the  
date of the investment by the fiduciary if regular installment  
payments are required sufficient to amortize four per cent or more  
of the principal of the outstanding notes per annum and if the  
unpaid principal and interest become due and payable at the option  
of the holder upon any default in the payment of any installment  
of interest or principal upon the notes, or of taxes, assessments,  
or insurance premiums upon the mortgaged premises or upon the  
failure to cure any such default within any grace period provided  
therein not exceeding ninety days in duration;

(6) Life, endowment, or annuity contracts of legal reserve  
life insurance companies regulated by sections 3907.01 to 3907.21,  
3909.01 to 3909.17, 3911.01 to 3911.24, 3913.01 to 3913.10,  
3915.01 to 3915.15, and 3917.01 to 3917.05 of the Revised Code,  
and licensed by the superintendent of insurance to transact  
business within the state, provided that the purchase of contracts  
authorized by this division shall be limited to executors or the

successors to their powers when specifically authorized by will	937
and to guardians and trustees, which contracts may be issued on	938
the life of a ward, a beneficiary of a trust fund, or according to	939
a will, or upon the life of a person in whom such ward or	940
beneficiary has an insurable interest and the contracts shall be	941
drawn by the insuring company so that the proceeds shall be the	942
sole property of the person whose funds are so invested;	943
(7) Notes or bonds secured by mortgages and insured by the	944
federal housing administrator or debentures issued by such	945
administrator;	946
(8) Obligations issued by a federal home loan bank created	947
under the "Federal Home Loan Bank Act of 1932," 47 Stat. 725, 12	948
U.S.C.A. 1421, as amended;	949
(9) Shares and certificates or other evidences of deposits	950
issued by a federal savings and loan association organized and	951
incorporated under the "Home Owners' Loan Act of 1933," 48 Stat.	952
128, 12 U.S.C.A. 1461, as amended, to the extent and only to the	953
extent that those shares or certificates or other evidences of	954
deposits are insured pursuant to the "Financial Institutions	955
Reform, Recovery, and Enforcement Act of 1989," 103 Stat. 183, 12	956
U.S.C.A. 1811, as amended;	957
(10) Bonds issued by the home owners' loan corporation	958
created under the "Home Owners' Act of 1933," 48 Stat. 128, 12	959
U.S.C.A. 1461, as amended;	960
(11) Obligations issued by the national mortgage association	961
created under the "National Housing Act," 48 Stat. 1246 (1934), 12	962
U.S.C.A. 1701, as amended;	963
(12) Shares and certificates or other evidences of deposits	964
issued by a domestic savings and loan association organized under	965
the laws of the state, which association has obtained insurance of	966
accounts pursuant to the "Financial Institutions Reform, Recovery,	967



and Enforcement Act of 1989," 103 Stat. 183, 12 U.S.C.A. 1811, as  
amended, or as may be otherwise provided by law, only to the  
extent that such evidences of deposits are insured under that act,  
as amended;

(13) Shares and certificates or other evidences of deposits  
issued by a domestic savings and loan association organized under  
the laws of the state, provided that no fiduciary may invest such  
deposits except with the approval of the probate court, and then  
in an amount not to exceed the amount which the fiduciary is  
permitted to invest under division (A)(12) of this section;

(14) In savings accounts in, or certificates or other  
evidences of deposits issued by, a national bank located in the  
state or a state bank located in and organized under the laws of  
the state by depositing the funds in the bank, and such national  
or state bank when itself acting in a fiduciary capacity may  
deposit the funds in savings accounts in, or certificates or other  
evidences of deposits issued by, its own savings department or any  
bank subsidiary corporation owned or controlled by the bank  
holding company that owns or controls such national or state bank;  
provided that no deposit shall be made by any fiduciary,  
individual, or corporate, unless the deposits of the depository  
bank are insured by the federal deposit insurance corporation  
created under the "Federal Deposit Insurance Corporation Act of  
1933," 48 Stat. 162, 12 U.S.C. 264, as amended, and provided that  
the deposit of the funds of any one trust in any such savings  
accounts in, or certificates or other evidences of deposits issued  
by, any one bank shall not exceed the sum insured under that act,  
as amended;

(15) Obligations consisting of notes, bonds, debentures, or  
equipment trust certificates issued under an indenture, which are  
the direct obligations, or in the case of equipment trust  
certificates are secured by direct obligations, of a railroad or

industrial corporation, or a corporation engaged directly and  
primarily in the production, transportation, distribution, or sale  
of electricity or gas, or the operation of telephone or telegraph  
systems or waterworks, or in some combination of them; provided  
that the obligor corporation is one which is incorporated under  
the laws of the United States, any state, or the District of  
Columbia, and the obligations are rated at the time of purchase in  
the highest or next highest classification established by at least  
two standard rating services selected from a list of the standard  
rating services which shall be prescribed by the superintendent of  
financial institutions; provided that every such list shall be  
certified by the superintendent to the clerk of each probate court  
in the state, and shall continue in effect until a different list  
is prescribed and certified as provided in this division;

(16) Obligations issued, assumed, or guaranteed by the  
international finance corporation or by the international bank for  
reconstruction and development, the Asian development bank, the  
inter-American development bank, the African development bank, or  
other similar development bank in which the president, as  
authorized by congress and on behalf of the United States, has  
accepted membership, provided that the obligations are rated at  
the time of purchase in the highest or next highest classification  
established by at least one standard rating service selected from  
a list of standard rating services which shall be prescribed by  
the superintendent of financial institutions;

(17) Securities of any investment company, as defined in and  
registered under sections 3 and 8 of the "Investment Company Act  
of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8, that are  
invested exclusively in forms of investment or in instruments that  
are fully collateralized by forms of investment in which the  
fiduciary is permitted to invest pursuant to divisions (A)(1) to  
(16) of this section, provided that, in addition to such forms of

investment, the investment company may, for the purpose of 1032  
reducing risk of loss or of stabilizing investment returns, engage 1033  
in hedging transactions. 1034

(B) No administrator or executor may invest funds belonging 1035  
to an estate in any asset other than a direct obligation of the 1036  
United States that has a maturity date not exceeding one year from 1037  
the date of investment, or other than in a short-term investment 1038  
fund that is invested exclusively in obligations of the United 1039  
States or of its agencies, or primarily in such obligations and 1040  
otherwise only in variable demand notes, corporate money market 1041  
instruments including, but not limited to, commercial paper, or 1042  
fully collateralized repurchase agreements or other evidences of 1043  
indebtedness that are payable on demand or generally have a 1044  
maturity date not exceeding ninety-one days from the date of 1045  
investment, except with the approval of the probate court or with 1046  
the permission of the instruments creating the trust. 1047

(C)(1) In addition to the investments allowed by this 1048  
section, a guardian or trustee, with the approval of the court, 1049  
may invest funds belonging to the trust in productive real estate 1050  
located within the state, provided that neither the guardian nor 1051  
the trustee nor any member of the family of either has any 1052  
interest in such real estate or in the proceeds of the purchase 1053  
price. The title to any real estate so purchased by a guardian 1054  
must be taken in the name of the ward. 1055

(2) Notwithstanding the provisions of division (C)(1) of this 1056  
section, the court may permit the funds to be used to purchase or 1057  
acquire a home for the ward or an interest in a home for the ward 1058  
in which a member of the ward's family may have an interest. 1059

(D) If the fiduciary is a trustee appointed by and 1060  
accountable to the probate court, the fiduciary shall invest the 1061  
trust's assets pursuant to the requirements and standards set 1062

forth in ~~sections 1339.52 to 1339.61~~ of the Revised Code Ohio 1063  
Uniform Prudent Investor Act. 1064

**Sec. 2109.62.** (A)(1) Upon the filing of a motion by a trustee 1065  
with the court that has jurisdiction over the trust, upon the 1066  
provision of reasonable notice to all beneficiaries who are known 1067  
and in being and who have vested or contingent interests in the 1068  
trust, and after holding a hearing, the court may terminate the 1069  
trust, in whole or in part, if it determines that all of the 1070  
following apply: 1071

(a) It is no longer economically feasible to continue the 1072  
trust. 1073

(b) The termination of the trust is for the benefit of the 1074  
beneficiaries. 1075

(c) The termination of the trust is equitable and practical. 1076

(d) The current value of the trust is less than one hundred 1077  
thousand dollars. 1078

(2) The existence of a spendthrift or similar provision in a 1079  
trust instrument or will does not preclude the termination of a 1080  
trust pursuant to this section. 1081

(B) If property is to be distributed from an estate being 1082  
probated to a trust and the termination of the trust pursuant to 1083  
this section does not clearly defeat the intent of the testator, 1084  
the probate court has jurisdiction to order the outright 1085  
distribution of the property or to make the property custodial 1086  
property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 1087  
Revised Code. A probate court may so order whether the application 1088  
for the order is made by an inter vivos trustee named in the will 1089  
of the decedent or by a testamentary trustee. 1090

(C) Upon the termination of a trust pursuant to this section, 1091  
the probate court shall order the distribution of the trust estate 1092

in accordance with any provision specified in the trust instrument 1093  
for the premature termination of the trust. If there is no 1094  
provision of that nature in the trust instrument, the probate 1095  
court shall order the distribution of the trust estate among the 1096  
beneficiaries of the trust in accordance with their respective 1097  
beneficial interests and in a manner that the court determines to 1098  
be equitable. For purposes of ordering the distribution of the 1099  
trust estate among the beneficiaries of the trust under this 1100  
division, the court shall consider all of the following: 1101

(1) The existence of any agreement among the beneficiaries 1102  
with respect to their beneficial interests; 1103

(2) The actuarial values of the separate beneficial interests 1104  
of the beneficiaries; 1105

(3) Any expression of preference of the beneficiaries that is 1106  
contained in the trust instrument. 1107

~~(D) Unless otherwise represented or bound, a minor, an 1108  
incapacitated or unborn person, or a person whose identity or 1109  
location is unknown and is not reasonably ascertainable may be 1110  
represented by or bound by another person who has a substantially 1111  
identical interest in the trust as that minor, incapacitated or 1112  
unborn person, or person whose identity or location is unknown and 1113  
is not reasonably ascertainable, but only to the extent that there 1114  
is no conflict of interest between the person who is represented 1115  
or bound and the person who represents or binds that person. As 1116  
used in this division, "minor" means a person who is under 1117  
eighteen years of age. 1118~~

**Sec. 2109.68.** Allocation of receipts and expenditures between 1119  
principal and income by an executor, administrator, or 1120  
testamentary trustee shall be as prescribed in sections ~~1340.40~~ 1121  
5812.01 to ~~1340.91~~ 5812.52 of the Revised Code. 1122

Sec. 2109.69. (A) Subject to division (B) of this section, 1123  
the provisions of Chapters 5801. to 5811. of the Revised Code 1124  
apply to testamentary trusts except to the extent that any 1125  
provision of those chapters conflicts with any provision of 1126  
Chapter 2109. of the Revised Code, or with any other provision of 1127  
the Revised Code, that applies specifically to testamentary trusts 1128  
and except to the extent that any provision of Chapters 5801. to 1129  
5811. of the Revised Code is clearly inapplicable to testamentary 1130  
trusts. 1131

(B) Section 5808.13 of the Revised Code applies to 1132  
testamentary trusts whether or not that section conflicts with any 1133  
provision of Chapter 2109. of the Revised Code or any other 1134  
provision of the Revised Code that applies specifically to 1135  
testamentary trusts. 1136

**Sec. 2111.131.** (A) The probate court may enter an order that 1137  
authorizes a person under a duty to pay or deliver money or 1138  
personal property to a minor who does not have a guardian of the 1139  
person and estate or a guardian of the estate, to perform that 1140  
duty in amounts not exceeding five thousand dollars annually, by 1141  
paying or delivering the money or property to any of the 1142  
following: 1143

(1) The guardian of the person only of the minor; 1144

(2) The minor's natural guardians, if any, as determined 1145  
pursuant to section 2111.08 of the Revised Code; 1146

(3) The ~~minor himself~~ minor's own self; 1147

(4) Any person who has the care and custody of the minor and 1148  
with whom the minor resides, other than a guardian of the person 1149  
only or a natural guardian; 1150

(5) A financial institution incident to a deposit in a 1151

federally insured savings account in the sole name of the minor; 1152

(6) A custodian designated by the court in its order, for the 1153  
minor under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 1154  
Revised Code. 1155

(B) An order entered pursuant to division (A) of this section 1156  
authorizes the person or entity specified in it, to receive the 1157  
money or personal property on behalf of the minor from the person 1158  
under the duty to pay or deliver it, in amounts not exceeding five 1159  
thousand dollars annually. Money or personal property so received 1160  
by guardians of the person only, natural guardians, and custodians 1161  
as described in division (A)(4) of this section may be used by 1162  
them only for the support, maintenance, or education of the minor 1163  
involved. The order of the court is prima-facie evidence that a 1164  
guardian of the person only, a natural guardian, or a custodian as 1165  
described in division (A)(4) of this section has the authority to 1166  
use the money or personal property received. 1167

(C) A person who pays or delivers moneys or personal property 1168  
in accordance with a court order entered pursuant to division (A) 1169  
of this section is not responsible for the proper application of 1170  
the moneys or property by the recipient. 1171

**Sec. 2113.861.** Except as provided in section ~~1339.45~~ 5815.27 1172  
of the Revised Code, the generation-skipping transfer tax imposed 1173  
by Chapter 13 of subtitle B of the Internal Revenue Code of 1986, 1174  
100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, and the 1175  
generation-skipping tax levied by division (B) of section 5731.181 1176  
of the Revised Code shall be apportioned in the manner described 1177  
in section 2113.86 of the Revised Code. 1178

**Sec. 2305.22.** Sections 2305.03 to 2305.21, 1302.98, and 1179  
1304.35 of the Revised Code, respecting lapse of time as a bar to 1180  
suit, do not apply in the case of ~~a continuing and subsisting~~ 1181

~~trust, nor to~~ an action by a vendee of real property, in 1182  
possession thereof, to obtain a conveyance of ~~it~~ the real 1183  
property. 1184

**Sec. 5111.15.** If a recipient of medical assistance is the 1185  
beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 1186  
of the Revised Code, then, notwithstanding any contrary provision 1187  
of this chapter or of a rule adopted pursuant to this chapter, 1188  
divisions (C) and (D) of that section shall apply in determining 1189  
the assets or resources of the recipient, the recipient's estate, 1190  
the settlor, or the settlor's estate and to claims arising under 1191  
this chapter against the recipient, the recipient's estate, the 1192  
settlor, or the settlor's estate. 1193

**Sec. 5111.151.** (A) This section applies to eligibility 1194  
determinations for all cases involving medical assistance provided 1195  
pursuant to this chapter, qualified medicare beneficiaries, 1196  
specified low-income medicare beneficiaries, qualifying 1197  
individuals-1, qualifying individuals-2, and medical assistance 1198  
for covered families and children. 1199

(B) As used in this section: 1200

(1) "Trust" means any arrangement in which a grantor 1201  
transfers real or personal property to a trust with the intention 1202  
that it be held, managed, or administered by at least one trustee 1203  
for the benefit of the grantor or beneficiaries. "Trust" includes 1204  
any legal instrument or device similar to a trust. 1205

(2) "Legal instrument or device similar to a trust" includes, 1206  
but is not limited to, escrow accounts, investment accounts, 1207  
partnerships, contracts, and other similar arrangements that are 1208  
not called trusts under state law but are similar to a trust and 1209  
to which all of the following apply: 1210

(a) The property in the trust is held, managed, retained, or 1211



administered by a trustee.	1212
(b) The trustee has an equitable, legal, or fiduciary duty to hold, manage, retain, or administer the property for the benefit of the beneficiary.	1213 1214 1215
(c) The trustee holds identifiable property for the beneficiary.	1216 1217
(3) "Grantor" is a person who creates a trust, including all of the following:	1218 1219
(a) An individual;	1220
(b) An individual's spouse;	1221
(c) A person, including a court or administrative body, with legal authority to act in place of or on behalf of an individual or an individual's spouse;	1222 1223 1224
(d) A person, including a court or administrative body, that acts at the direction or on request of an individual or the individual's spouse.	1225 1226 1227
(4) "Beneficiary" is a person or persons, including a grantor, who benefits in some way from a trust.	1228 1229
(5) "Trustee" is a person who manages a trust's principal and income for the benefit of the beneficiaries.	1230 1231
(6) "Person" has the same meaning as in section 1.59 of the Revised Code and includes an individual, corporation, business trust, estate, trust, partnership, and association.	1232 1233 1234
(7) "Applicant" is an individual who applies for medical assistance benefits or the individual's spouse.	1235 1236
(8) "Recipient" is an individual who receives medical assistance benefits or the individual's spouse.	1237 1238
(9) "Revocable trust" is a trust that can be revoked by the grantor or the beneficiary, including all of the following, even	1239 1240

if the terms of the trust state that it is irrevocable:	1241
(a) A trust that provides that the trust can be terminated only by a court;	1242 1243
(b) A trust that terminates on the happening of an event, but only if the event occurs at the direction or control of the grantor, beneficiary, or trustee.	1244 1245 1246
(10) "Irrevocable trust" is a trust that cannot be revoked by the grantor or terminated by a court and that terminates only on the occurrence of an event outside of the control or direction of the beneficiary or grantor.	1247 1248 1249 1250
(11) "Payment" is any disbursement from the principal or income of the trust, including actual cash, noncash or property disbursements, or the right to use and occupy real property.	1251 1252 1253
(12) "Payments to or for the benefit of the applicant or recipient" is a payment to any person resulting in a direct or indirect benefit to the applicant or recipient.	1254 1255 1256
(13) "Testamentary trust" is a trust that is established by a will and does not take effect until after the death of the person who created the trust.	1257 1258 1259
(C) If an applicant or recipient is a beneficiary of a trust, the county department of job and family services shall determine what type of trust it is and shall treat the trust in accordance with the appropriate provisions of this section and rules adopted by the department of job and family services governing trusts. The county department of job and family services may determine that the trust or portion of the trust is one of the following:	1260 1261 1262 1263 1264 1265 1266
(1) A countable resource;	1267
(2) Countable income;	1268
(3) A countable resource and countable income;	1269

(4) Not a countable resource or countable income.	1270
(D)(1) A trust or legal instrument or device similar to a trust shall be considered a medicaid qualifying trust if all of the following apply:	1271 1272 1273
(a) The trust was established on or prior to August 10, 1993.	1274
(b) The trust was not established by a will.	1275
(c) The trust was established by an applicant or recipient.	1276
(d) The applicant or recipient is or may become the beneficiary of all or part of the trust.	1277 1278
(e) Payment from the trust is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the applicant or recipient.	1279 1280 1281
(2) If a trust meets the requirement of division (D)(1) of this section, the amount of the trust that is considered by the county department of job and family services as an available resource to the applicant or recipient shall be the maximum amount of payments permitted under the terms of the trust to be distributed to the applicant or recipient, assuming the full exercise of discretion by the trustee or trustees. The maximum amount shall include only amounts that are permitted to be distributed but are not distributed from either the income or principal of the trust.	1282 1283 1284 1285 1286 1287 1288 1289 1290 1291
(3) Amounts that are actually distributed from a <del>Medicaid</del> <u>medicaid</u> qualifying trust to a beneficiary for any purpose shall be treated in accordance with rules adopted by the department of job and family services governing income.	1292 1293 1294 1295
(4) Availability of a medicaid qualifying trust shall be considered without regard to any of the following:	1296 1297
(a) Whether or not the trust is irrevocable or was established for purposes other than to enable a grantor to qualify	1298 1299

for medicaid, medical assistance for covered families and 1300  
children, or as a qualified medicare beneficiary, specified 1301  
low-income medicare beneficiary, qualifying individual-1, or 1302  
qualifying individual-2; 1303

(b) Whether or not the trustee actually exercises discretion. 1304

(5) If any real or personal property is transferred to a 1305  
medicaid qualifying trust that is not distributable to the 1306  
applicant or recipient, the transfer shall be considered an 1307  
improper transfer of resources and shall be subject to rules 1308  
adopted by the department of job and family services governing 1309  
improper transfers of resources. 1310

(6) The baseline date for the look-back period for transfers 1311  
of assets involving a medicaid qualifying trust shall be the date 1312  
on which the applicant or recipient is both institutionalized and 1313  
first applies for medical assistance. The following conditions 1314  
also apply to look-back periods for transfers of assets involving 1315  
medicaid qualifying trusts: 1316

(a) If a medicaid qualifying trust is a revocable trust and a 1317  
portion of the trust is distributed to someone other than the 1318  
applicant or recipient for the benefit of someone other than the 1319  
applicant or recipient, the distribution shall be considered an 1320  
improper transfer of resources. The look-back period shall be 1321  
sixty months from the baseline date. The transfer shall be 1322  
considered to have taken place on the date on which the payment to 1323  
someone other than the applicant or recipient was made. 1324

(b) If a medicaid qualifying trust is an irrevocable trust 1325  
and a portion of the trust is not distributable to the applicant 1326  
or recipient, the trust shall be treated as an improper transfer 1327  
of resources. The look-back period shall be sixty months from the 1328  
baseline date. The transfer is considered to have been made as of 1329  
the later of the date the trust was established or the date on 1330

which payment to the applicant or recipient was foreclosed. The 1331  
value of the assets shall not be reduced by any payments from the 1332  
trust that may be made from these unavailable assets at a later 1333  
date. 1334

(c) If a medicaid qualifying trust is an irrevocable trust 1335  
and a portion or all of the trust may be disbursed to or for the 1336  
benefit of the applicant or recipient, any payment that is made to 1337  
another person other than the applicant or recipient shall be 1338  
considered an improper transfer of resources. The look-back period 1339  
shall be thirty-six months from the baseline date. The transfer 1340  
shall be considered to have been made as of the date of payment to 1341  
the other person. 1342

(E)(1) A trust or legal instrument or device similar to a 1343  
trust shall be considered a self-settled trust if all of the 1344  
following apply: 1345

(a) The trust was established on or after August 11, 1993. 1346

(b) The trust was not established by a will. 1347

(c) The trust was established by an applicant or recipient, 1348  
spouse of an applicant or recipient, or a person, including a 1349  
court or administrative body, with legal authority to act in place 1350  
of or on behalf of an applicant, recipient, or spouse, or acting 1351  
at the direction or on request of an applicant, recipient, or 1352  
spouse. 1353

(2) A trust that meets the requirements of division (E)(1) of 1354  
this section and is a revocable trust shall be treated by the 1355  
county department of job and family services as follows: 1356

(a) The corpus of the trust shall be considered a resource 1357  
available to the applicant or recipient. 1358

(b) Payments from the trust to or for the benefit of the 1359  
applicant or recipient shall be considered unearned income of the 1360

applicant or recipient. 1361

(c) Any other payments from the trust shall be considered an 1362  
improper transfer of resources and shall be subject to rules 1363  
adopted by the department of job and family services governing 1364  
improper transfers of resources. 1365

(3) A trust that meets the requirements of division (E)(1) of 1366  
this section and is an irrevocable trust shall be treated by the 1367  
county department of job and family services as follows: 1368

(a) If there are any circumstances under which payment from 1369  
the trust could be made to or for the benefit of the applicant or 1370  
recipient, including a payment that can be made only in the 1371  
future, the portion from which payments could be made shall be 1372  
considered a resource available to the applicant or recipient. The 1373  
county department of job and family services shall not take into 1374  
account when payments can be made. 1375

(b) Any payment that is actually made to or for the benefit 1376  
of the applicant or recipient from either the corpus or income 1377  
shall be considered unearned income. 1378

(c) If a payment is made to someone other than to the 1379  
applicant or recipient and the payment is not for the benefit of 1380  
the applicant or recipient, the payment shall be considered an 1381  
improper transfer of resources and shall be subject to rules 1382  
adopted by the department of job and family services governing 1383  
improper transfers of resources. 1384

(d) The date of the transfer shall be the later of the date 1385  
of establishment of the trust or the date of the occurrence of the 1386  
event. 1387

(e) When determining the value of the transferred resource 1388  
under this provision, the value of the trust shall be its value on 1389  
the date payment to the applicant or recipient was foreclosed. 1390

(f) Any income earned or other resources added subsequent to 1391  
the foreclosure date shall be added to the total value of the 1392  
trust. 1393

(g) Any payments to or for the benefit of the applicant or 1394  
recipient after the foreclosure date but prior to the application 1395  
date shall be subtracted from the total value. Any other payments 1396  
shall not be subtracted from the value. 1397

(h) Any addition of resources after the foreclosure date 1398  
shall be considered a separate transfer. 1399

(4) If a trust is funded with assets of another person or 1400  
persons in addition to assets of the applicant or recipient, the 1401  
applicable provisions of this section and rules adopted by the 1402  
department of job and family services governing trusts shall apply 1403  
only to the portion of the trust attributable to the applicant or 1404  
recipient. 1405

(5) The availability of a self-settled trust shall be 1406  
considered without regard to any of the following: 1407

(a) The purpose for which the trust is established; 1408

(b) Whether the trustees have exercised or may exercise 1409  
discretion under the trust; 1410

(c) Any restrictions on when or whether distributions may be 1411  
made from the trust; 1412

(d) Any restrictions on the use of distributions from the 1413  
trust. 1414

(6) The baseline date for the look-back period for transfers 1415  
of assets involving a self-settled trust shall be the date on 1416  
which the applicant or recipient is both institutionalized and 1417  
first applies for medical assistance. The following conditions 1418  
also apply to look-back periods for transfers of assets involving 1419  
self-settled trusts: 1420

(a) If a self-settled trust is a revocable trust and a portion of the trust is distributed to someone other than the applicant or recipient for the benefit of someone other than the applicant or recipient, the distribution shall be considered an improper transfer of resources. The look-back period shall be sixty months from the baseline date. The transfer shall be considered to have taken place on the date on which the payment to someone other than the applicant or recipient was made.

(b) If a self-settled trust is an irrevocable trust and a portion of the trust is not distributable to the applicant or recipient, the trust shall be treated as an improper transfer of resources. The look-back period shall be sixty months from the baseline date. The transfer is considered to have been made as of the later of the date the trust was established or the date on which payment to the applicant or recipient was foreclosed. The value of these assets shall not be reduced by any payments from the trust that may be made from these unavailable assets at a later date.

(c) If a self-settled trust is an irrevocable trust and a portion or all of the trust may be disbursed to or for the benefit of the applicant or recipient, any payment that is made to another person other than the applicant or recipient shall be considered an improper transfer of resources. The look-back period shall be thirty-six months from the baseline date. The transfer shall be considered to have been made as of the date of payment to the other person.

(F) The principal or income from any of the following shall be exempt from being counted as a resource by a county department of job and family services:

(1)(a) A special needs trust that meets all of the following requirements:



(i) The trust contains assets of an applicant or recipient 1452  
under sixty-five years of age and may contain the assets of other 1453  
individuals. 1454

(ii) The applicant or recipient is disabled as defined in 1455  
rules adopted by the department of job and family services. 1456

(iii) The trust is established for the benefit of the 1457  
applicant or recipient by a parent, grandparent, legal guardian, 1458  
or a court. 1459

(iv) The trust requires that on the death of the applicant or 1460  
recipient the state will receive all amounts remaining in the 1461  
trust up to an amount equal to the total amount of medical 1462  
assistance paid on behalf of the applicant or recipient. 1463

(b) If a special needs trust meets the requirements of 1464  
division (F)(1)(a) of this section and has been established for a 1465  
disabled applicant or recipient under sixty-five years of age, the 1466  
exemption for the trust granted pursuant to division (F) of this 1467  
section shall continue after the disabled applicant or recipient 1468  
becomes sixty-five years of age if the applicant or recipient 1469  
continues to be disabled as defined in rules adopted by the 1470  
department of job and family services. Except for income earned by 1471  
the trust, the grantor shall not add to or otherwise augment the 1472  
trust after the applicant or recipient attains sixty-five years of 1473  
age. An addition or augmentation of the trust by the applicant or 1474  
recipient with the applicant's own assets after the applicant or 1475  
recipient attains sixty-five years of age shall be treated as an 1476  
improper transfer of resources. 1477

(c) Cash distributions to the applicant or recipient shall be 1478  
counted as unearned income. All other distributions from the trust 1479  
shall be treated as provided in rules adopted by the department of 1480  
job and family services governing in-kind income. 1481

(d) Transfers of assets to a special needs trust shall not be 1482

treated as an improper transfer of resources. Assets held prior to	1483
the transfer to the trust shall be considered as countable assets	1484
or countable income or countable assets and income.	1485
(2)(a) A qualifying income trust that meets all of the	1486
following requirements:	1487
(i) The trust is composed only of pension, social security,	1488
and other income to the applicant or recipient, including	1489
accumulated interest in the trust.	1490
(ii) The income is received by the individual and the right	1491
to receive the income is not assigned or transferred to the trust.	1492
(iii) The trust requires that on the death of the applicant	1493
or recipient the state will receive all amounts remaining in the	1494
trust up to an amount equal to the total amount of medical	1495
assistance paid on behalf of the applicant or recipient.	1496
(b) No resources shall be used to establish or augment the	1497
trust.	1498
(c) If an applicant or recipient has irrevocably transferred	1499
or assigned the applicant's or recipient's right to receive income	1500
to the trust, the trust shall not be considered a qualifying	1501
income trust by the county department of job and family services.	1502
(d) Income placed in a qualifying income trust shall not be	1503
counted in determining an applicant's or recipient's eligibility	1504
for medical assistance. The recipient of the funds may place any	1505
income directly into a qualifying income trust without those funds	1506
adversely affecting the applicant's or recipient's eligibility for	1507
medical assistance. Income generated by the trust that remains in	1508
the trust shall not be considered as income to the applicant or	1509
recipient.	1510
(e) All income placed in a qualifying income trust shall be	1511
combined with any countable income not placed in the trust to	1512

arrive at a base income figure to be used for spend down 1513  
calculations. 1514

(f) The base income figure shall be used for post-eligibility 1515  
deductions, including personal needs allowance, monthly income 1516  
allowance, family allowance, and medical expenses not subject to 1517  
third party payment. Any income remaining shall be used toward 1518  
payment of patient liability. Payments made from a qualifying 1519  
income trust shall not be combined with the base income figure for 1520  
post-eligibility calculations. 1521

(g) The base income figure shall be used when determining the 1522  
spend down budget for the applicant or recipient. Any income 1523  
remaining after allowable deductions are permitted as provided 1524  
under rules adopted by the department of job and family services 1525  
shall be considered the applicant's or recipient's spend down 1526  
liability. 1527

(3)(a) A pooled trust that meets all of the following 1528  
requirements: 1529

(i) The trust contains the assets of the applicant or 1530  
recipient of any age who is disabled as defined in rules adopted 1531  
by the department of job and family services. 1532

(ii) The trust is established and managed by a nonprofit 1533  
association. 1534

(iii) A separate account is maintained for each beneficiary 1535  
of the trust but, for purposes of investment and management of 1536  
funds, the trust pools the funds in these accounts. 1537

(iv) Accounts in the trust are established by the applicant 1538  
or recipient, the applicant's or recipient's parent, grandparent, 1539  
or legal guardian, or a court solely for the benefit of 1540  
individuals who are disabled. 1541

(v) The trust requires that, to the extent that any amounts 1542

remaining in the beneficiary's account on the death of the 1543  
beneficiary are not retained by the trust, the trust pay to the 1544  
state the amounts remaining in the trust up to an amount equal to 1545  
the total amount of medical assistance paid on behalf of the 1546  
beneficiary. 1547

(b) Cash distributions to the applicant or recipient shall be 1548  
counted as unearned income. All other distributions from the trust 1549  
shall be treated as provided in rules adopted by the department of 1550  
job and family services governing in-kind income. 1551

(c) Transfers of assets to a pooled trust shall not be 1552  
treated as an improper transfer of resources. Assets held prior to 1553  
the transfer to the trust shall be considered as countable assets, 1554  
countable income, or countable assets and income. 1555

(4) A supplemental services trust that meets the requirements 1556  
of section ~~1339.51~~ 5815.28 of the Revised Code and to which all of 1557  
the following apply: 1558

(a) A person may establish a supplemental services trust 1559  
pursuant to section ~~1339.51~~ 5815.28 of the Revised Code only for 1560  
another person who is eligible to receive services through one of 1561  
the following agencies: 1562

(i) The department of mental retardation and developmental 1563  
disabilities; 1564

(ii) A county board of mental retardation and developmental 1565  
disabilities; 1566

(iii) The department of mental health; 1567

(iv) A board of alcohol, drug addiction, and mental health 1568  
services. 1569

(b) A county department of job and family services shall not 1570  
determine eligibility for another agency's program. An applicant 1571  
or recipient shall do one of the following: 1572

(i) Provide documentation from one of the agencies listed in 1573  
division (F)(4)(a) of this section that establishes that the 1574  
applicant or recipient was determined to be eligible for services 1575  
from the agency at the time of the creation of the trust; 1576

(ii) Provide an order from a court of competent jurisdiction 1577  
that states that the applicant or recipient was eligible for 1578  
services from one of the agencies listed in division (F)(4)(a) of 1579  
this section at the time of the creation of the trust. 1580

(c) At the time the trust is created, the trust principal 1581  
does not exceed the maximum amount permitted. The maximum amount 1582  
permitted in calendar year 2002 is two hundred fourteen thousand 1583  
dollars. Each year thereafter, the maximum amount permitted is the 1584  
prior year's amount plus two thousand dollars. 1585

(d) A county department of job and family services shall 1586  
review the trust to determine whether it complies with the 1587  
provisions of section ~~1339.51~~ 5815.28 of the Revised Code. 1588

(e) Payments from supplemental services trusts shall be 1589  
exempt as long as the payments are for supplemental services as 1590  
defined in rules adopted by the department of job and family 1591  
services. All supplemental services shall be purchased by the 1592  
trustee and shall not be purchased through direct cash payments to 1593  
the beneficiary. 1594

(f) If a trust is represented as a supplemental services 1595  
trust and a county department of job and family services 1596  
determines that the trust does not meet the requirements provided 1597  
in division (F)(4) of this section and section ~~1339.51~~ 5815.28 of 1598  
the Revised Code, the county department of job and family services 1599  
shall not consider it an exempt trust. 1600

(G)(1) A trust or legal instrument or device similar to a 1601  
trust shall be considered a trust established by an individual for 1602  
the benefit of the applicant or recipient if all of the following 1603

apply: 1604

(a) The trust is created by a person other than the applicant 1605  
or recipient. 1606

(b) The trust names the applicant or recipient as a 1607  
beneficiary. 1608

(c) The trust is funded with assets or property in which the 1609  
applicant or recipient has never held an ownership interest prior 1610  
to the establishment of the trust. 1611

(2) Any portion of a trust that meets the requirements of 1612  
division (G)(1) of this section shall be an available resource 1613  
only if the trust permits the trustee to expend principal, corpus, 1614  
or assets of the trust for the applicant's or recipient's medical 1615  
care, care, comfort, maintenance, health, welfare, general well 1616  
being, or any combination of these purposes. 1617

(3) A trust that meets the requirements of division (G)(1) of 1618  
this section shall be considered an available resource even if the 1619  
trust contains any of the following types of provisions: 1620

(a) A provision that prohibits the trustee from making 1621  
payments that would supplant or replace medical assistance or 1622  
other public assistance; 1623

(b) A provision that prohibits the trustee from making 1624  
payments that would impact or have an effect on the applicant's or 1625  
recipient's right, ability, or opportunity to receive medical 1626  
assistance or other public assistance; 1627

(c) A provision that attempts to prevent the trust or its 1628  
corpus or principal from being counted as an available resource. 1629

(4) A trust that meets the requirements of division (G)(1) of 1630  
this section shall not be counted as an available resource if at 1631  
least one of the following circumstances applies: 1632

(a) If a trust contains a clear statement requiring the 1633

trustee to preserve a portion of the trust for another beneficiary 1634  
or remainderman, that portion of the trust shall not be counted as 1635  
an available resource. Terms of a trust that grant discretion to 1636  
preserve a portion of the trust shall not qualify as a clear 1637  
statement requiring the trustee to preserve a portion of the 1638  
trust. 1639

(b) If a trust contains a clear statement requiring the 1640  
trustee to use a portion of the trust for a purpose other than 1641  
medical care, care, comfort, maintenance, welfare, or general well 1642  
being of the applicant or recipient, that portion of the trust 1643  
shall not be counted as an available resource. Terms of a trust 1644  
that grant discretion to limit the use of a portion of the trust 1645  
shall not qualify as a clear statement requiring the trustee to 1646  
use a portion of the trust for a particular purpose. 1647

(c) If a trust contains a clear statement limiting the 1648  
trustee to making fixed periodic payments, the trust shall not be 1649  
counted as an available resource and payments shall be treated in 1650  
accordance with rules adopted by the department of job and family 1651  
services governing income. Terms of a trust that grant discretion 1652  
to limit payments shall not qualify as a clear statement requiring 1653  
the trustee to make fixed periodic payments. 1654

(d) If a trust contains a clear statement that requires the 1655  
trustee to terminate the trust if it is counted as an available 1656  
resource, the trust shall not be counted as an available resource. 1657  
Terms of a trust that grant discretion to terminate the trust do 1658  
not qualify as a clear statement requiring the trustee to 1659  
terminate the trust. 1660

(e) If a person obtains a judgment from a court of competent 1661  
jurisdiction that expressly prevents the trustee from using part 1662  
or all of the trust for the medical care, care, comfort, 1663  
maintenance, welfare, or general well being of the applicant or 1664

recipient, the trust or that portion of the trust subject to the court order shall not be counted as a resource.

(f) If a trust is specifically exempt from being counted as an available resource by a provision of the Revised Code, rules, or federal law, the trust shall not be counted as a resource.

(g) If an applicant or recipient presents a final judgment from a court demonstrating that the applicant or recipient was unsuccessful in a civil action against the trustee to compel payments from the trust, the trust shall not be counted as an available resource.

(h) If an applicant or recipient presents a final judgment from a court demonstrating that in a civil action against the trustee the applicant or recipient was only able to compel limited or periodic payments, the trust shall not be counted as an available resource and payments shall be treated in accordance with rules adopted by the department of job and family services governing income.

(i) If an applicant or recipient provides written documentation showing that the cost of a civil action brought to compel payments from the trust would be cost prohibitive, the trust shall not be counted as an available resource.

(5) Any actual payments to the applicant or recipient from a trust that meet the requirements of division (G)(1) of this section, including trusts that are not counted as an available resource, shall be treated as provided in rules adopted by the department of job and family services governing income. Payments to any person other than the applicant or recipient shall not be considered income to the applicant or recipient. Payments from the trust to a person other than the applicant or recipient shall not be considered an improper transfer of assets.



**Sec. 5119.01.** The director of mental health is the chief executive and administrative officer of the department of mental health. The director may establish procedures for the governance of the department, conduct of its employees and officers, performance of its business, and custody, use, and preservation of departmental records, papers, books, documents, and property. Whenever the Revised Code imposes a duty upon or requires an action of the department or any of its institutions, the director shall perform the action or duty in the name of the department, except that the medical director appointed pursuant to section 5119.07 of the Revised Code shall be responsible for decisions relating to medical diagnosis, treatment, rehabilitation, quality assurance, and the clinical aspects of the following: licensure of hospitals and residential facilities, research, community mental health plans, and delivery of mental health services.

The director shall:

(A) Adopt rules for the proper execution of the powers and duties of the department with respect to the institutions under its control, and require the performance of additional duties by the officers of the institutions as necessary to fully meet the requirements, intents, and purposes of this chapter. In case of an apparent conflict between the powers conferred upon any managing officer and those conferred by such sections upon the department, the presumption shall be conclusive in favor of the department.

(B) Adopt rules for the nonpartisan management of the institutions under the department's control. An officer or employee of the department or any officer or employee of any institution under its control who, by solicitation or otherwise, exerts influence directly or indirectly to induce any other officer or employee of the department or any of its institutions to adopt the exerting officer's or employee's political views or

to favor any particular person, issue, or candidate for office 1726  
shall be removed from the exerting officer's or employee's office 1727  
or position, by the department in case of an officer or employee, 1728  
and by the governor in case of the director. 1729

(C) Appoint such employees, including the medical director, 1730  
as are necessary for the efficient conduct of the department, and 1731  
prescribe their titles and duties; 1732

(D) Prescribe the forms of affidavits, applications, medical 1733  
certificates, orders of hospitalization and release, and all other 1734  
forms, reports, and records that are required in the 1735  
hospitalization or admission and release of all persons to the 1736  
institutions under the control of the department, or are otherwise 1737  
required under this chapter or Chapter 5122. of the Revised Code; 1738

(E) Contract with hospitals licensed by the department under 1739  
section 5119.20 of the Revised Code for the care and treatment of 1740  
mentally ill patients, or with persons, organizations, or agencies 1741  
for the custody, supervision, care, or treatment of mentally ill 1742  
persons receiving services elsewhere than within the enclosure of 1743  
a hospital operated under section 5119.02 of the Revised Code; 1744

(F) Exercise the powers and perform the duties relating to 1745  
community mental health facilities and services that are assigned 1746  
to the director under this chapter and Chapter 340. of the Revised 1747  
Code; 1748

(G) Develop and implement clinical evaluation and monitoring 1749  
of services that are operated by the department; 1750

(H) At the director's discretion, adopt rules establishing 1751  
standards for the adequacy of services provided by community 1752  
mental health facilities, and certify the compliance of such 1753  
facilities with the standards for the purpose of authorizing their 1754  
participation in the health care plans of health insuring 1755  
corporations under Chapter 1751. and sickness and accident 1756

insurance policies issued under Chapter 3923. of the Revised Code. 1757  
The director shall cease to certify such compliance two years 1758  
after ~~the effective date of this amendment~~ June 6, 2001. The 1759  
director shall rescind the rules after the date the director 1760  
ceases to certify such compliance. 1761

(I) Adopt rules establishing standards for the performance of 1762  
evaluations by a forensic center or other psychiatric program or 1763  
facility of the mental condition of defendants ordered by the 1764  
court under section 2919.271, or 2945.371 of the Revised Code, and 1765  
for the treatment of defendants who have been found incompetent to 1766  
stand trial and ordered by the court under section 2945.38, 1767  
2945.39, 2945.401, or 2945.402 of the Revised Code to receive 1768  
treatment in facilities; 1769

(J) On behalf of the department, have the authority and 1770  
responsibility for entering into contracts and other agreements; 1771

(K) Prepare and publish regularly a state mental health plan 1772  
that describes the department's philosophy, current activities, 1773  
and long-term and short-term goals and activities; 1774

(L) Adopt rules in accordance with Chapter 119. of the 1775  
Revised Code specifying the supplemental services that may be 1776  
provided through a trust authorized by section ~~1339.51~~ 5815.28 of 1777  
the Revised Code; 1778

(M) Adopt rules in accordance with Chapter 119. of the 1779  
Revised Code establishing standards for the maintenance and 1780  
distribution to a beneficiary of assets of a trust authorized by 1781  
section ~~1339.51~~ 5815.28 of the Revised Code. 1782

**Sec. 5119.17.** (A) As used in this section, "supplemental 1783  
services" has the same meaning as in section ~~1339.51~~ 5815.28 of 1784  
the Revised Code. 1785

(B) There is hereby created in the state treasury the 1786

services fund for individuals with mental illness. On the death of 1787  
the beneficiary of a trust created pursuant to section ~~1339.51~~ 1788  
5815.28 of the Revised Code, the portion of the remaining assets 1789  
of the trust specified in the trust instrument shall be deposited 1790  
to the credit of the fund. Money credited to the fund shall be 1791  
used for individuals with mental illness. 1792

Supplemental services may be provided through the department 1793  
or boards of alcohol, drug addiction, and mental health services. 1794  
In accordance with Chapter 119. of the Revised Code, the 1795  
department of mental health may adopt any rules necessary to 1796  
implement this section. 1797

**Sec. 5121.04.** (A) The department of mental retardation and 1798  
developmental disabilities shall investigate the financial 1799  
condition of the residents in institutions, residents whose care 1800  
or treatment is being paid for in a private facility or home under 1801  
the control of the department, and of the relatives named in 1802  
section 5121.06 of the Revised Code as liable for the support of 1803  
such residents, in order to determine the ability of any resident 1804  
or liable relatives to pay for the support of the resident and to 1805  
provide suitable clothing as required by the superintendent of the 1806  
institution. 1807

(B) The department shall follow the provisions of this 1808  
division in determining the ability to pay of a resident or the 1809  
resident's liable relatives and the amount to be charged such 1810  
resident or liable relatives. 1811

(1) Subject to divisions (B)(10) and (11) of this section, a 1812  
resident without dependents shall be liable for the full 1813  
applicable cost. A resident without dependents who has a gross 1814  
annual income equal to or exceeding the sum of the full applicable 1815  
cost, plus fifty dollars per month, regardless of the source of 1816  
such income, shall pay currently the full amount of the applicable 1817

cost; if the resident's gross annual income is less than such sum, 1818  
not more than fifty dollars per month shall be kept for personal 1819  
use by or on behalf of the resident, except as permitted in the 1820  
state plan for providing medical assistance under Title XIX of the 1821  
"Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as 1822  
amended, and the balance shall be paid currently on the resident's 1823  
support. Subject to divisions (B)(10) and (11) of this section, 1824  
the estate of a resident without dependents shall pay currently 1825  
any remaining difference between the applicable cost and the 1826  
amounts prescribed in this section, or shall execute an agreement 1827  
with the department for payment to be made at some future date 1828  
under terms suitable to the department. However, no security 1829  
interest, mortgage, or lien shall be taken, granted, or charged 1830  
against any principal residence of a resident without dependents 1831  
under an agreement or otherwise to secure support payments, and no 1832  
foreclosure actions shall be taken on security interests, 1833  
mortgages, or liens taken, granted, or charged against principal 1834  
residences of residents prior to October 7, 1977. 1835

(2) The ability to pay of a resident with dependents, or of a 1836  
liable relative of a resident either with or without dependents, 1837  
shall be determined in accordance with the resident's or liable 1838  
relative's income or other assets, the needs of others who are 1839  
dependent on such income and other assets for support, and, if 1840  
applicable, divisions (B)(10) and (11) of this section. 1841

For the first thirty days of care and treatment of each 1842  
admission, but in no event for more than thirty days in any 1843  
calendar year, the resident with dependents or the liable relative 1844  
of a resident either with or without dependents shall be charged 1845  
an amount equal to the percentage of the average applicable cost 1846  
determined in accordance with the schedule of adjusted gross 1847  
annual income contained after this paragraph. After such first 1848  
thirty days of care and treatment, such resident or such liable 1849

relative shall be charged an amount equal to the percentage of a  
base support rate of four dollars per day for residents, as  
determined in accordance with the schedule of gross annual income  
contained after this paragraph, or in accordance with division  
(B)(5) of this section. Beginning January 1, 1978, the department  
shall increase the base rate when the consumer price index average  
is more than 4.0 for the preceding calendar year by not more than  
the average for such calendar year.

Adjusted Gross Annual 1858

Income of Resident 1859

or Liable Relative (FN a) Number of Dependents (FN b) 1860

8 or 1861

1 2 3 4 5 6 7 more 1862

Rate of Support (In Percentages) 1863

\$15,000 or less -- -- -- -- -- -- -- -- 1864

15,001 to 17,500 20 -- -- -- -- -- -- -- 1865

17,501 to 20,000 25 20 -- -- -- -- -- -- 1866

20,001 to 21,000 30 25 20 -- -- -- -- -- 1867

21,001 to 22,000 35 30 25 20 -- -- -- -- 1868

22,001 to 23,000 40 35 30 25 20 -- -- -- 1869

23,001 to 24,000 45 40 35 30 25 20 -- -- 1870

24,001 to 25,000 50 45 40 35 30 25 20 -- 1871

25,001 to 26,000 55 50 45 40 35 30 25 20 1872

26,001 to 27,000 60 55 50 45 40 35 30 25 1873

27,001 to 28,000 70 60 55 50 45 40 35 30 1874

28,001 to 30,000 80 70 60 55 50 45 40 35 1875

30,001 to 40,000 90 80 70 60 55 50 45 40 1876

40,001 and over 100 90 80 70 60 55 50 45 1877

Footnote a. The resident or relative shall furnish a copy of 1878

the resident's or relative's federal income tax return as evidence 1879

of gross annual income. 1880

Footnote b. The number of dependents includes the liable 1881

relative but excludes a resident in an institution. "Dependent" 1882  
includes any person who receives more than half the person's 1883  
support from the resident or the resident's liable relative. 1884

(3) A resident or liable relative having medical, funeral, or 1885  
related expenses in excess of four per cent of the adjusted gross 1886  
annual income, which expenses were not covered by insurance, may 1887  
adjust such gross annual income by reducing the adjusted gross 1888  
annual income by the full amount of such expenses. Proof of such 1889  
expenses satisfactory to the department must be furnished. 1890

(4) Additional dependencies may be claimed if: 1891

(a) The liable relative is blind; 1892

(b) The liable relative is over sixty-five; 1893

(c) A child is a college student with expenses in excess of 1894  
fifty dollars per month; 1895

(d) The services of a housekeeper, costing in excess of fifty 1896  
dollars per month, are required if the person who normally keeps 1897  
house for minor children is the resident. 1898

(5) If with respect to any resident with dependents there is 1899  
chargeable under division (B)(2) of this section less than fifty 1900  
per cent of the applicable cost or, if the base support rate was 1901  
used, less than fifty per cent of the amount determined by use of 1902  
the base support rate, and if with respect to such resident there 1903  
is a liable relative who has an estate having a value in excess of 1904  
fifteen thousand dollars or if such resident has a dependent and 1905  
an estate having a value in excess of fifteen thousand dollars, 1906  
there shall be paid with respect to such resident a total of fifty 1907  
per cent of the applicable cost or the base support rate amount, 1908  
as the case may be, on a current basis or there shall be executed 1909  
with respect to such resident an agreement with the department for 1910  
payment to be made at some future date under terms suitable to the 1911

department. 1912

(6) When a person has been a resident for fifteen years and 1913  
the support charges for which a relative is liable have been paid 1914  
for the fifteen-year period, the liable relative shall be relieved 1915  
of any further support charges. 1916

(7) The department shall accept voluntary payments from 1917  
residents or liable relatives whose incomes are below the minimum 1918  
shown in the schedule set forth in this division. The department 1919  
also shall accept voluntary payments in excess of required amounts 1920  
from both liable and nonliable relatives. 1921

(8) If a resident is covered by an insurance policy, or other 1922  
contract that provides for payment of expenses for care and 1923  
treatment for mental retardation or other developmental disability 1924  
at or from an institution or facility (including a community 1925  
service unit under the jurisdiction of the department), the other 1926  
provisions of this section, except divisions (B)(8), (10), and 1927  
(11) of this section, and of section 5121.01 of the Revised Code 1928  
shall be suspended to the extent that such insurance policy or 1929  
other contract is in force, and such resident shall be charged the 1930  
full amount of the applicable cost. Any insurance carrier or other 1931  
third party payor providing coverage for such care and treatment 1932  
shall pay for this support obligation in an amount equal to the 1933  
lesser of either the applicable cost or the benefits provided 1934  
under the policy or other contract. Whether or not an insured, 1935  
owner of, or other person having an interest in such policy or 1936  
other contract is liable for support payments under other 1937  
provisions of this chapter, the insured, policy owner, or other 1938  
person shall assign payment directly to the department of all 1939  
assignable benefits under the policy or other contract and shall 1940  
pay over to the department, within ten days of receipt, all 1941  
insurance or other benefits received as reimbursement or payment 1942  
for expenses incurred by the resident or for any other reason. If 1943



the insured, policy owner, or other person refuses to assign such 1944  
payment to the department or refuses to pay such received 1945  
reimbursements or payments over to the department within ten days 1946  
of receipt, the insured's, policy owners', or other person's total 1947  
liability for the services equals the applicable statutory 1948  
liability for payment for the services as determined under other 1949  
provisions of this chapter, plus the amounts payable under the 1950  
terms of the policy or other contract. In no event shall this 1951  
total liability exceed the full amount of the applicable cost. 1952  
Upon its request, the department is entitled to a court order that 1953  
compels the insured, owner of, or other person having an interest 1954  
in the policy or other contract to comply with the assignment 1955  
requirements of this division or that itself serves as a legally 1956  
sufficient assignment in compliance with such requirements. 1957  
Notwithstanding section 5123.89 of the Revised Code and any other 1958  
law relating to confidentiality of records, the managing officer 1959  
of the institution or facility where a person is or has been a 1960  
resident shall disclose pertinent medical information concerning 1961  
the resident to the insurance carrier or other third party payor 1962  
in question, in order to effect collection from the carrier or 1963  
payor of the state's claim for care and treatment under this 1964  
division. For such disclosure, the managing officer is not subject 1965  
to any civil or criminal liability. 1966

(9) The rate to be charged for pre-admission care, 1967  
after-care, day-care, or routine consultation and treatment 1968  
services shall be based upon the ability of the resident or the 1969  
resident's liable relatives to pay. When it is determined by the 1970  
department that a charge shall be made, such charge shall be 1971  
computed as provided in divisions (B)(1) and (2) of this section. 1972

(10) If a resident with or without dependents is the 1973  
beneficiary of a trust created pursuant to section ~~1339.51~~ 5815.28 1974  
of the Revised Code, then, notwithstanding any contrary provision 1975

of this chapter or of a rule adopted pursuant to this chapter, 1976  
divisions (C) and (D) of that section shall apply in determining 1977  
the assets or resources of the resident, the resident's estate, 1978  
the settlor, or the settlor's estate and to claims arising under 1979  
this chapter against the resident, the resident's estate, the 1980  
settlor, or the settlor's estate. 1981

(11) If the department waives the liability of an individual 1982  
and the individual's liable relatives pursuant to section 5123.194 1983  
of the Revised Code, the liability of the individual and relative 1984  
ceases in accordance with the waiver's terms. 1985

(C) The department may enter into agreements with a resident 1986  
or a liable relative for support payments to be made in the 1987  
future. However, no security interest, mortgage, or lien shall be 1988  
taken, granted, or charged against any principal family residence 1989  
of a resident with dependents or a liable relative under an 1990  
agreement or otherwise to secure support payments, and no 1991  
foreclosure actions shall be taken on security interests, 1992  
mortgages or liens taken, granted, or charged against principal 1993  
residences of residents or liable relatives prior to October 7, 1994  
1977. 1995

(D) The department shall make all investigations and 1996  
determinations required by this section within ninety days after a 1997  
resident is admitted to an institution under the department's 1998  
control and immediately shall notify by mail the persons liable of 1999  
the amount to be charged. 2000

(E) All actions to enforce the collection of payments agreed 2001  
upon or charged by the department shall be commenced within six 2002  
years after the date of default of an agreement to pay support 2003  
charges or the date such payment becomes delinquent. If a payment 2004  
is made pursuant to an agreement which is in default, a new 2005  
six-year period for actions to enforce the collection of payments 2006  
under such agreement shall be computed from the date of such 2007

payment. For purposes of this division an agreement is in default 2008  
or a payment is delinquent if a payment is not made within thirty 2009  
days after it is incurred or a payment, pursuant to an agreement, 2010  
is not made within thirty days after the date specified for such 2011  
payment. In all actions to enforce the collection of payment for 2012  
the liability for support, every court of record shall receive 2013  
into evidence the proof of claim made by the state together with 2014  
all debts and credits, and it shall be prima-facie evidence of the 2015  
facts contained in it. 2016

**Sec. 5121.10.** Upon the death of a resident or former resident 2017  
of any institution under the jurisdiction of the department of 2018  
mental retardation and developmental disabilities, or upon the 2019  
death of a person responsible under section 5121.06 of the Revised 2020  
Code for the support of a resident, the department may waive the 2021  
presentation of any claim for support against the estate of such 2022  
decedent, when in its judgment an otherwise dependent person will 2023  
be directly benefited by the estate. Claims against an estate for 2024  
support of a resident are subject to section ~~1339.51~~ 5815.28 and 2025  
Chapter 2117. of the Revised Code, and shall be treated, and may 2026  
be barred, the same as the claims of other creditors of the 2027  
estate, pursuant to that section or chapter. 2028

The department may accept from a guardian or trustee of a 2029  
resident a contract agreeing to pay to the state from the property 2030  
of the guardian's or trustee's ward before or at the death of the 2031  
ward a fixed annual amount for the support of the ward while the 2032  
ward is a resident, with interest at four per cent per annum. A 2033  
copy of the contract shall be filed in the probate court of the 2034  
proper county and duly entered as a part of the records concerning 2035  
the ward. 2036

**Sec. 5121.30.** As used in sections 5121.30 to 5121.56 of the 2037

Revised Code:	2038
(A) "Community mental health services client" or "client"	2039
means a person receiving state-operated community mental health	2040
services.	2041
(B) "Countable assets" means all of the following:	2042
(1) Cash;	2043
(2) Bank deposits;	2044
(3) Securities;	2045
(4) Individual retirement accounts;	2046
(5) Qualified employer plans, including 401(k) and Keogh	2047
plans;	2048
(6) Annuities;	2049
(7) Funds in a trust created under section <del>1339.51</del> <u>5815.28</u> of	2050
the Revised Code;	2051
(8) Investment property and income;	2052
(9) The cash surrender values of life insurance policies;	2053
(10) Assets acquired by gift, bequest, devise, or	2054
inheritance;	2055
(11) Any other asset determined by the department of mental	2056
health to be equivalent to the assets enumerated in this division.	2057
(C) "Federal poverty level" or "FPL" means the income level	2058
represented by the poverty guidelines as revised annually by the	2059
United States department of health and human services in	2060
accordance with section 673(2) of the "Omnibus Reconciliation Act	2061
of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family	2062
size equal to the size of the family of the person whose income is	2063
being determined.	2064
(D) "Federal poverty guidelines" means the poverty guidelines	2065

as revised annually by the United States department of health and 2066  
human services in accordance with section 673(2) of the "Omnibus 2067  
Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, 2068  
as amended, for a family size equal to the size of the family of 2069  
the person whose income is being determined. 2070

(E) "Hospital" means an institution, hospital, or other place 2071  
established, controlled, or supervised by the department of mental 2072  
health under Chapter 5119. of the Revised Code. 2073

(F) "Liable relative" means all of the following: 2074

(1) A patient's spouse; 2075

(2) A patient's mother or father, or both, if the patient is 2076  
under eighteen years of age; 2077

(3) A patient's guardian. 2078

(G) "Patient" means a person admitted to a hospital for 2079  
inpatient care or treatment, including a person transferred to a 2080  
hospital from a state correctional institution or a person under 2081  
indictment or conviction who has been transferred to a hospital. 2082

**Sec. 5121.52.** On the death of a person who is a patient, or 2083  
has been a patient in a hospital, or on the death of a person 2084  
responsible under section 5121.34 of the Revised Code for the 2085  
support of a patient, the department of mental health may waive 2086  
the presentation of any claim for support against the estate of 2087  
such decedent, when in its judgment an otherwise dependent person 2088  
will be directly benefited by the estate. Claims against an estate 2089  
for support of a patient are subject to section ~~1339.51~~ 5815.28 2090  
and Chapter 2117. of the Revised Code, and shall be treated, and 2091  
may be barred, the same as the claims of other creditors of the 2092  
estate, pursuant to that section or chapter. 2093

The department of mental health may accept from a guardian or 2094  
trustee of a patient a contract agreeing to pay to the state from 2095

the property of the guardian's or trustee's ward before or at the 2096  
death of the ward a fixed annual amount for the support of the 2097  
ward while the ward is a patient, with interest at four per cent 2098  
per annum. A copy of the contract shall be filed in the probate 2099  
court of the proper county and duly entered as a part of the 2100  
records concerning the ward. 2101

**Sec. 5123.04.** (A) The director of mental retardation and 2102  
developmental disabilities is the executive head of the department 2103  
of mental retardation and developmental disabilities. All duties 2104  
conferred on the department and its institutions by law or by 2105  
order of the director shall be performed under such rules as the 2106  
director prescribes, and shall be under the director's control. 2107  
The director shall establish bylaws for the government of all 2108  
institutions under the jurisdiction of the department. Except as 2109  
otherwise is provided as to appointments by chiefs of divisions, 2110  
the director shall appoint such employees as are necessary for the 2111  
efficient conduct of the department, and shall prescribe their 2112  
titles and duties. If the director is not a licensed physician, 2113  
decisions relating to medical diagnosis and treatment shall be the 2114  
responsibility of a licensed physician appointed by the director. 2115

(B) The director shall adopt rules for the proper execution 2116  
of the powers and duties of the department. 2117

(C) The director shall adopt rules establishing standards 2118  
that mental retardation programs and facilities shall follow when 2119  
performing evaluations of the mental condition of defendants 2120  
ordered by the court under section 2919.271 or 2945.371 of the 2121  
Revised Code, and for the treatment of defendants who have been 2122  
found incompetent to stand trial under section 2945.38 of the 2123  
Revised Code, and certify the compliance of such programs and 2124  
facilities with the standards. 2125

(D) On behalf of the department, the director has the 2126

authority to, and responsibility for, entering into contracts and 2127  
other agreements. 2128

(E) The director shall adopt rules in accordance with Chapter 2129  
119. of the Revised Code that do all of the following: 2130

(1) Specify the supplemental services that may be provided 2131  
through a trust authorized by section ~~1339.51~~ 5815.28 of the 2132  
Revised Code; 2133

(2) Establish standards for the maintenance and distribution 2134  
to a beneficiary of assets of a trust authorized by section 2135  
~~1339.51~~ 5815.28 of the Revised Code. 2136

(F) The director shall provide monitoring of county boards of 2137  
mental retardation and developmental disabilities. 2138

**Sec. 5123.28.** (A) Except as otherwise provided in this 2139  
division, money or property deposited with managing officers of 2140  
institutions under the jurisdiction of the department of mental 2141  
retardation and developmental disabilities by any resident under 2142  
the department's control or by relatives, guardians, conservators, 2143  
and others for the special benefit of such resident, as well as 2144  
all other funds and all other income paid to the resident, to ~~his~~ 2145  
the resident's estate, or on ~~his~~ the resident's behalf, or paid to 2146  
the managing officer or to the institution as representative payee 2147  
or otherwise paid on the resident's behalf, shall remain in the 2148  
hands of such managing officers in appropriate accounts for use 2149  
accordingly. Each such managing officer shall keep itemized book 2150  
accounts of the receipt and disposition of such money and 2151  
property, which book shall be open at all times to the inspection 2152  
of the department. The director of mental retardation and 2153  
developmental disabilities shall adopt rules governing the 2154  
deposit, transfer, withdrawal, or investment of such funds and the 2155  
income of the funds, as well as rules under which such funds and 2156

income shall be paid by managing officers, institutions, or 2157  
district managers for the support of such residents pursuant to 2158  
Chapter 5121. of the Revised Code, or for their other needs. 2159

This division does not require, and shall not be construed as 2160  
requiring, the deposit of the principal or income of a trust 2161  
created pursuant to section ~~1339.51~~ 5815.28 of the Revised Code 2162  
with managing officers of institutions under the jurisdiction of 2163  
the department. 2164

(B) Whenever any resident confined in a state institution 2165  
under the jurisdiction of the department dies, escapes, or is 2166  
discharged from the institution, any personal funds of the 2167  
resident remain in the hands of the managing officer of the 2168  
institution, and no demand is made upon the managing officer by 2169  
the owner of the funds or ~~his~~ the owner's legally appointed 2170  
representative, the managing officer shall hold the funds in the 2171  
personal deposit fund for a period of at least one year during 2172  
which time the managing officer shall make every effort possible 2173  
to locate the owner or ~~his~~ the owner's legally appointed 2174  
representative. If, at the end of this period, no demand has been 2175  
made for the funds, the managing officer shall dispose of the 2176  
funds as follows: 2177

(1) All money in a personal deposit fund in excess of ten 2178  
dollars due for the support of a resident, shall be paid in 2179  
accordance with Chapter 5121. of the Revised Code. 2180

(2) All money in a personal deposit fund in excess of ten 2181  
dollars not due for the support of a resident, shall be placed to 2182  
the credit of the institution's local account designated as the 2183  
"industrial and entertainment" fund. 2184

(3) The first ten dollars to the credit of a resident shall 2185  
be placed to the credit of the institution's local account 2186  
designated as the "industrial and entertainment" fund. 2187



(C) Whenever any resident in any state institution subject to 2188  
the jurisdiction of the department dies, escapes, or is discharged 2189  
from the institution, any personal effects of the resident remain 2190  
in the hands of the managing officer of the institution, and no 2191  
demand is made upon the managing officer by the owner of the 2192  
personal effects or ~~his~~ the owner's legally appointed 2193  
representative, the managing officer shall hold and dispose of the 2194  
personal effects in the following manner. All the miscellaneous 2195  
personal effects shall be held for a period of at least one year, 2196  
during which time the managing officer shall make every effort 2197  
possible to locate the owner or ~~his~~ the owner's legal 2198  
representative. If, at the end of this period, no demand has been 2199  
made by the owner of the property or ~~his~~ the owner's legal 2200  
representative, the managing officer shall file with the county 2201  
recorder of the county of commitment of such owner, all deeds, 2202  
wills, contract mortgages, or assignments. The balance of the 2203  
personal effects shall be sold at public auction after being duly 2204  
advertised, and the funds turned over to the treasurer of state 2205  
for credit to the general revenue fund. If any of the property is 2206  
not of a type to be filed with the county recorder and is not 2207  
salable at public auction, the managing officer of the institution 2208  
shall destroy that property. 2209

**Sec. 5123.40.** There is hereby created in the state treasury 2210  
the services fund for individuals with mental retardation and 2211  
developmental disabilities. On the death of the beneficiary of a 2212  
trust created pursuant to section ~~1339.51~~ 5815.28 of the Revised 2213  
Code, the portion of the remaining assets of the trust specified 2214  
in the trust instrument shall be deposited to the credit of the 2215  
fund. 2216

Money credited to the fund shall be used for individuals with 2217  
mental retardation and developmental disabilities. In accordance 2218

with Chapter 119. of the Revised Code, the department of mental 2219  
retardation and developmental disabilities may adopt any rules 2220  
necessary to implement this section. 2221

Sec. 5801.01. As used in Chapters 5801. to 5811. of the 2222  
Revised Code: 2223

(A) "Action," with respect to an act of a trustee, includes a 2224  
failure to act. 2225

(B) "Ascertainable standard" means a standard relating to an 2226  
individual's health, education, support, or maintenance within the 2227  
meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal 2228  
Revenue Code. 2229

(C) "Beneficiary" means a person that has a present or future 2230  
beneficial interest in a trust, whether vested or contingent, or 2231  
that, in a capacity other than that of trustee, holds a power of 2232  
appointment over trust property, or a charitable organization that 2233  
is expressly designated in the terms of the trust to receive 2234  
distributions. "Beneficiary" does not include any charitable 2235  
organization that is not expressly designated in the terms of the 2236  
trust to receive distributions, but to whom the trustee may in its 2237  
discretion make distributions. 2238

(D) "Beneficiary surrogate" means a person, other than a 2239  
trustee, designated by the settlor in the trust instrument to 2240  
receive notices, information, and reports otherwise required to be 2241  
provided to a current beneficiary under divisions (B)(8) and (9) 2242  
of section 5801.04 of the Revised Code. 2243

(E) "Charitable trust" means a trust, or portion of a trust, 2244  
created for a charitable purpose described in division (A) of 2245  
section 5804.05 of the Revised Code. 2246

(F) "Current beneficiary" means a beneficiary that, on the 2247  
date the beneficiary's qualification is determined, is a 2248

<u>distributee or permissible distributee of trust income or</u>	2249
<u>principal.</u>	2250
<u>(G) "Environmental law" means a federal, state, or local law,</u>	2251
<u>rule, regulation, or ordinance relating to protection of the</u>	2252
<u>environment.</u>	2253
<u>(H) "Guardian of the estate" means a guardian appointed by a</u>	2254
<u>court to administer the estate of any individual or to serve as</u>	2255
<u>conservator of the property of an individual eighteen years of age</u>	2256
<u>or older under section 2111.021 of the Revised Code.</u>	2257
<u>(I) "Guardian of the person" means a guardian appointed by a</u>	2258
<u>court to make decisions regarding the support, care, education,</u>	2259
<u>health, and welfare of any individual or to serve as conservator</u>	2260
<u>of the person of an individual eighteen years of age or older</u>	2261
<u>under section 2111.021 of the Revised Code. "Guardian of the</u>	2262
<u>person" does not include a guardian ad litem.</u>	2263
<u>(J) "Internal Revenue Code" means the "Internal Revenue Code</u>	2264
<u>of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.</u>	2265
<u>(K) "Interests of the beneficiaries" means the beneficial</u>	2266
<u>interests provided in the terms of the trust.</u>	2267
<u>(L) "Jurisdiction," with respect to a geographic area,</u>	2268
<u>includes a state or country.</u>	2269
<u>(M) "Mandatory distribution" means a distribution of income</u>	2270
<u>or principal, including a distribution upon termination of the</u>	2271
<u>trust, that the trustee is required to make to a beneficiary under</u>	2272
<u>the terms of the trust. Mandatory distributions do not include</u>	2273
<u>distributions that a trustee is directed or authorized to make</u>	2274
<u>pursuant to a support or other standard, regardless of whether the</u>	2275
<u>terms of the trust provide that the trustee "may" or "shall" make</u>	2276
<u>the distributions pursuant to a support or other standard.</u>	2277
<u>(N) "Person" means an individual, corporation, business</u>	2278

trust, estate, trust, partnership, limited liability company, 2279  
association, joint venture, government, governmental agency or 2280  
instrumentality, public corporation, or any other legal or 2281  
commercial entity. 2282

(O) "Power of withdrawal" means a presently exercisable 2283  
general power of appointment other than a power exercisable by a 2284  
trustee that is limited by an ascertainable standard or that is 2285  
exercisable by another person only upon consent of the trustee or 2286  
a person holding an adverse interest. 2287

(P) "Property" means anything or any interest in anything 2288  
that may be the subject of ownership. 2289

(Q) "Qualified beneficiary" means a beneficiary to whom, on 2290  
the date the beneficiary's qualification is determined, any of the 2291  
following applies: 2292

(1) The beneficiary is a distributee or permissible 2293  
distributee of trust income or principal. 2294

(2) The beneficiary would be a distributee or permissible 2295  
distributee of trust income or principal if the interests of the 2296  
distributees described in division (Q)(1) of this section 2297  
terminated on that date, but the termination of those interests 2298  
would not cause the trust to terminate. 2299

(3) The beneficiary would be a distributee or permissible 2300  
distributee of trust income or principal if the trust terminated 2301  
on that date. 2302

(R) "Revocable," as applied to a trust, means revocable at 2303  
the time of determination by the settlor alone or by the settlor 2304  
with the consent of any person other than a person holding an 2305  
adverse interest. A trust's characterization as revocable is not 2306  
affected by the settlor's lack of capacity to exercise the power 2307  
of revocation, regardless of whether an agent of the settlor under 2308

a power of attorney, or a guardian of the person or estate of the settlor, is serving. 2309  
2310

(S) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion. 2311  
2312  
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2314  
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(T) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest. 2317  
2318  
2319

(U) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or an Indian tribe or band recognized by federal law or formally acknowledged by a state. 2320  
2321  
2322  
2323

(V) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding. 2324  
2325  
2326  
2327

(W) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust and any amendments to that instrument. 2328  
2329  
2330

(X) "Trustee" includes an original, additional, and successor trustee and a cotrustee. 2331  
2332

(Y)(1) "Wholly discretionary trust" means a trust to which all of the following apply: 2333  
2334

(a) The trust is irrevocable. 2335

(b) Distributions of income or principal from the trust may or shall be made to or for the benefit of the beneficiary only at the trustee's discretion. 2336  
2337  
2338

(c) The beneficiary does not have a power of withdrawal from the trust. 2339  
2340

(d) The terms of the trust use "sole," "absolute," "uncontrolled," or language of similar import to describe the trustee's discretion to make distributions to or for the benefit of the beneficiary. 2341  
2342  
2343  
2344

(e) The terms of the trust do not provide any standards to guide the trustee in exercising its discretion to make distributions to or for the benefit of the beneficiary. 2345  
2346  
2347

(f) The beneficiary is not the settlor, the trustee, or a cotrustee. 2348  
2349

(g) The beneficiary does not have the power to become the trustee or a cotrustee. 2350  
2351

(2) A trust may be a wholly discretionary trust with respect to one or more but less than all beneficiaries. 2352  
2353

(3) If a beneficiary has a power of withdrawal, the trust may be a wholly discretionary trust with respect to that beneficiary during any period in which the beneficiary may not exercise the power. During a period in which the beneficiary may exercise the power, both of the following apply: 2354  
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2356  
2357  
2358

(a) The portion of the trust the beneficiary may withdraw may not be a wholly discretionary trust with respect to that beneficiary; 2359  
2360  
2361

(b) The portion of the trust the beneficiary may not withdraw may be a wholly discretionary trust with respect to that beneficiary. 2362  
2363  
2364

(4) If the beneficiary and one or more others have made contributions to the trust, the portion of the trust attributable to the beneficiary's contributions may not be a wholly discretionary trust with respect to that beneficiary, but the 2365  
2366  
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2368

portion of the trust attributable to the contributions of others 2369  
may be a wholly discretionary trust with respect to that 2370  
beneficiary. If a beneficiary has a power of withdrawal, then upon 2371  
the lapse, release, or waiver of the power, the beneficiary is 2372  
treated as having made contributions to the trust only to the 2373  
extent the value of the property affected by the lapse, release, 2374  
or waiver exceeds the greatest of the following amounts: 2375

(a) The amount specified in section 2041(b)(2) or 2514(e) of 2376  
the Internal Revenue Code; 2377

(b) If the donor of the property subject to the beneficiary's 2378  
power of withdrawal is not married at the time of the transfer of 2379  
the property to the trust, the amount specified in section 2503(b) 2380  
of the Internal Revenue Code; 2381

(c) If the donor of the property subject to the beneficiary's 2382  
power of withdrawal is married at the time of the transfer of the 2383  
property to the trust, twice the amount specified in section 2384  
2503(b) of the Internal Revenue Code. 2385

(5) Notwithstanding divisions (Y)(1)(f) and (g) of this 2386  
section, a trust may be a wholly discretionary trust if the 2387  
beneficiary is, or has the power to become, a trustee only with 2388  
respect to the management or the investment of the trust assets, 2389  
and not with respect to making discretionary distribution 2390  
decisions. With respect to a trust established for the benefit of 2391  
an individual who is blind or disabled as defined in 42 U.S.C. 2392  
1382c(a)(2) or (3), as amended, a wholly discretionary trust may 2393  
include either or both of the following: 2394

(a) Precatory language regarding its intended purpose of 2395  
providing supplemental goods and services to or for the benefit of 2396  
the beneficiary, and not to supplant benefits from public 2397  
assistance programs; 2398

(b) A prohibition against providing food, clothing, and 2399

shelter to the beneficiary. 2400

Sec. 5801.011. Chapters 5801. to 5811. of the Revised Code 2401  
may be cited as the Ohio trust code. 2402

Sec. 5801.02. Except as otherwise provided in any provision 2403  
of Chapters 5801. to 5811. of the Revised Code, those chapters 2404  
apply to charitable and noncharitable inter vivos express trusts 2405  
and to trusts created pursuant to a statute, judgment, or decree 2406  
that requires the trust to be administered in the manner of an 2407  
express trust. Chapters 5801. to 5811. of the Revised Code apply 2408  
to testamentary trusts to the extent provided by section 2109.69 2409  
of the Revised Code. 2410

Sec. 5801.03. (A) Subject to division (B) of this section, a 2411  
person has knowledge of a fact if any of the following apply: 2412

(1) The person has actual knowledge of the fact. 2413

(2) The person has received notice or notification of the 2414  
fact. 2415

(3) From all the facts and circumstances known to the person 2416  
at the time in question, the person has reason to know the fact. 2417

(B) An organization that conducts activities through 2418  
employees has notice or knowledge of a fact involving a trust only 2419  
from the time an employee having responsibility to act for the 2420  
trust received the information or the information would have been 2421  
brought to the employee's attention if the organization had 2422  
exercised reasonable diligence. An organization exercises 2423  
reasonable diligence if it maintains reasonable routines for 2424  
communicating significant information to the employee having 2425  
responsibility to act for the trust and there is reasonable 2426  
compliance with the routines. Reasonable diligence does not 2427  
require an employee of the organization to communicate information 2428



unless the communication is part of the individual's regular 2429  
duties or the individual knows a matter involving the trust would 2430  
be materially affected by the information. 2431

Sec. 5801.04. (A) Except as otherwise provided in the terms 2432  
of the trust, Chapters 5801. to 5811. of the Revised Code govern 2433  
the duties and powers of a trustee, relations among trustees, and 2434  
the rights and interests of a beneficiary. 2435

(B) The terms of a trust prevail over any provision of 2436  
Chapters 5801. to 5811. of the Revised Code except the following: 2437

(1) The requirements for creating a trust; 2438

(2) The duty of a trustee to act in good faith and in 2439  
accordance with the purposes of the trust; 2440

(3) The requirement that the trust have a purpose that is 2441  
lawful, not contrary to public policy, and possible to achieve; 2442

(4) The power of the court to modify or terminate a trust 2443  
under sections 5804.10 to 5804.16 of the Revised Code; 2444

(5) The effect of a spendthrift provision and the rights of 2445  
certain creditors and assignees to reach a trust as provided in 2446  
Chapter 5805. of the Revised Code; 2447

(6) The power of the court under section 5807.02 of the 2448  
Revised Code to require, dispense with, or modify or terminate a 2449  
bond; 2450

(7) The power of the court under division (B) of section 2451  
5807.08 of the Revised Code to adjust a trustee's compensation 2452  
specified in the terms of the trust which is unreasonably low or 2453  
high; 2454

(8) Subject to division (C) of this section, the duty under 2455  
divisions (B)(2) and (3) of section 5808.13 of the Revised Code to 2456  
notify current beneficiaries of an irrevocable trust who have 2457

attained twenty-five years of age of the existence of the trust, 2458  
of the identity of the trustee, and of their right to request 2459  
trustee's reports; 2460

(9) Subject to division (C) of this section, the duty under 2461  
division (A) of section 5808.13 of the Revised Code to respond to 2462  
the request of a current beneficiary of an irrevocable trust for 2463  
trustee's reports and other information reasonably related to the 2464  
administration of a trust; 2465

(10) The effect of an exculpatory term under section 5810.08 2466  
of the Revised Code; 2467

(11) The rights under sections 5810.10 to 5810.13 of the 2468  
Revised Code of a person other than a trustee or beneficiary; 2469

(12) Periods of limitation for commencing a judicial 2470  
proceeding; 2471

(13) The power of the court to take any action and exercise 2472  
any jurisdiction that may be necessary in the interests of 2473  
justice; 2474

(14) The subject-matter jurisdiction of the court for 2475  
commencing a proceeding as provided in section 5802.03 of the 2476  
Revised Code. 2477

(C) With respect to one or more of the current beneficiaries, 2478  
the settlor, in the trust instrument, may waive or modify the 2479  
duties of the trustee described in divisions (B)(8) and (9) of 2480  
this section. The waiver or modification may be made only by the 2481  
settlor designating in the trust instrument one or more 2482  
beneficiary surrogates to receive any notices, information, or 2483  
reports otherwise required under those divisions to be provided to 2484  
the current beneficiaries. If the settlor makes a waiver or 2485  
modification pursuant to this division, the trustee shall provide 2486  
the notices, information, and reports to the beneficiary surrogate 2487

or surrogates in lieu of providing them to the current 2488  
beneficiaries. The beneficiary surrogate or surrogates shall act 2489  
in good faith to protect the interests of the current 2490  
beneficiaries for whom the notices, information, or reports are 2491  
received. A waiver or modification made under this division shall 2492  
be effective for so long as the beneficiary surrogate or 2493  
surrogates, or their successor or successors designated in 2494  
accordance with the terms of the trust instrument, act in that 2495  
capacity. 2496

Sec. 5801.05. The common law of trusts and principles of 2497  
equity continue to apply in this state, except to the extent 2498  
modified by Chapters 5801. to 5811. or another section of the 2499  
Revised Code. 2500

Sec. 5801.06. The law of the jurisdiction designated in the 2501  
terms of a trust determines the meaning and effect of the terms 2502  
unless the designation of that jurisdiction's law is contrary to a 2503  
strong public policy of the jurisdiction having the most 2504  
significant relationship to the matter at issue. In the absence of 2505  
a controlling designation in the terms of the trust, the law of 2506  
the jurisdiction having the most significant relationship to the 2507  
matter at issue determines the meaning and effect of the terms. 2508

Sec. 5801.07. (A) Without precluding other means for 2509  
establishing a sufficient connection with the designated 2510  
jurisdiction, the terms of a trust designating the principal place 2511  
of administration of the trust are valid and controlling if a 2512  
trustee's principal place of business is located in or a trustee 2513  
is a resident of the designated jurisdiction or if all or part of 2514  
the administration occurs in the designated jurisdiction. 2515

(B) A trustee is under a continuing duty to administer the 2516  
trust at a place appropriate to its purposes, its administration, 2517

and the interests of the beneficiaries. 2518

(C) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by division (B) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States. 2519  
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(D) The trustee shall notify the current beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of a proposed transfer shall include all of the following: 2524  
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(1) The name of the jurisdiction to which the principal place of administration is to be transferred; 2528  
2529

(2) The address and telephone number at the new location at which the trustee can be contacted; 2530  
2531

(3) An explanation of the reasons for the proposed transfer; 2532

(4) The date on which the trustee expects the proposed transfer to occur. 2533  
2534

(E) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 5807.04 of the Revised Code. 2535  
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**Sec. 5801.08.** (A) Notice to a person or the sending of a document to a person under Chapters 5801. to 5811. of the Revised Code shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message. 2540  
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(B) Notice otherwise required or a document otherwise 2548  
required to be sent under Chapters 5801. to 5811. of the Revised 2549  
Code is not required to be provided to a person whose identity or 2550  
location is unknown to and not reasonably ascertainable by the 2551  
trustee. 2552

(C) The person to be notified or sent a document may waive 2553  
notice or the sending of a document under Chapters 5801. to 5811. 2554  
of the Revised Code. 2555

(D) Notice of a judicial proceeding must be given as provided 2556  
in the applicable rules of civil procedure. 2557

**Sec. 5801.09.** (A) Whenever Chapters 5801. to 5811. of the 2558  
Revised Code require notice to current or qualified beneficiaries 2559  
of a trust, the trustee shall also give notice to any other 2560  
beneficiary who has sent the trustee a request for notice. 2561

(B) A person appointed to enforce a trust created for the 2562  
care of an animal or another noncharitable purpose as provided in 2563  
section 5804.08 or 5804.09 of the Revised Code has the rights of a 2564  
current beneficiary under Chapters 5801. to 5811. of the Revised 2565  
Code. 2566

**Sec. 5801.10.** (A) As used in this section, "creditor" means 2567  
any of the following: 2568

(1) A person holding a debt or security for a debt entered 2569  
into by a trustee on behalf of the trust; 2570

(2) A person holding a debt secured by one or more assets of 2571  
the trust; 2572

(3) A person having a claim against the trustee or the assets 2573  
of the trust under section 5805.06 of the Revised Code; 2574

(4) A person who has attached through legal process a 2575  
beneficiary's interest in the trust. 2576

(B) The parties to an agreement under this section shall be 2577  
all of the following, or their representatives under the 2578  
representation provisions of Chapter 5803. of the Revised Code, 2579  
except that only the settlor and any trustee are required to be 2580  
parties to an amendment of any revocable trust: 2581

(1) The settlor if living and if no adverse income or 2582  
transfer tax results would arise from the settlor's participation; 2583

(2) All beneficiaries; 2584

(3) All currently serving trustees; 2585

(4) Creditors, if their interest is to be affected by the 2586  
agreement. 2587

(C) The persons specified in division (B) of this section may 2588  
by written instrument enter into an agreement with respect to any 2589  
matter concerning the construction of, administration of, or 2590  
distributions under the trust instrument, the investment of income 2591  
or principal held by the trustee, or other matters. The agreement 2592  
is valid only to the extent that it does not effect a termination 2593  
of the trust before the date specified for the trust's termination 2594  
in the trust instrument, does not change the interests of the 2595  
beneficiaries in the trust except as necessary to effect a 2596  
modification described in division (C)(5) or (6) of this section, 2597  
and includes terms and conditions that could be properly approved 2598  
by the court under Chapters 5801. to 5811. of the Revised Code or 2599  
other applicable law. Matters that may be resolved by a private 2600  
settlement agreement include, but are not limited to, all of the 2601  
following: 2602

(1) Determining classes of creditors, beneficiaries, heirs, 2603  
next of kin, or other persons; 2604

(2) Resolving disputes arising out of the administration or 2605  
distribution under the trust instrument, including disputes over 2606

the construction of the language of the trust instrument or 2607  
construction of the language of other writings that affect the 2608  
trust instrument; 2609

(3) Granting to the trustee necessary or desirable powers not 2610  
granted in the trust instrument or otherwise provided by law, to 2611  
the extent that those powers either are not inconsistent with the 2612  
express provisions or purposes of the trust instrument or, if 2613  
inconsistent with the express provisions or purposes of the trust 2614  
instrument, are necessary for the due administration of the trust 2615  
instrument; 2616

(4) Modifying the trust instrument, if the modification is 2617  
not inconsistent with any dominant purpose or objective of the 2618  
trust; 2619

(5) Modifying the trust instrument in the manner required to 2620  
qualify the gift under the trust instrument for the charitable 2621  
estate or gift tax deduction permitted by federal law, including 2622  
the addition of mandatory governing instrument requirements for a 2623  
charitable remainder trust as required by the Internal Revenue 2624  
Code and regulations promulgated under it in any case in which all 2625  
parties interested in the trust have submitted written agreements 2626  
to the proposed changes or written disclaimer of interest; 2627

(6) Modifying the trust instrument in the manner required to 2628  
qualify any gift under the trust instrument for the estate tax 2629  
marital deduction available to noncitizen spouses, including the 2630  
addition of mandatory governing instrument requirements for a 2631  
qualified domestic trust under section 2056A of the Internal 2632  
Revenue Code and regulations promulgated under it in any case in 2633  
which all parties interested in the trust have submitted written 2634  
agreements to the proposed changes or written disclaimer of 2635  
interest; 2636

(7) Resolving any other matter that arises under Chapters 2637

5801. to 5811. of the Revised Code. 2638

(D) No agreement shall be entered into under this section 2639  
affecting the rights of a creditor without the creditor's consent 2640  
or affecting the collection rights of federal, state, or local 2641  
taxing authorities. 2642

(E) Any agreement entered into under this section that 2643  
complies with the requirements of division (C) of this section 2644  
shall be final and binding on the trustee, the settlor if living, 2645  
all beneficiaries, and their heirs, successors, and assigns. 2646

(F) Notwithstanding anything in this section, in division (D) 2647  
of section 5803.03 of the Revised Code, or in any other rule of 2648  
law to the contrary, a trustee serving under the trust instrument 2649  
shall only represent its own individual or corporate interests in 2650  
negotiating or entering into an agreement subject to this section. 2651  
No trustee serving under the trust instrument shall be considered 2652  
to represent any settlor, beneficiary, or the interests of any 2653  
settlor or beneficiary in negotiating or entering into an 2654  
agreement subject to this section. 2655

(G) Any party to a private settlement agreement entered into 2656  
under this section may request the court to approve the agreement, 2657  
to determine whether the representation as provided in Chapter 2658  
5803. of the Revised Code was adequate, and to determine whether 2659  
the agreement contains terms and conditions the court could have 2660  
properly approved. 2661

(H) If an agreement entered into under this section contains 2662  
a provision requiring binding arbitration of any disputes arising 2663  
under the agreement, the provision is enforceable. 2664

(I) Nothing in this section affects any of the following: 2665

(1) The right of a beneficiary to disclaim under section 2666  
5815.36 of the Revised Code; 2667



<u>(2) The termination or modification of a trust under section</u>	2668
<u>5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16</u>	2669
<u>of the Revised Code;</u>	2670
<u>(3) The ability of a trustee to divide or consolidate a trust</u>	2671
<u>under section 5804.17 of the Revised Code.</u>	2672
<u>(J) Nothing in this section restricts or limits the</u>	2673
<u>jurisdiction of any court to dispose of matters not covered by</u>	2674
<u>agreements under this section or to supervise the acts of trustees</u>	2675
<u>appointed by that court.</u>	2676
<u>(K) This section shall be liberally construed to favor the</u>	2677
<u>validity and enforceability of agreements entered into under it.</u>	2678
<u>(L) A trustee serving under the trust instrument is not</u>	2679
<u>liable to any third person arising from any loss due to that</u>	2680
<u>trustee's actions or inactions taken or omitted in good faith</u>	2681
<u>reliance on the terms of an agreement entered into under this</u>	2682
<u>section.</u>	2683
<u>(M) This section does not apply to any of the following:</u>	2684
<u>(1) A charitable trust that has one or more charitable</u>	2685
<u>organizations as qualified beneficiaries;</u>	2686
<u>(2) A charitable trust the terms of which authorize or direct</u>	2687
<u>the trustee to distribute trust income or principal to one or more</u>	2688
<u>charitable organizations to be selected by the trustee, or for one</u>	2689
<u>or more charitable purposes described in division (A) of section</u>	2690
<u>5804.05 of the Revised Code, if any of the following apply:</u>	2691
<u>(a) The distributions may be made on the date that an</u>	2692
<u>agreement under this section would be entered into.</u>	2693
<u>(b) The distributions could be made on the date that an</u>	2694
<u>agreement under this section would be entered into if the</u>	2695
<u>interests of the current beneficiaries of the trust terminated on</u>	2696
<u>that date, but the termination of those interests would not cause</u>	2697

<u>the trust to terminate.</u>	2698
<u>(c) The distributions could be made on the date that an agreement under this section would be entered into if the trust terminated on that date.</u>	2699 2700 2701
<u>Sec. 5802.01. (A) A court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.</u>	2702 2703 2704
<u>(B) An inter vivos trust is not subject to continuing judicial supervision unless ordered by the court. Trusts created pursuant to a section of the Revised Code or a judgment or decree of a court are subject to continuing judicial supervision to the extent provided by the section, judgment, or decree or by court order.</u>	2705 2706 2707 2708 2709 2710
<u>(C) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.</u>	2711 2712 2713
<u>Sec. 5802.02. (A) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.</u>	2714 2715 2716 2717 2718
<u>(B) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from the trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.</u>	2719 2720 2721 2722 2723 2724 2725
<u>(C) This section does not preclude other methods of obtaining</u>	2726

jurisdiction over a trustee, beneficiary, or other person 2727  
receiving property from the trust. 2728

Sec. 5802.03. The probate division of the court of common 2729  
pleas has concurrent jurisdiction with, and the same powers at law 2730  
and in equity as, the general division of the court of common 2731  
pleas to issue writs and orders and to hear and determine any 2732  
action that involves an inter vivos trust. 2733

Sec. 5803.01. (A) Notice to a person who may represent and 2734  
bind another person under this chapter has the same effect as if 2735  
notice were given directly to the other person. 2736

(B) The consent of a person who may represent and bind 2737  
another person under this chapter is binding on the person 2738  
represented unless the person represented objects to the 2739  
representation before the consent would otherwise have become 2740  
effective. 2741

(C) Except as otherwise provided in sections 5804.11 and 2742  
5806.02 of the Revised Code, a person who under this chapter may 2743  
represent a settlor who lacks capacity may receive notice and give 2744  
a binding consent on the settlor's behalf. 2745

(D) A settlor may not represent and bind a beneficiary under 2746  
this chapter with respect to the termination or modification of a 2747  
trust under division (A) of section 5804.11 of the Revised Code. 2748

Sec. 5803.02. To the extent there is no conflict of interest 2749  
between the holder of a general testamentary power of appointment 2750  
and the persons represented with respect to the particular 2751  
question or dispute, the holder may represent and bind persons 2752  
whose interests, as permissible appointees, takers in default, or 2753  
otherwise, are subject to the power. 2754

Sec. 5803.03. To the extent there is no conflict of interest 2755  
between the representative and the person represented or among 2756  
those being represented with respect to a particular question or 2757  
dispute, all of the following apply: 2758

(A) A guardian of the estate may represent and bind the 2759  
estate that the guardian of the estate controls. 2760

(B) A guardian of the person may represent and bind the ward 2761  
if a guardian of the estate has not been appointed. 2762

(C) An agent having authority to act with respect to the 2763  
particular question or dispute may represent and bind the 2764  
principal. 2765

(D) Except as provided in division (F) of section 5801.10 of 2766  
the Revised Code, a trustee may represent and bind the 2767  
beneficiaries of the trust. 2768

(E) A personal representative of a decedent's estate may 2769  
represent and bind persons interested in the estate. 2770

(F) A parent may represent and bind the parent's minor or 2771  
unborn child if neither a guardian for the child's estate or a 2772  
guardian of the person has been appointed. 2773

Sec. 5803.04. Unless otherwise represented, a minor, 2774  
incapacitated individual, unborn individual, or person whose 2775  
identity or location is unknown and not reasonably ascertainable 2776  
may be represented by and bound by another having a substantially 2777  
identical interest with respect to the particular question or 2778  
dispute, but only to the extent there is no conflict of interest 2779  
between the representative and the person represented. 2780

Sec. 5803.05. (A) If the court determines that an interest is 2781  
not represented under this chapter or that the otherwise available 2782

representation might be inadequate, the court may appoint a 2783  
representative to receive notice, give consent, and otherwise 2784  
represent, bind, and act on behalf of a minor, incapacitated 2785  
individual, unborn individual, or person whose identity or 2786  
location is unknown. A representative may be appointed to 2787  
represent several persons or interests. 2788

(B) A representative may act on behalf of the individual 2789  
represented with respect to any matter arising under Chapters 2790  
5801. to 5811. of the Revised Code, whether or not a judicial 2791  
proceeding concerning the trust is pending. 2792

(C) In making decisions, a representative may consider 2793  
general benefit accruing to the living members of the individual's 2794  
family. 2795

**Sec. 5804.01.** A trust may be created by any of the following 2796  
methods: 2797

(A) Transfer of property to another person as trustee during 2798  
the settlor's lifetime or by will or other disposition taking 2799  
effect upon the settlor's death; 2800

(B) Declaration by the owner of property that the owner holds 2801  
identifiable property as trustee; 2802

(C) Exercise of a power of appointment in favor of a trustee; 2803

(D) A court order. 2804

**Sec. 5804.02.** (A) A trust is created only if all of the 2805  
following apply: 2806

(1) The settlor of the trust, other than the settlor of a 2807  
trust created by a court order, has capacity to create a trust. 2808

(2) The settlor of the trust, other than the settlor of a 2809  
trust created by a court order, indicates an intention to create 2810

<u>the trust.</u>	2811
<u>(3) The trust has a definite beneficiary or is one of the</u>	2812
<u>following:</u>	2813
<u>(a) A charitable trust;</u>	2814
<u>(b) A trust for the care of an animal, as provided in section</u>	2815
<u>5804.08 of the Revised Code;</u>	2816
<u>(c) A trust for a noncharitable purpose, as provided in</u>	2817
<u>section 5804.09 of the Revised Code.</u>	2818
<u>(4) The trustee has duties to perform.</u>	2819
<u>(5) The same person is not the sole trustee and sole</u>	2820
<u>beneficiary.</u>	2821
<u>(B) A beneficiary is definite if the beneficiary can be</u>	2822
<u>ascertained now or in the future, subject to any applicable rule</u>	2823
<u>against perpetuities.</u>	2824
<u>(C) A power in a trustee to select a beneficiary from an</u>	2825
<u>indefinite class is valid. If the power is not exercised within a</u>	2826
<u>reasonable time, the power fails, and the property subject to the</u>	2827
<u>power passes to the persons who would have taken the property had</u>	2828
<u>the power not been conferred.</u>	2829
<u>(D) A trust is valid regardless of the existence, size, or</u>	2830
<u>character of the corpus of the trust. This division applies to any</u>	2831
<u>trust that was executed prior to, or is executed on or after, the</u>	2832
<u>effective date of Chapters 5801. to 5811. of the Revised Code.</u>	2833
<u>(E) A trust is not invalid because a person, including, but</u>	2834
<u>not limited to, the creator of the trust, is or may become the</u>	2835
<u>sole trustee and the sole holder of the present beneficial</u>	2836
<u>enjoyment of the corpus of the trust, provided that one or more</u>	2837
<u>other persons hold a vested, contingent, or expectant interest</u>	2838
<u>relative to the enjoyment of the corpus of the trust upon the</u>	2839
<u>cessation of the present beneficial enjoyment. A merger of the</u>	2840

legal and equitable titles to the corpus of a trust described in 2841  
this division does not occur in its creator, and, notwithstanding 2842  
any contrary provision of Chapter 2107. of the Revised Code, the 2843  
trust is not a testamentary trust that is required to comply with 2844  
that chapter in order for its corpus to be legally distributed to 2845  
other beneficiaries in accordance with the provisions of the trust 2846  
upon the cessation of the present beneficial enjoyment. This 2847  
division applies to any trust that satisfies the provisions of 2848  
this division, whether the trust was executed prior to, on, or 2849  
after October 10, 1991. 2850

Sec. 5804.03. A trust not created by will is validly created 2851  
if its creation complies with the law of the jurisdiction in which 2852  
the trust instrument was executed or the law of the jurisdiction 2853  
in which, at the time of creation, any of the following applies: 2854

(A) The settlor was domiciled in, had a place of abode in, or 2855  
was a national of the jurisdiction. 2856

(B) A trustee was domiciled or had a place of business in the 2857  
jurisdiction. 2858

(C) Any trust property was located in the jurisdiction. 2859

Sec. 5804.04. A trust may be created only to the extent that 2860  
its purposes are lawful, not contrary to public policy, and 2861  
possible to achieve. A trust exists, and its assets shall be held, 2862  
for the benefit of its beneficiaries in accordance with the 2863  
interests of the beneficiaries in the trust. 2864

Sec. 5804.05. (A) A charitable trust may be created for the 2865  
relief of poverty, the advancement of education or religion, the 2866  
promotion of health, governmental or municipal purposes, or other 2867  
purposes the achievement of which is beneficial to the community. 2868

(B) If the terms of a charitable trust do not indicate a 2869

particular charitable purpose or beneficiary, the court may select 2870  
one or more charitable purposes or beneficiaries. The selection 2871  
must be consistent with the settlor's intention to the extent it 2872  
can be ascertained. 2873

(C) The settlor of a charitable trust, among others, may 2874  
maintain a proceeding to enforce the trust. 2875

Sec. 5804.06. A trust is void to the extent its creation was 2876  
induced by fraud, duress, or undue influence. As used in this 2877  
section, "fraud," "duress," and "undue influence" have the same 2878  
meanings for trust validity purposes as they have for purposes of 2879  
determining the validity of a will. 2880

Sec. 5804.07. Except as required by any section of the 2881  
Revised Code not in Chapters 5801. to 5811. of the Revised Code, a 2882  
trust is not required to be evidenced by a trust instrument, but 2883  
the creation of an oral trust and its terms may be established 2884  
only by clear and convincing evidence. 2885

Sec. 5804.08. (A) A trust may be created to provide for the 2886  
care of an animal alive during the settlor's lifetime. The trust 2887  
terminates upon the death of the animal or, if the trust was 2888  
created to provide for the care of more than one animal alive 2889  
during the settlor's lifetime, upon the death of the last 2890  
surviving animal. 2891

(B) A person appointed in the terms of a trust or, if no 2892  
person is so appointed, a person appointed by the court may 2893  
enforce a trust authorized by this section. A person having an 2894  
interest in the welfare of an animal that is provided care by a 2895  
trust authorized by this section may request the court to appoint 2896  
a person to enforce the trust or to remove a person appointed. 2897

(C) The property of a trust authorized by this section may be 2898



applied only to its intended use, except to the extent the court 2899  
determines that the value of the trust property exceeds the amount 2900  
required for the intended use. Except as otherwise provided in the 2901  
terms of the trust, property not required for the intended use 2902  
must be distributed to the settlor if then living or to the 2903  
settlor's successors in interest. 2904

Sec. 5804.09. Except as otherwise provided in section 5804.08 2905  
of the Revised Code or any other section of the Revised Code: 2906

(A) A trust may be created for a noncharitable purpose 2908  
without a definite or definitely ascertainable beneficiary or for 2909  
a noncharitable but otherwise valid purpose to be selected by the 2910  
trustee. A trust created for a noncharitable purpose may not be 2911  
enforced for more than twenty-one years. 2912

(B) A trust authorized by this section may be enforced by a 2913  
person appointed in the terms of the trust or, if no person is so 2914  
appointed, by a person appointed by the court. 2915

(C) The property of a trust authorized by this section may be 2916  
applied only to its intended use, except to the extent the court 2917  
determines that the value of the trust property exceeds the amount 2918  
required for the intended use. Except as otherwise provided in the 2919  
terms of the trust, property not required for the intended use 2920  
must be distributed to the settlor if then living or to the 2921  
settlor's successors in interest. 2922

Sec. 5804.10. (A) In addition to the methods of termination 2923  
prescribed by sections 5804.11 to 5804.14 of the Revised Code, a 2924  
trust terminates to the extent the trust is revoked or expires 2925  
pursuant to its terms, a court determines that no purpose of the 2926  
trust remains to be achieved, or a court determines that the 2927  
purposes of the trust have become unlawful or impossible to 2928

achieve. 2929

(B) A trustee or beneficiary may commence a proceeding to 2930  
approve or disapprove a proposed modification or termination under 2931  
sections 5804.11 to 5804.16 of the Revised Code or to approve or 2932  
disapprove a trust combination or division under section 5804.17 2933  
of the Revised Code. The settlor may commence a proceeding to 2934  
approve or disapprove a proposed modification or termination under 2935  
section 5804.11 of the Revised Code. The settlor of a charitable 2936  
trust may maintain a proceeding to modify the trust under section 2937  
5804.13 of the Revised Code. 2938

Sec. 5804.11. (A) If upon petition the court finds that the 2939  
settlor and all beneficiaries consent to the modification or 2940  
termination of a noncharitable irrevocable trust, the court shall 2941  
enter an order approving the modification or termination even if 2942  
the modification or termination is inconsistent with a material 2943  
purpose of the trust. An agent under a power of attorney may 2944  
exercise a settlor's power to consent to a trust's modification or 2945  
termination only to the extent expressly authorized by both the 2946  
power of attorney and the terms of the trust. The settlor's 2947  
guardian of the estate may exercise a settlor's power to consent 2948  
to a trust's modification or termination with the approval of the 2949  
court supervising the guardianship if an agent is not so 2950  
authorized. The guardian of the settlor's person may exercise a 2951  
settlor's power to consent to a trust's modification or 2952  
termination with the approval of the court supervising the 2953  
guardianship if an agent is not so authorized and a guardian of 2954  
the estate has not been appointed. This division applies only to 2955  
irrevocable trusts created on or after the effective date of 2956  
Chapters 5801. to 5811. of the Revised Code and to revocable 2957  
trusts that become irrevocable on or after the effective date of 2958  
Chapters 5801. to 5811. of the Revised Code. This division does 2959

not apply to a noncharitable irrevocable trust described in 42 2960  
U.S.C. 1396p(d)(4). 2961

(B) A noncharitable irrevocable trust may be terminated upon 2962  
consent of all of the beneficiaries if the court concludes that 2963  
continuance of the trust is not necessary to achieve any material 2964  
purpose of the trust. A noncharitable irrevocable trust may be 2965  
modified, but not to remove or replace the trustee, upon consent 2966  
of all of the beneficiaries if the court concludes that 2967  
modification is not inconsistent with a material purpose of the 2968  
trust. A spendthrift provision in the terms of the trust may, but 2969  
is not presumed to, constitute a material purpose of the trust. 2970

(C) Upon termination of a trust under division (A) or (B) of 2971  
this section, the trustee shall distribute the trust property as 2972  
agreed by the beneficiaries. 2973

(D) If not all of the beneficiaries consent to a proposed 2974  
modification or termination of the trust under division (A) or (B) 2975  
of this section, the court may approve the modification or 2976  
termination if the court is satisfied of both of the following: 2977

(1) That if all of the beneficiaries had consented, the trust 2978  
could have been modified or terminated under this section; 2979

(2) That the interests of a beneficiary who does not consent 2980  
will be adequately protected. 2981

**Sec. 5804.12.** (A) The court may modify the administrative or 2982  
dispositive terms of a trust or terminate the trust if because of 2983  
circumstances not anticipated by the settlor modification or 2984  
termination will further the purposes of the trust. To the extent 2985  
practicable, the court shall make the modification in accordance 2986  
with the settlor's probable intention. 2987

(B) The court may modify the administrative terms of a trust 2988

<u>if continuation of the trust on its existing terms would be</u>	2989
<u>impracticable or impair the trust's administration.</u>	2990
<u>(C) Upon termination of a trust under this section, the</u>	2991
<u>trustee shall distribute the trust property in a manner consistent</u>	2992
<u>with the purposes of the trust.</u>	2993
<b>Sec. 5804.13.</b> <u>(A) Except as otherwise provided in division</u>	2994
<u>(B) of this section, if a particular charitable purpose becomes</u>	2995
<u>unlawful, impracticable, or impossible to achieve, all of the</u>	2996
<u>following apply:</u>	2997
<u>(1) The trust does not fail in whole or in part.</u>	2998
<u>(2) The trust property does not revert to the settlor or the</u>	2999
<u>settlor's successors in interest.</u>	3000
<u>(3) The court may apply cy pres to modify or terminate the</u>	3001
<u>trust by directing that the trust property be applied or</u>	3002
<u>distributed, in whole or in part, in a manner consistent with the</u>	3003
<u>settlor's charitable purposes. In accordance with section 109.25</u>	3004
<u>of the Revised Code, the attorney general is a necessary party to</u>	3005
<u>a judicial proceeding brought under this section.</u>	3006
<u>(B) A provision in the terms of a charitable trust for the</u>	3007
<u>distribution of the trust property to a noncharitable beneficiary</u>	3008
<u>prevails over the power of the court under division (A) of this</u>	3009
<u>section to apply cy pres to modify or terminate the trust.</u>	3010
<b>Sec. 5804.14.</b> <u>(A)(1) Except as provided in division (A)(2) of</u>	3011
<u>this section, after notice to the qualified beneficiaries, the</u>	3012
<u>trustee of an inter vivos trust consisting of trust property</u>	3013
<u>having a total value of less than one hundred thousand dollars may</u>	3014
<u>terminate the trust if the trustee concludes that the value of the</u>	3015
<u>trust property is insufficient to justify the cost of</u>	3016
<u>administration.</u>	3017

(2) Division (A)(1) of this section does not apply to any of 3018  
the following: 3019

(a) A charitable trust that has one or more charitable 3020  
organizations as qualified beneficiaries; 3021

(b) A charitable trust the terms of which authorize or direct 3022  
the trustee to distribute trust income or principal to one or more 3023  
charitable organizations to be selected by the trustee, or for one 3024  
or more charitable purposes described in division (A) of section 3025  
5804.05 of the Revised Code, if any of the following apply: 3026

(i) The distributions may be made on the date that the trust 3027  
would be terminated under division (A)(1) of this section. 3028

(ii) The distributions could be made on the date that the 3029  
trust would be terminated under division (A)(1) of this section if 3030  
the interests of the current beneficiaries of the trust terminated 3031  
on that date, but the termination of those interests would not 3032  
cause the trust to terminate. 3033

(iii) The distributions could be made on the date that the 3034  
trust would be terminated under division (A)(1) of this section, 3035  
if the trust terminated on that date but not under that division. 3036

(B) If an inter vivos trust consists of trust property having 3037  
a total value of less than one hundred thousand dollars, the court 3038  
may modify or terminate the trust or remove the trustee and 3039  
appoint a different trustee if it determines that the value of the 3040  
trust property is insufficient to justify the cost of 3041  
administration. 3042

(C) Upon the termination of a trust pursuant to division 3043  
(A)(1) of this section, the trustee shall distribute the trust 3044  
estate in accordance with any provision specified in the trust 3045  
instrument for the premature termination of the trust. If there is 3046  
no provision of that nature in the trust instrument, the trustee 3047

shall distribute the trust estate among the beneficiaries of the 3048  
trust in accordance with their respective beneficial interests and 3049  
in a manner that the trustee determines to be equitable. For 3050  
purposes of distributing the trust estate among the beneficiaries 3051  
of the trust under this division, the trustee shall consider all 3052  
of the following: 3053

(1) The existence of any agreement among the beneficiaries 3054  
with respect to their beneficial interests; 3055

(2) The actuarial values of the separate beneficial interests 3056  
of the beneficiaries; 3057

(3) Any expression of preference of the beneficiaries that is 3058  
contained in the trust instrument. 3059

(D) Upon the termination of a trust pursuant to division (B) 3060  
of this section, the probate court shall order the distribution of 3061  
the trust estate in accordance with any provision specified in the 3062  
trust instrument for the premature termination of the trust. If 3063  
there is no provision of that nature in the trust instrument, the 3064  
probate court shall order the distribution of the trust estate 3065  
among the beneficiaries of the trust in accordance with their 3066  
respective beneficial interests and in a manner that the court 3067  
determines to be equitable. For purposes of ordering the 3068  
distribution of the trust estate among the beneficiaries of the 3069  
trust under this division, the court shall consider the three 3070  
factors listed in division (C) of this section. 3071

(E) The existence of a spendthrift or similar provision in a 3072  
trust instrument or will does not preclude the termination of a 3073  
trust pursuant to this section. 3074

(F) This section does not apply to an easement for 3075  
conservation or preservation. 3076

**Sec. 5804.15.** The court may reform the terms of a trust, even 3077

if they are unambiguous, to conform the terms to the settlor's 3078  
intention if it is proved by clear and convincing evidence that 3079  
both the settlor's intent and the terms of the trust were affected 3080  
by a mistake of fact or law, whether in expression or inducement. 3081  
3082

Sec. 5804.16. To achieve the settlor's tax objectives, the 3083  
court may modify the terms of a trust in a manner that is not 3084  
contrary to the settlor's probable intention. The court may 3085  
provide that the modification has retroactive effect. 3086

Sec. 5804.17. After notice to the qualified beneficiaries, a 3087  
trustee may combine two or more trusts into a single trust or 3088  
divide a trust into two or more separate trusts if the result does 3089  
not impair the rights of any beneficiary or adversely affect 3090  
achievement of the purposes of the trust. 3091

Sec. 5804.18. A trust described in 42 U.S.C. 1396p(d)(4) is 3092  
irrevocable if the terms of the trust prohibit the settlor from 3093  
revoking it, whether or not the settlor's estate or the settlor's 3094  
heirs are named as the remainder beneficiary or beneficiaries of 3095  
the trust upon the settlor's death. 3096

Sec. 5805.01. (A) A spendthrift provision is valid only if it 3097  
restrains both voluntary and involuntary transfer of a 3098  
beneficiary's interest or if it restrains involuntary transfer of 3099  
a beneficiary's interest and permits voluntary transfer of a 3100  
beneficiary's interest only with the consent of a trustee who is 3101  
not the beneficiary. 3102

(B) A term of a trust providing that the interest of a 3103  
beneficiary is held subject to a "spendthrift trust," or words of 3104  
similar import, is sufficient to restrain both voluntary and 3105

involuntary transfer of the beneficiary's interest. 3106

(C) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter and in section 5810.04 of the Revised Code, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. Real property or tangible personal property that is owned by the trust but that is made available for a beneficiary's use or occupancy in accordance with the trustee's authority under the trust instrument shall not be considered to have been distributed by the trustee or received by the beneficiary for purposes of allowing a creditor or assignee of the beneficiary to reach the property. 3107  
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Sec. 5805.02. (A) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state. 3119  
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(B) Subject to section 5805.03 of the Revised Code, a spendthrift provision is unenforceable against either of the following: 3122  
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(1) The beneficiary's child or spouse who has a judgment or court order against the beneficiary for support, but only if distributions can be made for the beneficiary's support under the terms of the trust; 3125  
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(2) A claim of this state or the United States to the extent provided by the Revised Code or federal law. 3129  
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(C) A spendthrift provision is enforceable against the beneficiary's former spouse. 3131  
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(D) A claimant described in division (B) of this section may obtain from the court an order attaching present or future distributions to or for the benefit of the beneficiary. The court 3133  
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may limit the award to the relief that is appropriate under the 3136  
circumstances, considering among any other factors determined 3137  
appropriate by the court the support needs of the beneficiary, the 3138  
beneficiary's spouse, and the beneficiary's dependent children or, 3139  
with respect to a beneficiary who is the recipient of public 3140  
benefits, the supplemental needs of the beneficiary if the trust 3141  
was not intended to provide for the beneficiary's basic support. 3142

(E) The only exceptions to the effectiveness of a spendthrift 3143  
provision are those described in divisions (B) and (D) of this 3144  
section, in division (B) of section 5805.05 of the Revised Code, 3145  
and in sections 5805.06 and 5810.04 of the Revised Code. 3146

**Sec. 5805.03.** Notwithstanding anything to the contrary in 3147  
division (B) of section 5805.02 of the Revised Code, no creditor 3148  
or assignee of a beneficiary of a wholly discretionary trust may 3149  
reach the beneficiary's interest in the trust, or a distribution 3150  
by the trustee before its receipt by the beneficiary, whether by 3151  
attachment of present or future distributions to or for the 3152  
benefit of the beneficiary, by judicial sale, by obtaining an 3153  
order compelling the trustee to make distributions from the trust, 3154  
or by any other means, regardless of whether the trust instrument 3155  
includes a spendthrift provision. 3156

**Sec. 5805.04.** (A) As used in this section, "child" includes 3157  
any person for whom an order or judgment for child support has 3158  
been entered in this or any other state. 3159

(B) Except as otherwise provided in divisions (C) and (D) of 3160  
this section, whether or not a trust contains a spendthrift 3161  
provision, a creditor of a beneficiary may not compel a 3162  
distribution that is subject to the trustee's discretion, even if 3163  
the discretion is expressed in the form of a standard of 3164  
distribution or the trustee has abused the discretion. 3165

(C) Division (B) of this section does not apply to this state 3166  
for any claim for support of a beneficiary in a state institution 3167  
if the terms of the trust do not include a spendthrift provision 3168  
and do include a standard for distributions to or for the 3169  
beneficiary under which the trustee may make distributions for the 3170  
beneficiary's support. 3171

(D) Unless the settlor has explicitly provided in the trust 3172  
that the beneficiary's child or spouse or both are excluded from 3173  
benefiting from the trust, to the extent a trustee of a trust that 3174  
is not a wholly discretionary trust has not complied with a 3175  
standard of distribution or has abused a discretion, both of the 3176  
following apply: 3177

(1) The court may order a distribution to satisfy a judgment 3178  
or court order against the beneficiary for support of the 3179  
beneficiary's child or spouse, provided that the court may order 3180  
the distributions only if distributions can be made for the 3181  
beneficiary's support under the terms of the trust and that the 3182  
court may not order any distributions under this division to 3183  
satisfy a judgment or court order against the beneficiary for 3184  
support of the beneficiary's former spouse. 3185

(2) The court shall direct the trustee to pay to the child or 3186  
spouse the amount that is equitable under the circumstances but 3187  
not more than the amount the trustee would have been required to 3188  
distribute to or for the benefit of the beneficiary had the 3189  
trustee complied with the standard or not abused the discretion. 3190

(E) Even if a trust does not contain a spendthrift provision, 3191  
to the extent a beneficiary's interest in a trust is subject to 3192  
the exercise of the trustee's discretion, whether or not such 3193  
discretion is subject to one or more standards of distribution, 3194  
the interest may not be ordered sold to satisfy or partially 3195  
satisfy a claim of the beneficiary's creditor or assignee. 3196

(F) If the trustee's or cotrustee's discretion to make 3197  
distributions for the trustee's or cotrustee's own benefit is 3198  
limited by an ascertainable standard, a creditor may not reach or 3199  
compel distribution of the beneficial interest except to the 3200  
extent the interest would be subject to the creditor's claim if 3201  
the beneficiary were not acting as trustee or cotrustee. 3202

**Sec. 5805.05.** (A) To the extent that a trust that gives a 3203  
beneficiary the right to receive one or more mandatory 3204  
distributions does not contain a spendthrift provision, the court 3205  
may authorize a creditor or assignee of the beneficiary to attach 3206  
present or future mandatory distributions to or for the benefit of 3207  
the beneficiary or to reach the beneficiary's interest by other 3208  
means. The court may limit an award under this section to the 3209  
relief that is appropriate under the circumstances, considering 3210  
among any other factors determined appropriate by the court, the 3211  
support needs of the beneficiary, the beneficiary's spouse, and 3212  
the beneficiary's dependent children or, with respect to a 3213  
beneficiary who is the recipient of public benefits, the 3214  
supplemental needs of the beneficiary if the trust was not 3215  
intended to provide for the beneficiary's basic support. If in 3216  
exercising its power under this section the court decides to order 3217  
either a sale of a beneficiary's interest or that a lien be placed 3218  
on the interest, in deciding between the two types of action, the 3219  
court shall consider among any other factors it considers relevant 3220  
the amount of the claim of the creditor or assignee and the 3221  
proceeds a sale would produce relative to the potential value of 3222  
the interest to the beneficiary. 3223

(B) Whether or not a trust contains a spendthrift provision, 3224  
a creditor or assignee of a beneficiary may reach a mandatory 3225  
distribution the beneficiary is entitled to receive if the trustee 3226  
has not made the distribution to the beneficiary within a 3227

reasonable time after the designated distribution date. 3228

Sec. 5805.06. (A) Whether or not the terms of a trust contain 3229  
a spendthrift provision, all of the following apply: 3230

(1) During the lifetime of the settlor, the property of a 3231  
revocable trust is subject to claims of the settlor's creditors. 3232

(2) With respect to an irrevocable trust, a creditor or 3233  
assignee of the settlor may reach the maximum amount that can be 3234  
distributed to or for the settlor's benefit. If a trust has more 3235  
than one settlor, the amount the creditor or assignee of a 3236  
particular settlor may reach may not exceed the settlor's interest 3237  
in the portion of the trust attributable to that settlor's 3238  
contribution. 3239

(3) With respect to a trust described in 42 U.S.C. section 3240  
1396p(d)(4)(A) or (C), the court may limit the award of a 3241  
settlor's creditor under division (A)(1) or (2) of this section to 3242  
the relief that is appropriate under the circumstances, 3243  
considering among any other factors determined appropriate by the 3244  
court, the supplemental needs of the beneficiary. 3245

(B) For purposes of this section, all of the following apply: 3246

(1) The holder of a power of withdrawal is treated in the 3247  
same manner as the settlor of a revocable trust to the extent of 3248  
the property subject to the power during the period the power may 3249  
be exercised. 3250

(2) Upon the lapse, release, or waiver of the power of 3251  
withdrawal, the holder is treated as the settlor of the trust only 3252  
to the extent the value of the property affected by the lapse, 3253  
release, or waiver exceeds the greatest of the following amounts: 3254

(a) The amount specified in section 2041(b)(2) or 2514(e) of 3255  
the Internal Revenue Code; 3256

(b) If the donor of the property subject to the holder's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in section 2503(b) of the Internal Revenue Code; 3257  
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(c) If the donor of the property subject to the holder's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in section 2503(b) of the Internal Revenue Code. 3261  
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Sec. 5805.07. Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt. 3265  
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Sec. 5806.01. The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. 3268  
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Sec. 5806.02. (A) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This division does not apply to a trust created under an instrument executed before the effective date of this section. 3272  
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(B) If a revocable trust is created or funded by more than one settlor, all of the following apply: 3277  
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(1) To the extent the trust consists of community property, either spouse acting alone may revoke the trust, but the trust may be amended only by joint action of both spouses. 3279  
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(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution. 3282  
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(3) Upon the revocation or amendment of the trust by less than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment. 3286  
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(C) The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method, by any other method manifesting clear and convincing evidence of the settlor's intent, provided that a revocable trust may not be revoked or amended by a will or codicil, regardless of whether it refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust unless the terms of the trust expressly allow it to be revoked or amended by a will or codicil. 3289  
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(D) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs. 3299  
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(E) An agent under a power of attorney may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only to the extent expressly authorized by both the terms of the trust and the power. 3301  
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(F) A guardian of the estate of the settlor or, if no guardian of the estate has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship. 3305  
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(G) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked. 3310  
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**Sec. 5806.03.** (A) During the lifetime of the settlor of a revocable trust, whether or not the settlor has capacity to revoke 3314  
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the trust, the rights of the beneficiaries are subject to the 3316  
control of, and the duties of the trustee are owed exclusively to, 3317  
the settlor. If the trustee breaches its duty during the lifetime 3318  
of the settlor, any recovery obtained from the trustee after the 3319  
settlor becomes incapacitated or dies shall be apportioned by the 3320  
court. If the settlor is living when the recovery is obtained, the 3321  
court shall apportion the recovery between the settlor and the 3322  
trust, or allocate the entire recovery to the settlor or the 3323  
trust, as it determines to be equitable under the circumstances. 3324  
If the settlor is not living when the recovery is obtained, the 3325  
court shall apportion the recovery between the settlor's estate 3326  
and the trust, or allocate the entire recovery to the settlor's 3327  
estate or the trust, as it determines to be equitable under the 3328  
circumstances. 3329

(B) During the period the power may be exercised, the holder 3330  
of a power of withdrawal has the rights of a settlor of a 3331  
revocable trust under this section to the extent of the property 3332  
subject to the power. 3333

**Sec. ~~2305.121~~ 5806.04.** (A) Any of the following actions 3334  
pertaining to a revocable trust that is made irrevocable by the 3335  
death of the ~~grantor~~ settlor of the trust shall be commenced 3336  
within two years after the date of the death of the ~~grantor~~ 3337  
settlor of the trust: 3338

(1) An action to contest the validity of the trust; 3339

(2) An action to contest the validity of any amendment to the 3340  
trust that was made during the lifetime of the ~~grantor~~ settlor of 3341  
the trust; 3342

(3) An action to contest the revocation of the trust during 3343  
the lifetime of the ~~grantor~~ settlor of the trust; 3344

(4) An action to contest the validity of any transfer made to 3345

the trust during the lifetime of the ~~grantor~~ settlor of the trust. 3346

(B) Upon the death of the ~~grantor~~ settlor of a revocable 3347  
trust that was made irrevocable by the death of the ~~grantor~~ 3348  
settlor, the trustee, without liability, may proceed to distribute 3349  
the trust property in accordance with the terms of the trust 3350  
unless either of the following applies: 3351

(1) The trustee has actual knowledge of a pending action to 3352  
contest the validity of the trust, any amendment to the trust, the 3353  
revocation of the trust, or any transfer made to the trust during 3354  
the lifetime of the ~~grantor~~ settlor of the trust. 3355

(2) The trustee receives written notification from a 3356  
potential contestant of a potential action to contest the validity 3357  
of the trust, any amendment to the trust, the revocation of the 3358  
trust, or any transfer made to the trust during the lifetime of 3359  
the ~~grantor~~ settlor of the trust, and the action is actually filed 3360  
within ninety days after the written notification was given to the 3361  
trustee. 3362

(C) If a distribution of trust property is made pursuant to 3363  
division (B) of this section, a beneficiary of the trust shall 3364  
return any distribution to the extent that it exceeds the 3365  
distribution to which the beneficiary is entitled if the trust, an 3366  
amendment to the trust, or a transfer made to the trust later is 3367  
determined to be invalid. 3368

(D) This section applies only to revocable trusts that are 3369  
made irrevocable by the death of the ~~grantor~~ settlor of the trust 3370  
if the grantor dies on or after ~~the effective date of this section~~ 3371  
July 23, 2002. 3372

Sec. 5807.01. (A) Except as otherwise provided in division 3373  
(C) of this section, a person designated as trustee accepts the 3374  
trusteeship by substantially complying with a method of acceptance 3375



provided in the terms of the trust or, if the terms of the trust 3376  
do not provide a method or the method provided in the terms is not 3377  
expressly made exclusive, by accepting delivery of the trust 3378  
property, exercising powers or performing duties as trustee, or 3379  
otherwise indicating acceptance of the trusteeship. 3380

(B) A person designated as trustee who has not yet accepted 3381  
the trusteeship may reject the trusteeship. A designated trustee 3382  
who does not accept the trusteeship within a reasonable time after 3383  
knowing of the designation is deemed to have rejected the 3384  
trusteeship. 3385

(C) A person designated as trustee, without accepting the 3386  
trusteeship, may do either or both of the following: 3387

(1) Act to preserve the trust property if, within a 3388  
reasonable time after acting, the person sends a rejection of the 3389  
trusteeship to the settlor or, if the settlor is dead or lacks 3390  
capacity, to a qualified beneficiary; 3391

(2) Inspect or investigate trust property to determine 3392  
potential liability under environmental or other law or for any 3393  
other purpose. 3394

**Sec. 5807.02.** (A) A trustee shall give bond to secure 3395  
performance of the trustee's duties only if the court finds that a 3396  
bond is needed to protect the interests of the beneficiaries or is 3397  
required by the terms of the trust and the court has not dispensed 3398  
with the requirement. 3399

(B) The court may specify the amount of a bond, its 3400  
liabilities, and whether sureties are necessary. The court may 3401  
modify or terminate a bond at any time. 3402

(C) A regulated financial-service institution qualified to do 3403  
trust business in this state need not give bond, even if required 3404

by the terms of the trust.

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Sec. 5807.03. (A) If there are three or more cotrustees serving, the cotrustees may act by majority decision.

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(B) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

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(C) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

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(D) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

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(E) A trustee may delegate to a cotrustee duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. A delegation made under this division shall be governed by section 5808.07 of the Revised Code. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

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(F) Except as otherwise provided in division (G) of this section, and subject to divisions (C) and (E) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

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(G) Except as otherwise provided in this division, each trustee shall exercise reasonable care to prevent a cotrustee from committing a serious breach of trust and to compel a cotrustee to

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redress a serious breach of trust. A trustee is not required to 3435  
exercise reasonable care of that nature under this division, and a 3436  
trustee is not liable for resulting losses, when section 5815.25 3437  
of the Revised Code is applicable or there is more than one other 3438  
trustee and the other trustees act by majority vote. 3439

(H) A dissenting trustee who joins in an action at the 3440  
direction of the majority of the trustees and who notified any 3441  
cotrustee of the dissent at or before the time of the action is 3442  
not liable for the action. 3443

**Sec. 5807.04.** (A) A vacancy in a trusteeship occurs under any 3444  
of the following circumstances: 3445

(1) A person designated as trustee rejects the trusteeship; 3446

(2) A person designated as trustee cannot be identified or 3447  
does not exist; 3448

(3) A trustee resigns; 3449

(4) A trustee is disqualified or removed; 3450

(5) A trustee dies; 3451

(6) A guardian of the estate or person is appointed for an 3452  
individual serving as trustee. 3453

(B) If one or more cotrustees remain in office, a vacancy in 3454  
a trusteeship need not be filled. A vacancy in a trusteeship must 3455  
be filled if the trust has no remaining trustee. 3456

(C) A vacancy in a trusteeship of a noncharitable trust that 3457  
is required to be filled must be filled in the following order of 3458  
priority: 3459

(1) By a person designated in the terms of the trust to act 3460  
as successor trustee; 3461

(2) By a person appointed by someone designated in the terms 3462

<u>of the trust to appoint a successor trustee;</u>	3463
<u>(3) By a person appointed by unanimous agreement of the qualified beneficiaries;</u>	3464
<u>(4) By a person appointed by the court.</u>	3465
<u>(D) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:</u>	3466
<u>(1) By a person designated in the terms of the trust to act as successor trustee;</u>	3467
<u>(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;</u>	3468
<u>(3) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust;</u>	3469
<u>(4) By a person appointed by the court.</u>	3470
<u>(E) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.</u>	3471
<u>(A) A trustee may resign upon at least thirty days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees or with the approval of the court.</u>	3472
<u>(B) In approving a resignation of a trustee, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.</u>	3473
<u>(C) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.</u>	3474
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Sec. 5807.06. (A) The settlor, a cotrustee, or a beneficiary 3491  
may request the court to remove a trustee, or the court may remove 3492  
a trustee on its own initiative. 3493

(B) The court may remove a trustee for any of the following 3494  
reasons: 3495

(1) The trustee has committed a serious breach of trust; 3496

(2) Lack of cooperation among cotrustees substantially 3497  
impairs the administration of the trust; 3498

(3) Because of unfitness, unwillingness, or persistent 3499  
failure of the trustee to administer the trust effectively, the 3500  
court determines that removal of the trustee best serves the 3501  
interests of the beneficiaries. 3502

(C) Pending a final decision on a request to remove a 3503  
trustee, or in lieu of or in addition to removing a trustee, the 3504  
court may order any appropriate relief under division (B) of 3505  
section 5810.01 of the Revised Code that is necessary to protect 3506  
the trust property or the interests of the beneficiaries. 3507

Sec. 5807.07. (A) Unless a cotrustee remains in office or the 3508  
court otherwise orders, and until the trust property is delivered 3509  
to a successor trustee or other person entitled to it, a trustee 3510  
who has resigned or been removed has the duties of a trustee and 3511  
the powers necessary to protect the trust property. 3512

(B) A trustee who has resigned or been removed shall proceed 3513  
expeditiously to deliver the trust property within the trustee's 3514  
possession to the cotrustee, successor trustee, or other person 3515  
entitled to it. 3516

Sec. 5807.08. (A) If the terms of a trust do not specify the 3517  
trustee's compensation, a trustee is entitled to compensation that 3518

is reasonable under the circumstances. 3519

(B) If the terms of a trust specify the trustee's 3520  
compensation, the trustee is entitled to be compensated as 3521  
specified, but the court may allow more or less compensation if 3522  
the duties of the trustee are substantially different from those 3523  
contemplated when the trust was created or the compensation 3524  
specified by the terms of the trust would be unreasonably low or 3525  
high. 3526

**Sec. 5807.09.** (A) A trustee is entitled to be reimbursed out 3527  
of the trust property, with interest as appropriate, for expenses 3528  
that were properly incurred in the administration of the trust 3529  
and, to the extent necessary to prevent unjust enrichment of the 3530  
trust, expenses that were not properly incurred in the 3531  
administration of the trust. 3532

(B) An advance by the trustee of money for the protection of 3533  
the trust gives rise to a lien against trust property to secure 3534  
reimbursement with reasonable interest. 3535

**Sec. 5808.01.** Upon acceptance of a trusteeship, the trustee 3536  
shall administer the trust in good faith, in accordance with its 3537  
terms and purposes and the interests of the beneficiaries, and in 3538  
accordance with Chapters 5801. to 5811. of the Revised Code. 3539

**Sec. 5808.02.** (A) A trustee shall administer the trust solely 3540  
in the interests of the beneficiaries. 3541

(B) Subject to the rights of persons dealing with or 3542  
assisting the trustee as provided in section 5810.12 of the 3543  
Revised Code, a sale, encumbrance, or other transaction involving 3544  
the investment or management of trust property entered into by the 3545  
trustee for the trustee's own personal account or that is 3546

<u>otherwise affected by a conflict between the trustee's fiduciary</u>	3547
<u>and personal interests is voidable by a beneficiary affected by</u>	3548
<u>the transaction unless one of the following applies:</u>	3549
<u>(1) The transaction was authorized by the terms of the trust</u>	3550
<u>or by other provisions of the Revised Code.</u>	3551
<u>(2) The transaction was approved by the court.</u>	3552
<u>(3) The beneficiary did not commence a judicial proceeding</u>	3553
<u>within the time allowed by section 5810.05 of the Revised Code.</u>	3554
<u>(4) The beneficiary consented to the trustee's conduct,</u>	3555
<u>ratified the transaction, or released the trustee in compliance</u>	3556
<u>with section 5810.09 of the Revised Code.</u>	3557
<u>(5) The transaction involves a contract entered into or claim</u>	3558
<u>acquired by the trustee before the person became or contemplated</u>	3559
<u>becoming trustee.</u>	3560
<u>(C) A sale, encumbrance, or other transaction involving the</u>	3561
<u>investment or management of trust property is presumed to be</u>	3562
<u>affected by a conflict between personal and fiduciary interests if</u>	3563
<u>it is entered into by the trustee with one of the following:</u>	3564
<u>(1) The trustee's spouse;</u>	3565
<u>(2) The trustee's descendant, sibling, or parent or the</u>	3566
<u>spouse of a trustee's descendant, sibling, or parent;</u>	3567
<u>(3) An agent or attorney of the trustee;</u>	3568
<u>(4) A corporation or other person or enterprise in which the</u>	3569
<u>trustee, or a person that owns a significant interest in the</u>	3570
<u>trustee, has an interest that might affect the trustee's best</u>	3571
<u>judgment.</u>	3572
<u>(D) A transaction not concerning trust property in which the</u>	3573
<u>trustee engages in the trustee's individual capacity involves a</u>	3574
<u>conflict between personal and fiduciary interests if the</u>	3575

transaction concerns an opportunity properly belonging to the 3576  
trust. 3577

(E) An investment by a trustee that is permitted by other 3578  
provisions of the Revised Code is not presumed to be affected by a 3579  
conflict between personal and fiduciary interests if the 3580  
investment otherwise complies with the prudent investor rule of 3581  
Chapter 5809. of the Revised Code. 3582

(F) In voting shares of stock or in exercising powers of 3583  
control over similar interests in other forms of enterprise, the 3584  
trustee shall act in the best interests of the beneficiaries. If 3585  
the trust is the sole owner of a corporation or other form of 3586  
enterprise, the trustee shall elect or appoint directors or other 3587  
managers who will manage the corporation or enterprise in the best 3588  
interests of the beneficiaries. 3589

(G) This section does not preclude either of the following: 3590

(1) Any transaction authorized by another section of the 3591  
Revised Code; 3592

(2) Unless the beneficiaries establish that it is unfair, any 3593  
of the following transactions: 3594

(a) An agreement between a trustee and a beneficiary relating 3595  
to the appointment or compensation of the trustee; 3596

(b) Payment of reasonable compensation to the trustee; 3597

(c) A transaction between a trust and another trust, 3598  
decendent's estate, or guardianship of which the trustee is a 3599  
fiduciary or in which a beneficiary has an interest; 3600

(d) A deposit of trust money in a regulated 3601  
financial-services institution that is an affiliate of the 3602  
trustee; 3603

(e) An advance by the trustee of money for the protection of 3604  
the trust. 3605



(H) The court may appoint a special fiduciary to make a 3606  
decision with respect to any proposed transaction that might 3607  
violate this section if entered into by the trustee. 3608

**Sec. ~~1339.55~~ 5808.03.** ~~(A) A trustee shall invest and manage~~ 3609  
~~the trust assets solely in the interest of the beneficiaries.~~ 3610

~~(B) If a trust has two or more beneficiaries, the trustee~~ 3611  
~~shall act impartially in investing and, managing, and distributing~~ 3612  
~~the trust assets taking into account any differing property,~~ 3613  
~~giving due regard to the beneficiaries' respective interests of~~ 3614  
~~the beneficiaries.~~ 3615

**Sec. 5808.04.** A trustee shall administer the trust as a 3616  
prudent person would and shall consider the purposes, terms, 3617  
distributional requirements, and other circumstances of the trust. 3618  
In satisfying this standard, the trustee shall exercise reasonable 3619  
care, skill, and caution. 3620

**Sec. ~~1339.57~~ 5808.05.** Except as otherwise permitted by law, 3621  
in ~~investing and managing~~ administering a trust assets, a trustee 3622  
may ~~only~~ incur only costs that are appropriate and reasonable in 3623  
relation to the assets, the purposes of the trust, and the skills 3624  
of the trustee. 3625

**Sec. 5808.06.** A trustee who has special skills or expertise, 3626  
or is named trustee in reliance upon the trustee's representation 3627  
that the trustee has special skills or expertise, shall use those 3628  
special skills or expertise. 3629

**Sec. ~~1339.59~~ 5808.07.** (A) A trustee may delegate ~~investment~~ 3630  
~~duties and management functions of a trust~~ powers that a prudent 3631  
trustee having comparable skills could properly delegate under the 3632  
circumstances. In accordance with this division, a trustee shall 3633

exercise reasonable care, skill, and caution in doing all of the 3634  
following: 3635

(1) Selecting an agent, cotrustee, or other fiduciary to whom 3636  
the delegation is made; 3637

(2) Establishing the scope and terms of the delegation 3638  
consistent with the purposes and terms of the trust; 3639

(3) Periodically reviewing the agent's, cotrustee's, or other 3640  
fiduciary's actions in order to monitor the agent's, cotrustee's, 3641  
or other fiduciary's performance and compliance with the terms of 3642  
the delegation. 3643

(B) In performing ~~investment or management functions of a~~ 3644  
~~trust that are delegated to an agent function,~~ an agent, 3645  
cotrustee, or other fiduciary owes a duty to the trust to exercise 3646  
reasonable care to comply with the terms of the delegation. 3647

(C) A trustee who complies with division (A) of this section 3648  
is not liable to the beneficiaries of the trust or to the trust 3649  
for the decisions or actions of the agent, cotrustee, or other 3650  
fiduciary to whom the function was delegated. 3651

(D) By accepting the delegation of ~~investment powers~~ or 3652  
~~management functions~~ duties from the trustee of a trust that is 3653  
subject to the laws of this state, an agent, cotrustee, or other 3654  
fiduciary submits to the jurisdiction of this state. 3655

**Sec. 5808.08.** (A) While a trust is revocable, the trustee may 3656  
follow a direction of the settlor that is contrary to the terms of 3657  
the trust. 3658

(B) As provided in section 5815.25 of the Revised Code, a 3659  
trustee is not liable for losses resulting from certain actions or 3660  
failures to act when other persons are granted certain powers with 3661  
respect to the administration of the trust. 3662

(C) The terms of a trust may confer upon a trustee or other 3663

person a power to direct the modification or termination of the 3664  
trust. 3665

(D) A person other than a beneficiary who holds a power to 3666  
direct is presumptively a fiduciary who, as a fiduciary, is 3667  
required to act in good faith with regard to the purposes of the 3668  
trust and the interests of the beneficiaries. The holder of a 3669  
power to direct is liable for any loss that results from breach of 3670  
a fiduciary duty. 3671

Sec. 5808.09. A trustee shall take reasonable steps to take 3672  
control of and protect the trust property. 3673

Sec. 5808.10. (A) A trustee shall keep adequate records of 3674  
the administration of the trust. 3675

(B) A trustee shall keep trust property separate from the 3676  
trustee's own property. 3677

(C) Except as otherwise provided in division (D) of this 3678  
section and in section 2131.21 of the Revised Code, a trustee not 3679  
subject to federal or state banking regulation shall cause the 3680  
trust property to be designated so that the interest of the trust, 3681  
to the extent feasible, appears in records maintained by a party 3682  
other than a trustee or beneficiary. 3683

(D) If the trustee maintains records clearly indicating the 3684  
respective interests, a trustee may invest as a whole the property 3685  
of two or more separate trusts. 3686

Sec. 5808.11. A trustee shall take reasonable steps to 3687  
enforce claims of the trust and to defend claims against the 3688  
trust. 3689

Sec. 5808.12. A trustee shall take reasonable steps to 3690  
collect trust property held by third persons. The responsibility 3691

of a successor trustee with respect to the administration of the 3692  
trust by a prior trustee shall be governed by section 5815.24 of 3693  
the Revised Code. 3694

Sec. 5808.13. (A) A trustee shall keep the current 3695  
beneficiaries of the trust reasonably informed about the 3696  
administration of the trust and of the material facts necessary 3697  
for them to protect their interests. Unless unreasonable under the 3698  
circumstances, a trustee shall promptly respond to a beneficiary's 3699  
request for information related to the administration of the 3700  
trust. 3701

(B) A trustee shall do all of the following: 3702

(1) Upon the request of a beneficiary, promptly furnish to 3703  
the beneficiary a copy of the trust instrument. If the settlor of 3704  
a revocable trust that has become irrevocable has completely 3705  
restated the terms of the trust, the trust instrument furnished by 3706  
the trustee shall be the restated trust instrument, including any 3707  
amendments to the restated trust instrument. Nothing in division 3708  
(B)(1) of this section limits the ability of a beneficiary to 3709  
obtain a copy of the original trust instrument, any other 3710  
restatements of the original trust instrument, or amendments to 3711  
the original trust instrument and any other restatements of the 3712  
original trust instrument in a judicial proceeding with respect to 3713  
the trust. 3714

(2) Within sixty days after accepting a trusteeship, notify 3715  
the current beneficiaries of the acceptance and of the trustee's 3716  
name, address, and telephone number; 3717

(3) Within sixty days after the date the trustee acquires 3718  
knowledge of the creation of an irrevocable trust, or the date the 3719  
trustee acquires knowledge that a formerly revocable trust has 3720  
become irrevocable, whether by the death of the settlor or 3721

otherwise, notify the current beneficiaries of the trust's 3722  
existence, of the identity of the settlor or settlors, of the 3723  
right to request a copy of the trust instrument, and of the right 3724  
to a trustee's report as provided in division (C) of this section; 3725

(4) Notify the current beneficiaries in advance of any change 3726  
in the method or rate of the trustee's compensation. 3727

(C) A trustee shall send to the current beneficiaries, and to 3728  
other beneficiaries who request it, at least annually and at the 3729  
termination of the trust, a report of the trust property, 3730  
liabilities, receipts, and disbursements, including the source and 3731  
amount of the trustee's compensation, a listing of the trust 3732  
assets, and, if feasible, the trust assets' respective market 3733  
values. Upon a vacancy in a trusteeship, unless a cotrustee 3734  
remains in office, a report for the period during which the former 3735  
trustee served must be sent to the current beneficiaries by the 3736  
former trustee. A personal representative or guardian may send the 3737  
current beneficiaries a report on behalf of a deceased or 3738  
incapacitated trustee. 3739

(D) A beneficiary may waive the right to a trustee's report 3740  
or other information otherwise required to be furnished under this 3741  
section. A beneficiary, with respect to future reports and other 3742  
information, may withdraw a waiver previously given. 3743

(E) The trustee may provide information and reports to 3744  
beneficiaries to whom the provided information and reports are not 3745  
required to be provided under this section. 3746

(F) Divisions (B)(2) and (3) of this section apply only to a 3747  
trustee who accepts a trusteeship on or after the effective date 3748  
of this section, to an irrevocable trust created on or after the 3749  
effective date of this section, and to a revocable trust that 3750  
becomes irrevocable on or after the effective date of this 3751  
section. 3752

Sec. 5808.14. (A) The judicial standard of review for 3753  
discretionary trusts is that the trustee shall exercise a 3754  
discretionary power reasonably, in good faith, and in accordance 3755  
with the terms and purposes of the trust and the interests of the 3756  
beneficiaries, except that a reasonableness standard shall not be 3757  
applied to the exercise of discretion by the trustee of a wholly 3758  
discretionary trust. The greater the grant of discretion by the 3759  
settlor to the trustee, the broader the range of permissible 3760  
conduct by the trustee in exercising it. 3761

(B) Subject to division (D) of this section, and unless the 3762  
terms of the trust expressly indicate that a rule in this division 3763  
does not apply: 3764

(1) A person other than a settlor who is a beneficiary and 3765  
trustee of a trust that confers on the trustee a power to make 3766  
discretionary distributions to or for the trustee's personal 3767  
benefit may exercise the power only in accordance with an 3768  
ascertainable standard. 3769

(2) A trustee may not exercise a power to make discretionary 3770  
distributions to satisfy a legal obligation of support that the 3771  
trustee personally owes another person. 3772

(C) A power whose exercise is limited or prohibited by 3773  
division (B) of this section may be exercised by a majority of the 3774  
remaining trustees whose exercise of the power is not so limited 3775  
or prohibited. If the power of all trustees is so limited or 3776  
prohibited, the court may appoint a special fiduciary with 3777  
authority to exercise the power. 3778

(D) Division (B) of this section does not apply to any of the 3779  
following: 3780

(1) A power held by the settlor's spouse who is the trustee 3781  
of a trust for which a marital deduction, as defined in section 3782

<u>2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously</u>	3783
<u>allowed;</u>	3784
<u>(2) Any trust during any period that the trust may be revoked</u>	3785
<u>or amended by its settlor;</u>	3786
<u>(3) A trust if contributions to the trust qualify for the</u>	3787
<u>annual exclusion under section 2503(c) of the Internal Revenue</u>	3788
<u>Code.</u>	3789
<u>Sec. 5808.15. (A) A trustee, without authorization by the</u>	3790
<u>court, may exercise powers conferred by the terms of the trust</u>	3791
<u>and, except as limited by the terms of the trust, may exercise all</u>	3792
<u>of the following powers:</u>	3793
<u>(1) All powers over the trust property that an unmarried</u>	3794
<u>competent owner has over individually owned property;</u>	3795
<u>(2) Any other powers appropriate to achieve the proper</u>	3796
<u>investment, management, and distribution of the trust property;</u>	3797
<u>(3) Any other powers conferred by Chapters 5801. to 5811. of</u>	3798
<u>the Revised Code.</u>	3799
<u>(B) The exercise of a power is subject to the fiduciary</u>	3800
<u>duties prescribed by Chapter 5808. of the Revised Code.</u>	3801
<u>Sec. 5808.16. Without limiting the authority conferred by</u>	3802
<u>section 5808.15 of the Revised Code, a trustee may do all of the</u>	3803
<u>following:</u>	3804
<u>(A) Collect trust property and accept or reject additions to</u>	3805
<u>the trust property from a settlor or any other person;</u>	3806
<u>(B) Acquire or sell property, for cash or on credit, at</u>	3807
<u>public or private sale;</u>	3808
<u>(C) Exchange, partition, or otherwise change the character of</u>	3809
<u>trust property;</u>	3810

<u>(D) Deposit trust money in an account in a regulated</u>	3811
<u>financial-service institution;</u>	3812
<u>(E) Borrow money, with or without security, and mortgage or</u>	3813
<u>pledge trust property for a period within or extending beyond the</u>	3814
<u>duration of the trust;</u>	3815
<u>(F) With respect to an interest in a proprietorship,</u>	3816
<u>partnership, limited liability company, business trust,</u>	3817
<u>corporation, or other form of business or enterprise, continue the</u>	3818
<u>business or other enterprise and take any action that may be taken</u>	3819
<u>by shareholders, members, or property owners, including merging,</u>	3820
<u>dissolving, or otherwise changing the form of business</u>	3821
<u>organization or contributing additional capital;</u>	3822
<u>(G) With respect to stocks or other securities, exercise the</u>	3823
<u>rights of an absolute owner, including the right to do any of the</u>	3824
<u>following:</u>	3825
<u>(1) Vote, or give proxies to vote, with or without power of</u>	3826
<u>substitution, or enter into or continue a voting trust agreement;</u>	3827
<u>(2) Hold a security in the name of a nominee or in other form</u>	3828
<u>without disclosure of the trust so that title may pass by</u>	3829
<u>delivery;</u>	3830
<u>(3) Pay calls, assessments, and other sums chargeable or</u>	3831
<u>accruing against the securities and sell or exercise stock</u>	3832
<u>subscription or conversion rights;</u>	3833
<u>(4) Deposit the securities with a depository or other</u>	3834
<u>regulated financial-service institution.</u>	3835
<u>(H) With respect to an interest in real property, construct,</u>	3836
<u>or make ordinary or extraordinary repairs to, alterations to, or</u>	3837
<u>improvements in, buildings or other structures, demolish</u>	3838
<u>improvements, raze existing or erect new party walls or buildings,</u>	3839
<u>subdivide or develop land, dedicate land to public use or grant</u>	3840



public or private easements, and make or vacate plats and adjust 3841  
boundaries; 3842

(I) Enter into a lease for any purpose as lessor or lessee, 3843  
including a lease or other arrangement for exploration and removal 3844  
of natural resources, with or without the option to purchase or 3845  
renew, for a period within or extending beyond the duration of the 3846  
trust; 3847

(J) Grant an option involving a sale, lease, or other 3848  
disposition of trust property or acquire an option for the 3849  
acquisition of property, including an option exercisable beyond 3850  
the duration of the trust, and exercise an option so acquired; 3851

(K) Insure the property of the trust against damage or loss 3852  
and insure the trustee, the trustee's agents, and beneficiaries 3853  
against liability arising from the administration of the trust; 3854

(L) Abandon or decline to administer property of no value or 3855  
of insufficient value to justify its collection or continued 3856  
administration; 3857

(M) With respect to possible liability for violation of 3858  
environmental law, do any of the following: 3859

(1) Inspect or investigate property the trustee holds or has 3860  
been asked to hold, or property owned or operated by an 3861  
organization in which the trustee holds or has been asked to hold 3862  
an interest, for the purpose of determining the application of 3863  
environmental law with respect to the property; 3864

(2) Take action to prevent, abate, or otherwise remedy any 3865  
actual or potential violation of any environmental law affecting 3866  
property held directly or indirectly by the trustee, whether taken 3867  
before or after the assertion of a claim or the initiation of 3868  
governmental enforcement; 3869

(3) Decline to accept property into trust or disclaim any 3870

<u>power with respect to property that is or may be burdened with</u>	3871
<u>liability for violation of environmental law;</u>	3872
<u>(4) Compromise claims against the trust that may be asserted</u>	3873
<u>for an alleged violation of environmental law;</u>	3874
<u>(5) Pay the expense of any inspection, review, abatement, or</u>	3875
<u>remedial action to comply with environmental law.</u>	3876
<u>(N) Pay or contest any claim, settle a claim by or against</u>	3877
<u>the trust, and release, in whole or in part, a claim belonging to</u>	3878
<u>the trust;</u>	3879
<u>(O) Pay taxes, assessments, compensation of the trustee and</u>	3880
<u>of employees and agents of the trust, and other expenses incurred</u>	3881
<u>in the administration of the trust;</u>	3882
<u>(P) Exercise elections with respect to federal, state, and</u>	3883
<u>local taxes;</u>	3884
<u>(Q) Select a mode of payment under any employee benefit or</u>	3885
<u>retirement plan, annuity, or life insurance policy payable to the</u>	3886
<u>trustee, exercise rights under any employee benefit or retirement</u>	3887
<u>plan, annuity, or life insurance policy payable to the trustee,</u>	3888
<u>including the right to indemnification for expenses and against</u>	3889
<u>liabilities, and take appropriate action to collect the proceeds;</u>	3890
<u>(R) Make loans out of trust property, including loans to a</u>	3891
<u>beneficiary on terms and conditions the trustee considers to be</u>	3892
<u>fair and reasonable under the circumstances, and the trustee has a</u>	3893
<u>lien on future distributions for repayment of those loans;</u>	3894
<u>(S) Pledge the property of a revocable trust to guarantee</u>	3895
<u>loans made by others to the settlor of the revocable trust, or, if</u>	3896
<u>the settlor so directs, to guarantee loans made by others to a</u>	3897
<u>third party;</u>	3898
<u>(T) Appoint a trustee to act in another jurisdiction with</u>	3899
<u>respect to trust property located in the other jurisdiction,</u>	3900

confer upon the appointed trustee all of the powers and duties of 3901  
the appointing trustee, require that the appointed trustee furnish 3902  
security, and remove any trustee so appointed; 3903

(U) Pay an amount distributable to a beneficiary who is under 3904  
a legal disability or who the trustee reasonably believes is 3905  
incapacitated, by paying it directly to the beneficiary or 3906  
applying it for the beneficiary's benefit, or by doing any of the 3907  
following: 3908

(1) Paying it to the beneficiary's guardian of the estate, 3909  
or, if the beneficiary does not have a guardian of the estate, the 3910  
beneficiary's guardian of the person; 3911

(2) Paying it to the beneficiary's custodian under sections 3912  
5814.01 to 5814.09 of the Revised Code and, for that purpose, 3913  
creating a custodianship; 3914

(3) If the trustee does not know of a guardian of the person 3915  
or estate, or custodian, paying it to an adult relative or other 3916  
person having legal or physical care or custody of the 3917  
beneficiary, to be expended on the beneficiary's behalf; 3918

(4) Managing it as a separate fund on the beneficiary's 3919  
behalf, subject to the beneficiary's continuing right to withdraw 3920  
the distribution. 3921

(V) On distribution of trust property or the division or 3922  
termination of a trust, make distributions in divided or undivided 3923  
interests, allocate particular assets in proportionate or 3924  
disproportionate shares, value the trust property for those 3925  
purposes, and adjust for resulting differences in valuation; 3926

(W) Resolve a dispute concerning the interpretation of the 3927  
trust or its administration by mediation, arbitration, or other 3928  
procedure for alternative dispute resolution; 3929

(X) Prosecute or defend an action, claim, or judicial 3930

proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties; 3931  
3932

(Y) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; 3933  
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(Z) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it. 3936  
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**Sec. 5808.17.** (A) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection. 3939  
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(B) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. 3947  
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(C) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent that it was induced by improper conduct of the trustee or that the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach. 3952  
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**Sec. ~~1339.52~~ 5809.01.** (A)(1) As used in the Revised Code, the "Ohio Uniform Prudent Investor Act" means sections 5809.01 to 5809.08, 5808.03, 5808.05, and 5808.06, division (A) of section 5808.02, and division (B) of section 5808.07 of the Revised Code, 3957  
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and those sections may be cited as the "Ohio Uniform Prudent Investor Act." 3961  
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~~(2) As used in sections 1339.52 to 1339.61 of the Revised Code~~ 3963  
the Ohio Uniform Prudent Investor Act, "trustee" means a 3964  
trustee under any testamentary, inter vivos, or other trust. 3965

(B) Except as provided in division (C) or (D) of this 3966  
section, a trustee who invests and manages trust assets under 3967  
~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform 3968  
Prudent Investor Act owes a duty to the beneficiaries of the trust 3969  
to comply with ~~sections 1339.52 to 1339.61 of the Revised Code~~ the 3970  
Ohio Uniform Prudent Investor Act. 3971

(C) ~~Sections 1339.52 to 1339.61 of the Revised Code~~ The Ohio 3972  
Uniform Prudent Investor Act may be expanded, restricted, 3973  
eliminated, or otherwise altered, without express reference ~~to~~ 3974  
~~these sections~~ by the instrument creating a trust to the Ohio 3975  
Uniform Prudent Investor Act or any section of the Revised Code 3976  
that is part of that act. 3977

(D) A trustee is not liable to a beneficiary of a trust to 3978  
the extent the trustee acted in reasonable reliance on the 3979  
provisions of the trust. 3980

**Sec. ~~1339.53~~ 5809.02.** (A) A trustee shall invest and manage 3981  
trust assets as a prudent investor would, by considering the 3982  
purposes, terms, distribution requirements, and other 3983  
circumstances of the trust. In satisfying this requirement, the 3984  
trustee shall exercise reasonable care, skill, and caution. 3985

(B) A trustee shall make a reasonable effort to verify facts 3986  
relevant to the investment and management of trust assets. 3987

~~(C) A trustee who has special skills or expertise, or is~~ 3988  
~~named trustee in reliance upon the trustee's representation that~~ 3989  
~~the trustee has special skills or expertise, has a duty to use~~ 3990

<del>those special skills or expertise.</del>	3991
(D) A trustee's investment and management decisions	3992
respecting individual trust assets shall not be evaluated in	3993
isolation but in the context of the trust portfolio as a whole and	3994
as part of an overall investment strategy having risk and return	3995
objectives reasonably suited to the trust.	3996
<del>(E)</del> (D) Among circumstances that a trustee shall consider in	3997
investing and managing trust assets are the following as are	3998
relevant to the trust or its beneficiaries:	3999
(1) The general economic conditions;	4000
(2) The possible effect of inflation or deflation;	4001
(3) The expected tax consequences of investment decisions or	4002
strategies;	4003
(4) The role that each investment or course of action plays	4004
within the overall trust portfolio, which may include financial	4005
assets, interests in closely held enterprises, tangible and	4006
intangible personal property, and real property;	4007
(5) The expected total return from income and appreciation of	4008
capital;	4009
(6) Other resources of the beneficiaries;	4010
(7) Needs for liquidity, regularity of income, and	4011
preservation or appreciation of capital;	4012
(8) An asset's special relationship or special value, if any,	4013
to the purposes of the trust or to one or more of the	4014
beneficiaries.	4015
<b>Sec. <del>1339.54</del> 5809.03.</b> (A) A trustee may invest in any kind of	4016
property or type of investment provided that the investment is	4017
consistent with the requirements and standards of <del>sections 1339.52</del>	4018
<del>to 1339.61 of the Revised Code</del> <u>the Ohio Uniform Prudent Investor</u>	4019

Act. 4020

(B) A trustee shall diversify the investments of a trust 4021  
unless the trustee reasonably determines that, because of special 4022  
circumstances, the purposes of the trust are better served without 4023  
diversifying. 4024

**Sec. ~~1339.56~~ 5809.04.** Within a reasonable time after 4025  
accepting a trusteeship or receiving trust assets, a trustee shall 4026  
review the trust assets and make and implement decisions 4027  
concerning the retention and disposition of trust assets in order 4028  
to bring the trust portfolio into compliance with the purposes, 4029  
terms, distribution requirements, and other circumstances of the 4030  
trust, and in order to comply with the requirements and standards 4031  
of ~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio 4032  
Uniform Prudent Investor Act. 4033

**Sec. ~~1339.58~~ 5809.05.** Compliance with ~~sections 1339.52 to~~ 4034  
~~1339.61 of the Revised Code~~ the Ohio Uniform Prudent Investor Act 4035  
shall be determined in light of the facts and circumstances 4036  
existing at the time of a trustee's decision or action and not by 4037  
hindsight. 4038

**Sec. 5809.06.** (A) A trustee may delegate investment and 4039  
management functions of a trust that a prudent trustee having 4040  
comparable skills could properly delegate under the circumstances. 4041  
A trustee that exercises its delegation authority under this 4042  
division shall comply with the requirements of division (A) of 4043  
section 5808.07 of the Revised Code. 4044

(B) In performing investment or management functions of a 4045  
trust that are delegated to an agent, an agent owes a duty to the 4046  
trust to exercise reasonable care to comply with the terms of the 4047  
delegation. 4048

(C) A trustee who delegates a function to an agent in compliance with division (A) of this section is not liable to the beneficiaries of the trust or to the trust for the decisions or actions of the agent to whom the function was delegated. 4049  
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(D) By accepting the delegation of investment or management functions of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of this state. 4053  
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4055

**Sec. ~~1339.60~~ 5809.07.** The following terms or comparable 4056  
language in the provisions of a trust, unless otherwise limited or 4057  
modified, authorizes any investment or strategy permitted by 4058  
~~sections 1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform 4059  
Prudent Investor Act: "investments permissible by law for 4060  
investment of trust funds"; "legal investments"; "authorized 4061  
investments"; "using the judgment and care under the circumstances 4062  
then prevailing that persons of prudence, discretion, and 4063  
intelligence exercise in the management of their own affairs, not 4064  
in regard to speculation but in regard to the permanent 4065  
disposition of their funds considering the probable income as well 4066  
as the probable safety of their capital"; "prudent man rule"; 4067  
"prudent trustee rule"; "prudent person rule"; and "prudent 4068  
investor rule." 4069

**Sec. ~~1339.61~~ 5809.08.** (A) ~~Sections 1339.52 to 1339.61 of the~~ 4070  
~~Revised Code~~ The Ohio Uniform Prudent Investor Act shall be 4071  
applied and construed to effectuate the general purpose to make 4072  
uniform the law with respect to the subject of these sections 4073  
among the states enacting it. ~~These sections may be cited as the~~ 4074  
~~"Ohio Uniform Prudent Investor Act."~~ 4075

(B) ~~Sections 1339.52 to 1339.61 of the Revised Code~~ apply The 4076  
Ohio Uniform Prudent Investor Act applies to trusts existing on or 4077  
created after ~~the effective date of these sections~~ March 22, 1999. 4078



As applied to trusts existing on ~~the effective date of these~~ 4079  
~~sections March 22, 1999, sections 1339.52 to 1339.61 of the~~ 4080  
~~Revised Code govern~~ Ohio Uniform Prudent Investor Act governs only 4081  
decisions or actions occurring after ~~the effective date of these~~ 4082  
~~sections March 22, 1999.~~ 4083

(C) The temporary investment of cash or funds pursuant to 4084  
section ~~1339.44~~ 5815.26 or 2109.372 of the Revised Code shall be 4085  
considered a prudent investment in compliance with ~~sections~~ 4086  
~~1339.52 to 1339.61 of the Revised Code~~ the Ohio Uniform Prudent 4087  
Investor Act. 4088

Sec. 5810.01. (A) A violation by a trustee of a duty the 4089  
trustee owes to a beneficiary is a breach of trust. 4090

(B) To remedy a breach of trust that has occurred or may 4091  
occur, the court may do any of the following: 4092

(1) Compel the trustee to perform the trustee's duties; 4093

(2) Enjoin the trustee from committing a breach of trust; 4094

(3) Compel the trustee to redress a breach of trust by paying 4095  
money, restoring property, or other means; 4096

(4) Order a trustee to account; 4097

(5) Appoint a special fiduciary to take possession of the 4098  
trust property and administer the trust; 4099

(6) Suspend the trustee; 4100

(7) Remove the trustee as provided in section 5807.06 of the 4101  
Revised Code; 4102

(8) Reduce or deny compensation to the trustee; 4103

(9) Subject to section 5810.12 of the Revised Code, void an 4104  
act of the trustee, impose a lien or a constructive trust on trust 4105  
property, or trace trust property wrongfully disposed of and 4106  
recover the property or its proceeds; 4107

(10) Order any other appropriate relief. 4108

Sec. 5810.02. (A) A trustee who commits a breach of trust is 4109  
liable to the beneficiaries affected for the greater of the 4110  
following: 4111

(1) The amount required to restore the value of the trust 4112  
property and trust distributions to what they would have been had 4113  
the breach not occurred; 4114

(2) The profit the trustee made by reason of the breach. 4115

(B) Except as otherwise provided in this division, if more 4116  
than one trustee is liable to the beneficiaries for a breach of 4117  
trust, a trustee is entitled to contribution from the other 4118  
trustee or trustees. A trustee is not entitled to contribution if 4119  
the trustee was substantially more at fault than another trustee 4120  
or if the trustee committed the breach of trust in bad faith or 4121  
with reckless indifference to the purposes of the trust or the 4122  
interests of the beneficiaries. A trustee who received a benefit 4123  
from the breach of trust is not entitled to contribution from 4124  
another trustee to the extent of the benefit received. 4125

Sec. 5810.03. (A) Absent a breach of trust, a trustee is not 4126  
accountable to a beneficiary for any profit made by the trustee 4127  
arising from the administration of the trust. 4128

(B) Absent a breach of trust, a trustee is not liable to a 4129  
beneficiary for a loss or depreciation in the value of trust 4130  
property or for not having made a profit. 4131

Sec. 5810.04. In a judicial proceeding involving the 4132  
administration of a trust, including a trust that contains a 4133  
spendthrift provision, the court, as justice and equity may 4134  
require, may award costs, expenses, and reasonable attorney's fees 4135  
to any party, to be paid by another party, from the trust that is 4136

the subject of the controversy, or from a party's interest in the 4137  
trust that is the subject of the controversy. 4138

**Sec. 5810.05.** (A) A beneficiary may not commence a proceeding 4139  
against a trustee for breach of trust more than two years after 4140  
the date the beneficiary, a representative of the beneficiary, or 4141  
a beneficiary surrogate is sent a report that adequately discloses 4142  
the existence of a potential claim for breach of trust and informs 4143  
the beneficiary, the representative of the beneficiary, or the 4144  
beneficiary surrogate of the time allowed for commencing a 4145  
proceeding against a trustee. 4146

(B) A report adequately discloses the existence of a 4147  
potential claim for breach of trust if it provides sufficient 4148  
information so that the beneficiary or the representative of the 4149  
beneficiary knows of the potential claim or should know of the 4150  
existence of the potential claim. 4151

(C) If division (A) of this section does not apply, 4152  
notwithstanding section 2305.09 of the Revised Code, a judicial 4153  
proceeding by a beneficiary against a trustee for breach of trust 4154  
must be commenced within four years after the first of the 4155  
following to occur: 4156

(1) The removal, resignation, or death of the trustee; 4157

(2) The termination of the beneficiary's interest in the 4158  
trust; 4159

(3) The termination of the trust; 4160

(4) The time at which the beneficiary knew or should have 4161  
known of the breach of trust. 4162

**Sec. 5810.06.** A trustee who acts in reasonable reliance on 4163  
the terms of the trust as expressed in the trust instrument is not 4164

liable to a beneficiary for a breach of trust to the extent the 4165  
breach resulted from the reliance. 4166

Sec. 5810.07. If the happening of an event, including 4167  
marriage, divorce, performance of educational requirements, or 4168  
death, affects the administration or distribution of a trust, a 4169  
trustee who has exercised reasonable care to ascertain the 4170  
happening of the event is not liable for a loss resulting from the 4171  
trustee's lack of knowledge. 4172

Sec. 5810.08. A term of a trust relieving a trustee of 4173  
liability for breach of trust is unenforceable to the extent that 4174  
it relieves the trustee of liability for breach of trust committed 4175  
in bad faith or with reckless indifference to the purposes of the 4176  
trust or the interests of the beneficiaries or was inserted as the 4177  
result of an abuse by the trustee of a fiduciary or confidential 4178  
relationship to the settlor. 4179

Sec. 5810.09. A trustee is not liable to a beneficiary for 4180  
breach of trust if the beneficiary consented to the conduct 4181  
constituting the breach, released the trustee from liability for 4182  
the breach, or ratified the transaction constituting the breach, 4183  
unless the consent, release, or ratification of the beneficiary 4184  
was induced by improper conduct of the trustee or, at the time of 4185  
the consent, release, or ratification, the beneficiary did not 4186  
know of the beneficiary's rights or of the material facts relating 4187  
to the breach. 4188

Sec. 5810.10. (A) Except as otherwise provided in the 4189  
contract, for contracts entered into on or after March 22, 1984, a 4190  
trustee is not personally liable on a contract properly entered 4191  
into in the trustee's fiduciary capacity in the course of 4192

administering the trust if the trustee in the contract disclosed 4193  
the fiduciary capacity. The words "trustee," "as trustee," 4194  
"fiduciary," or "as fiduciary," or other words that indicate one's 4195  
trustee capacity, following the name or signature of a trustee are 4196  
sufficient disclosure for purposes of this division. 4197

(B) A trustee is personally liable for torts committed in the 4198  
course of administering a trust or for obligations arising from 4199  
ownership or control of trust property, including liability for 4200  
violation of environmental law, only if the trustee is personally 4201  
at fault. 4202

(C) A claim based on a contract entered into by a trustee in 4203  
the trustee's fiduciary capacity, on an obligation arising from 4204  
ownership or control of trust property, or on a tort committed in 4205  
the course of administering a trust may be asserted in a judicial 4206  
proceeding against the trustee in the trustee's fiduciary 4207  
capacity, whether or not the trustee is personally liable for the 4208  
claim. 4209

**Sec. 5810.11.** (A)(1) Except as otherwise provided in division 4210  
(C) of this section or unless personal liability is imposed in the 4211  
contract, a trustee who holds an interest as a general partner in 4212  
a general or limited partnership is not personally liable on a 4213  
contract entered into by the partnership after the trust's 4214  
acquisition of the interest if the fiduciary capacity was 4215  
disclosed. A partnership certificate that is filed pursuant to 4216  
Chapter 1777. or another chapter of the Revised Code and that 4217  
indicates that a trustee holds a general partnership interest in a 4218  
fiduciary capacity by the use following the name or signature of 4219  
the trustee of the words "as trustee" or other words that indicate 4220  
the trustee's fiduciary capacity constitutes a sufficient 4221  
disclosure for purposes of this division. 4222

(2) If a partnership certificate is not required to be filed 4223  
pursuant to Chapter 1777. or another chapter of the Revised Code, 4224  
a sufficient disclosure for purposes of division (A) of this 4225  
section can be made by a trustee if a certificate that is filed 4226  
with the recorder of the county in which the partnership's 4227  
principal office or place of business is situated and with the 4228  
recorder of each county in which the partnership owns real estate 4229  
satisfies all of the following requirements: 4230

(a) The certificate states in full the names of all persons 4231  
holding interests in the partnership and their places of 4232  
residence. 4233

(b) The certificate is signed by all persons who are general 4234  
partners in the partnership and is acknowledged by a person 4235  
authorized to take acknowledgements of deeds. 4236

(c) The certificate uses the words "trustee under the (will 4237  
or trust) of (name of decedent or settlor)," or other words that 4238  
indicate the trustee's fiduciary capacity, following the trustee's 4239  
name or signature. 4240

(3) A contract or other written instrument that is delivered 4241  
to a party that contracts with the partnership in which a trustee 4242  
holds a general partnership interest in a fiduciary capacity and 4243  
that indicates that the trustee so holds the interest constitutes 4244  
a disclosure for purposes of division (A)(1) of this section with 4245  
respect to transactions between the party and the partnership. If 4246  
a disclosure has been made by a certificate in accordance with 4247  
division (A) of this section, a disclosure for purposes of 4248  
division (A) of this section with respect to such transactions 4249  
exists regardless of whether a contract or other instrument 4250  
indicates the trustee holds the general partnership interest in a 4251  
fiduciary capacity. 4252

(B) Except as otherwise provided in division (C) of this 4253

section, a trustee who holds an interest as a general partner in a 4254  
general or limited partnership is not personally liable for torts 4255  
committed by the partnership or for obligations arising from 4256  
ownership or control of the interest unless the trustee is 4257  
personally at fault. 4258

(C) The immunity provided by this section does not apply if 4259  
an interest in the partnership is held by the trustee in a 4260  
capacity other than that of trustee or is held by the trustee's 4261  
spouse or one or more of the trustee's descendants, siblings, or 4262  
parents, or the spouse of any of them. 4263

(D) If the trustee of a revocable trust holds an interest as 4264  
a general partner in a general or limited partnership, the settlor 4265  
is personally liable for contracts and other obligations of the 4266  
partnership as if the settlor were a general partner. 4267

**Sec. 5810.12.** (A) A person other than a beneficiary who in 4268  
good faith assists a trustee, or who in good faith and for value 4269  
deals with a trustee, without knowledge that the trustee is 4270  
exceeding or improperly exercising the trustee's powers is 4271  
protected from liability as if the trustee properly exercised the 4272  
power. 4273

(B) A person other than a beneficiary who in good faith deals 4274  
with a trustee is not required to inquire into the extent of the 4275  
trustee's powers or the propriety of their exercise. 4276

(C) A person who in good faith delivers assets to a trustee 4277  
is not required to ensure their proper application. 4278

(D) A person other than a beneficiary who in good faith 4279  
assists a former trustee, or who in good faith and for value deals 4280  
with a former trustee, without knowledge that the trusteeship has 4281  
terminated is protected from liability as if the former trustee 4282  
were still a trustee. 4283

(E) Comparable protective provisions of other laws relating 4284  
to commercial transactions or transfer of securities by 4285  
fiduciaries prevail over the protection provided by this section. 4286

Sec. 5810.13. (A) Instead of furnishing a copy of the trust 4287  
instrument to a person other than a beneficiary, the trustee may 4288  
furnish to the person a certification of trust containing all of 4289  
the following information: 4290

(1) A statement that the trust exists and the date the trust 4291  
instrument was executed; 4292

(2) The identity of the settlor; 4293

(3) The identity and address of the currently acting trustee; 4294

(4) The powers of the trustee; 4295

(5) The revocability or irrevocability of the trust and the 4296  
identity of any person holding a power to revoke the trust; 4297

(6) The authority of cotrustees to sign or otherwise 4298  
authenticate and whether all or less than all are required in 4299  
order to exercise powers of the trustee; 4300

(7) The trust's taxpayer identification number; 4301

(8) The manner of taking title to trust property. 4302

(B) Any trustee may sign or otherwise authenticate a 4303  
certification of trust. 4304

(C) A certification of trust shall state that the trust has 4305  
not been revoked, modified, or amended in any manner that would 4306  
cause the representations contained in the certification of trust 4307  
to be incorrect. 4308

(D) A certification of trust is not required to contain the 4309  
dispositive terms of a trust. 4310

(E) A recipient of a certification of trust may require the 4311



trustee to furnish copies of those excerpts from the original 4312  
trust instrument and later amendments that designate the trustee 4313  
and confer upon the trustee the power to act in the pending 4314  
transaction. 4315

(F) A person who acts in reliance upon a certification of 4316  
trust without knowledge that the representations contained in the 4317  
certification are incorrect is not liable to any person for so 4318  
acting and may assume without inquiry the existence of the facts 4319  
contained in the certification. Knowledge of the terms of the 4320  
trust may not be inferred solely from the fact that a copy of all 4321  
or part of the trust instrument is held by the person relying upon 4322  
the certification. 4323

(G) A person who in good faith enters into a transaction in 4324  
reliance upon a certification of trust may enforce the transaction 4325  
against the trust property as if the representations contained in 4326  
the certification were correct. 4327

(H) A person making a demand for the trust instrument in 4328  
addition to a certification of trust or excerpts is liable for 4329  
damages if the court determines that the person did not act in 4330  
good faith in demanding the trust instrument. 4331

(I) This section does not limit the right of a person to 4332  
obtain a copy of the trust instrument in a judicial proceeding 4333  
concerning the trust. 4334

Sec. 5811.01. In applying and construing Chapters 5801. to 4335  
5811. of the Revised Code, a court may consider the need to 4336  
promote uniformity of the law with respect to the subject matter 4337  
of those chapters among states that enact the uniform trust code. 4338

Sec. 5811.02. The provisions of Chapters 5801. to 5811. of 4339  
the Revised Code governing the legal effect, validity, or 4340  
enforceability of electronic records or electronic signatures and 4341

of contracts formed or performed with the use of electronic 4342  
records or electronic signatures conform to the requirements of 4343  
section 102 of the Electronic Signatures in Global and National 4344  
Commerce Act, 15 U.S.C. 7002, 114 Stat. 467, and supersede, 4345  
modify, and limit the requirements of the Electronic Signatures in 4346  
Global and National Commerce Act. 4347

Sec. 5811.03. (A) Except as otherwise provided in Chapters 4348  
5801. to 5811. of the Revised Code, all of the following apply: 4349

(1) Chapters 5801. to 5811. of the Revised Code apply to all 4350  
trusts created before, on, or after their effective date. 4351

(2) Chapters 5801. to 5811. of the Revised Code apply to all 4352  
judicial proceedings concerning trusts commenced on or after their 4353  
effective date. 4354

(3) Chapters 5801. to 5811. of the Revised Code apply to 4355  
judicial proceedings concerning trusts commenced before the 4356  
effective date of those chapters unless the court finds that 4357  
application of a particular provision of those chapters would 4358  
substantially interfere with the effective conduct of the judicial 4359  
proceedings or prejudice the rights of the parties, in which case 4360  
the particular provision does not apply, and the superseded law 4361  
applies. 4362

(4) Any rule of construction or presumption provided in 4363  
Chapters 5801. to 5811. of the Revised Code applies to trust 4364  
instruments executed before the effective date of those chapters 4365  
unless there is a clear indication of a contrary intent in the 4366  
terms of the trust. 4367

(5) Chapters 5801. to 5811. of the Revised Code do not affect 4368  
an act done before the effective date of those chapters. 4369

(B) If a right is acquired, extinguished, or barred upon the 4370

expiration of a prescribed period that has commenced to run under 4371  
any other statute before the effective date of Chapters 5801. to 4372  
5811. of the Revised Code, that statute continues to apply to the 4373  
right even if it has been repealed or superseded. 4374

**Sec. ~~1340.40~~ 5812.01.** As used in sections ~~1340.40~~ 5812.01 to 4375  
~~1340.91~~ 5812.52 of the Revised Code: 4376

(A) "Accounting period" means a calendar year unless another 4377  
twelve-month period is selected by a fiduciary. "Accounting 4378  
period" includes a portion of a calendar year or other 4379  
twelve-month period that begins when an income interest begins or 4380  
ends when an income interest ends. 4381

(B) "Beneficiary" includes, in the case of a decedent's 4382  
estate, an heir, legatee, and devisee and, in the case of a trust, 4383  
an income beneficiary and a remainder beneficiary. 4384

(C) "Fiduciary" means a personal representative or a trustee. 4385  
The term includes an executor, administrator, successor personal 4386  
representative, special administrator, and a person performing 4387  
substantially the same function. 4388

(D) "Income" means money or property that a fiduciary 4389  
receives as current return from a principal asset. "Income" 4390  
includes a portion of receipts from a sale, exchange, or 4391  
liquidation of a principal asset, to the extent provided in 4392  
sections ~~1340.57~~ 5812.18 to ~~1340.77~~ 5812.38 of the Revised Code. 4393

(E) "Income beneficiary" means a person to whom net income of 4394  
a trust is or may be payable. 4395

(F) "Income interest" means the right of an income 4396  
beneficiary to receive all or part of net income, whether the 4397  
terms of the trust require or authorize it to be distributed in 4398  
the trustee's discretion. 4399

(G) "Mandatory income interest" means the right of an income 4400

beneficiary to receive net income that the terms of the trust 4401  
require the fiduciary to distribute. 4402

(H) "Net income" means the total receipts allocated to income 4403  
during an accounting period minus the disbursements made from 4404  
income during the period, plus or minus transfers under sections 4405  
~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code to or from 4406  
income during the period. 4407

(I) "Person" means an individual, corporation, business 4408  
trust, estate, trust, partnership, limited liability company, 4409  
association, joint venture, or government; governmental 4410  
subdivision, agency, or instrumentality; public corporation; or 4411  
any other legal or commercial entity. 4412

(J) "Principal" means property held in trust for distribution 4413  
to a remainder beneficiary when the trust terminates. 4414

(K) "Remainder beneficiary" means a person entitled to 4415  
receive principal when an income interest ends. 4416

(L) "Terms of a trust" means the manifestation of the intent 4417  
of a settlor or decedent with respect to the trust, expressed in a 4418  
manner that admits of its proof in a judicial proceeding, whether 4419  
by written or spoken words or by conduct. 4420

(M) "Trustee" includes an original, additional, or successor 4421  
trustee, whether or not appointed or confirmed by a court. 4422

**Sec. ~~1340.41~~ 5812.02.** (A) In allocating receipts and 4423  
disbursements to or between principal and income, and with respect 4424  
to any matter within the scope of sections ~~1340.46~~ 5812.07 to 4425  
~~1340.53~~ 5812.14 of the Revised Code, all of the following apply: 4426

(1) A fiduciary shall administer a trust or estate in 4427  
accordance with the terms of the trust or the will, even if there 4428  
is a different provision in sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 4429  
5812.52 of the Revised Code. 4430

(2) A fiduciary may administer a trust or estate by the 4431  
exercise of a discretionary power of administration given to the 4432  
fiduciary by the terms of the trust or the will, even if the 4433  
exercise of the power produces a result different from a result 4434  
required or permitted by any provision of sections ~~1340.40~~ 5812.01 4435  
to ~~1340.91~~ 5812.52 of the Revised Code. 4436

(3) A fiduciary shall administer a trust or estate in 4437  
accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the 4438  
Revised Code if the terms of the trust or the will do not contain 4439  
a different provision or do not give the fiduciary a discretionary 4440  
power of administration. 4441

(4) A fiduciary shall add a receipt, or charge a 4442  
disbursement, to principal to the extent that the terms of the 4443  
trust and any provision of sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 4444  
5812.52 of the Revised Code do not provide for allocating the 4445  
receipt or disbursement to or between principal and income. 4446

(B) In exercising the power to adjust under division (A) of 4447  
section ~~1340.42~~ 5812.03 of the Revised Code or a discretionary 4448  
power of administration regarding a matter within the scope of 4449  
sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the Revised Code, 4450  
whether granted by the terms of a trust, a will, or a provision of 4451  
any such section, a fiduciary shall administer a trust or estate 4452  
impartially, based on what is fair and reasonable to all of the 4453  
beneficiaries, except to the extent that the terms of the trust or 4454  
the will clearly manifest an intention that the fiduciary shall or 4455  
may favor one or more of the beneficiaries. A determination in 4456  
accordance with sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5812.52 of the 4457  
Revised Code is presumed to be fair and reasonable to all of the 4458  
beneficiaries. 4459

(C) In allocating receipts and disbursements to or between 4460  
principal and income, a fiduciary may credit a receipt or charge 4461

an expenditure to income or principal with respect to a decedent's 4462  
estate, a trust, or property passing to a trust, that is eligible 4463  
for a federal estate tax marital deduction or Ohio estate tax 4464  
marital deduction, or for a federal estate tax charitable 4465  
deduction or Ohio estate tax charitable deduction, or for a 4466  
federal gift tax marital deduction or federal gift tax charitable 4467  
deduction only to the extent that the credit of the receipt or 4468  
charge of the expenditure will not cause the reduction or loss of 4469  
the deduction. 4470

(D) As used in division (C) of this section: 4471

(1) "Federal estate tax charitable deduction" means the 4472  
estate tax charitable deduction allowed by subtitle B, Chapter 11 4473  
of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2055, as 4474  
amended. 4475

(2) "Federal estate tax marital deduction" means the estate 4476  
tax marital deduction allowed by subtitle B, Chapter 11 of the 4477  
"Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended. 4478

(3) "Federal gift tax charitable deduction" means the gift 4479  
tax charitable deduction allowed by subtitle B, Chapter 12 of the 4480  
"Internal Revenue Code of 1986," 26 U.S.C.A. 2522, as amended. 4481

(4) "Federal gift tax marital deduction" means the gift tax 4482  
marital deduction allowed by subtitle B, Chapter 12 of the 4483  
"Internal Revenue Code of 1986," 26 U.S.C.A. 2523, as amended. 4484

(5) "Ohio estate tax charitable deduction" means the estate 4485  
tax charitable deduction allowed by division (A) of section 4486  
5731.17 of the Revised Code. 4487

(6) "Ohio estate tax marital deduction" means the estate tax 4488  
marital deduction allowed by section 5731.15 of the Revised Code. 4489

**Sec. ~~1340.42~~ 5812.03.** (A) A trustee may adjust between 4490  
principal and income to the extent the trustee considers necessary 4491

if the trustee invests and manages the trust assets as a prudent 4492  
investor, the terms of the trust describe the amount that may or 4493  
must be distributed to a beneficiary by referring to the trust's 4494  
income, and the trustee determines, after applying division (A) of 4495  
section ~~1340.41~~ 5812.02 of the Revised Code, that the trustee is 4496  
unable to comply with division (B) of that section. 4497

(B) In deciding whether and to what extent to exercise the 4498  
power conferred by division (A) of this section, a trustee shall 4499  
consider all factors relevant to the trust and its beneficiaries, 4500  
including all of the following factors to the extent they are 4501  
relevant: 4502

(1) The nature, purpose, and expected duration of the trust; 4503

(2) The intent of the settlor; 4504

(3) The identity and circumstances of the beneficiaries; 4505

(4) The needs for liquidity, regularity of income, and 4506  
preservation and appreciation of capital; 4507

(5) The assets held in the trust; the extent to which they 4508  
consist of financial assets, interests in closely held 4509  
enterprises, tangible and intangible personal property, or real 4510  
property; the extent to which an asset is used by a beneficiary; 4511  
and whether an asset was purchased by the trustee or received from 4512  
the settlor; 4513

(6) The net amount allocated to income under sections ~~1340.40~~ 4514  
5812.01, ~~1340.41~~ 5812.02, and ~~1340.46~~ 5812.07 to ~~1340.91~~ 5812.52 4515  
of the Revised Code; and the increase or decrease in the value of 4516  
the principal assets, which the trustee may estimate as to assets 4517  
for which market values are not readily available; 4518

(7) Whether and to what extent the terms of the trust give 4519  
the trustee the power to invade principal or accumulate income or 4520  
prohibit the trustee from invading principal or accumulating 4521

income, and the extent to which the trustee has exercised a power	4522
from time to time to invade principal or accumulate income;	4523
(8) The actual and anticipated effect of economic conditions	4524
on principal and income and effects of inflation and deflation;	4525
(9) The anticipated tax consequences of an adjustment.	4526
(C) A trustee shall not make an adjustment if any of the	4527
following applies:	4528
(1) The adjustment diminishes the income interest in a trust	4529
that requires all of the income to be paid at least annually to a	4530
spouse and for which an estate tax or gift tax marital deduction	4531
would be allowed, in whole or in part, if the trustee did not have	4532
the power to make the adjustment.	4533
(2) The adjustment reduces the actuarial value of the income	4534
interest in a trust to which a person transfers property with the	4535
intent to qualify for a gift tax exclusion.	4536
(3) The adjustment changes the amount payable to a	4537
beneficiary as a fixed annuity or a fixed fraction of the value of	4538
the trust assets.	4539
(4) The adjustment is from any amount that is permanently set	4540
aside for charitable purposes under a will or the terms of a trust	4541
unless both income and principal are so set aside.	4542
(5) If possessing or exercising the power to make the	4543
adjustment causes an individual to be treated as the owner of all	4544
or part of the trust for income tax purposes, and the individual	4545
would not be treated as the owner if the trustee did not possess	4546
the power to make the adjustment;	4547
(6) If possessing or exercising the power to make the	4548
adjustment causes all or part of the trust assets to be included	4549
for estate tax purposes in the estate of an individual who has the	4550
power to remove a trustee or appoint a trustee, or both, and the	4551



assets would not be included in the estate of the individual if 4552  
the trustee did not possess the power to make the adjustment; 4553

(7) If the trustee is a beneficiary of the trust; 4554

(8) If the trustee is not a beneficiary, but the adjustment 4555  
would benefit the trustee directly or indirectly. 4556

(D) If division (C)(5), (6), (7), or (8) of this section 4557  
applies to a trustee and there is more than one trustee, a 4558  
cotrustee to whom the provision does not apply may make the 4559  
adjustment unless the exercise of the power by the remaining 4560  
trustee or trustees is not permitted by the terms of the trust. 4561

(E) A trustee may release the entire power conferred by 4562  
division (A) of this section or may release only the power to 4563  
adjust from income to principal or the power to adjust from 4564  
principal to income if the trustee is uncertain about whether 4565  
possessing or exercising the power will cause a result described 4566  
in division (C)(1), (2), (3), (4), (5), (6), or (8) of this 4567  
section or if the trustee determines that possessing or exercising 4568  
the power will or may deprive the trust of a tax benefit or impose 4569  
a tax burden not described in division (C) of this section. The 4570  
release may be permanent or for a specified period, including a 4571  
period measured by the life of an individual. 4572

(F) Terms of a trust that limit the power of a trustee to 4573  
make an adjustment between principal and income do not affect the 4574  
application of this section unless it is clear from the terms of 4575  
the trust that the terms are intended to deny the trustee the 4576  
power of adjustment conferred by division (A) of this section. 4577

(G) The liability of a trustee relative to the exercise of 4578  
adjustment authority conferred by divisions (A) to (F) of this 4579  
section shall be limited in the following manner: 4580

(1) Unless a court determines that a trustee has acted in bad 4581

faith, no trustee shall be held liable for damages for choosing 4582  
not to make an adjustment. 4583

(2) Unless a court determines that a trustee has acted in bad 4584  
faith with respect to an adjustment, the sole remedy to be ordered 4585  
by a court shall be a prospective correction of the adjustment. 4586

(3) For purposes of this section, and subject to division (C) 4587  
of this section, from time to time a trustee may make a 4588  
safe-harbor adjustment to increase net trust accounting income up 4589  
to and including an amount equal to four per cent of the trust's 4590  
fair market value determined as of the first business day of the 4591  
current year. If a trustee determines to make this safe-harbor 4592  
adjustment, the propriety of this adjustment shall be conclusively 4593  
presumed. Nothing in division (G)(3) of this section prohibits any 4594  
other type of adjustment authorized under any provision of this 4595  
section. 4596

**Sec. ~~1340.46~~ 5812.07.** After a decedent dies, in the case of 4597  
an estate, or after an income interest in a trust ends, all of the 4598  
following apply: 4599

(A) The fiduciary of the estate or of the terminating income 4600  
interest shall determine, under the provisions of sections ~~1340.51~~ 4601  
5812.12 to ~~1340.86~~ 5812.47 of the Revised Code that apply to 4602  
trustees and under division (E) of this section, the amount of net 4603  
income and net principal receipts received from property 4604  
specifically given to a beneficiary. The fiduciary shall 4605  
distribute the net income and net principal receipts to the 4606  
beneficiary that is to receive the specific property. 4607

(B) A fiduciary shall determine the remaining net income of a 4608  
decedent's estate or a terminating income interest under the 4609  
provisions of sections ~~1340.51~~ 5812.12 to ~~1340.86~~ 5812.47 of the 4610  
Revised Code that apply to trustees and by doing all of the 4611

following: 4612

(1) Including in net income all income from property used to 4613  
discharge liabilities; 4614

(2) Paying from income or principal, in the fiduciary's 4615  
discretion, fees of attorneys, accountants, and fiduciaries; court 4616  
costs and other expenses of administration; and interest on death 4617  
taxes. However, the fiduciary may pay those expenses from income 4618  
of property passing to a trust for which the fiduciary claims an 4619  
estate tax marital or charitable deduction only to the extent that 4620  
the payment of those expenses from income will not cause the 4621  
reduction or loss of the deduction. 4622

(3) Paying from principal all other disbursements made or 4623  
incurred in connection with the settlement of a decedent's estate 4624  
or the winding up of a terminating income interest, including 4625  
debts, funeral expenses, disposition of remains, family 4626  
allowances, and death taxes and related penalties that are 4627  
apportioned to the estate or terminating income interest by the 4628  
will, the terms of the trust, or applicable law. 4629

(C) A fiduciary shall distribute to a beneficiary that 4630  
receives a pecuniary amount outright the interest or any other 4631  
amount provided by the will, the terms of the trust, or applicable 4632  
law from net income determined under division (B) of this section 4633  
or from principal to the extent that net income is insufficient. 4634  
If a beneficiary is to receive a pecuniary amount outright from a 4635  
trust after an income interest ends and no interest or other 4636  
amount is provided for by the terms of the trust or applicable 4637  
law, the fiduciary shall distribute the interest or other amount 4638  
to which the beneficiary would be entitled under applicable law if 4639  
the pecuniary amount were required to be paid under a will. 4640

(D) A fiduciary shall distribute the net income remaining 4641  
after distributions required by division (C) of this section, in 4642

the manner described in section ~~1340.47~~ 5812.08 of the Revised Code, to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable, general power of appointment over the trust.

(E) A fiduciary shall not reduce principal or income receipts from property described in division (A) of this section because of a payment described in section ~~1340.81~~ 5812.42 or ~~1340.82~~ 5812.43 of the Revised Code to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

**Sec. ~~1340.47~~ 5812.08.** (A) Each beneficiary described in division (D) of section ~~1340.46~~ 5812.07 of the Revised Code is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one that does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of the decedent's death or terminating event or

earlier distribution date but has not distributed as of the 4674  
current distribution date. 4675

(B) In determining a beneficiary's share of net income for 4676  
the purpose of this section, all of the following apply: 4677

(1) The beneficiary is entitled to receive a portion of the 4678  
net income equal to the beneficiary's fractional interest in the 4679  
undistributed principal assets immediately before the distribution 4680  
date, including assets that later may be sold to meet principal 4681  
obligations. 4682

(2) The beneficiary's fractional interest in the 4683  
undistributed principal assets must be calculated without regard 4684  
to property specifically given to a beneficiary and property 4685  
required to pay pecuniary amounts not in trust. 4686

(3) The beneficiary's fractional interest in the 4687  
undistributed principal assets must be calculated on the basis of 4688  
the aggregate value of those assets as of the distribution date 4689  
without reducing the value by any unpaid principal obligation. 4690

(4) The distribution date for purposes of this section may be 4691  
the date as of which the fiduciary calculates the value of the 4692  
assets if that date is reasonably near the date on which assets 4693  
are actually distributed. 4694

(C) If a fiduciary does not distribute all of the collected 4695  
but undistributed net income described in divisions (A) and (B) of 4696  
this section to each person as of a distribution date, the 4697  
fiduciary shall maintain appropriate records showing the interest 4698  
of each. 4699

(D) To the extent that a fiduciary considers it appropriate, 4700  
the fiduciary may apply the provisions of divisions (A) to (C) of 4701  
this section to any net gain or loss, realized after the date of 4702  
the decedent's death or an income interest termination or earlier 4703  
distribution date, from the disposition of a principal asset to 4704

which such provisions apply.

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**Sec. ~~1340.51~~ 5812.12.** (A) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

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(B) An asset becomes subject to a trust on any of the following dates:

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(1) The date it is transferred to the trust, in the case of an asset that is transferred to a trust during the transferor's life;

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(2) The date of a testator's death, in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate;

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(3) The date of an individual's death, in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

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(C) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under division (D) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

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(D) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

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**Sec. ~~1340.52~~ 5812.13.** (A) A trustee shall allocate to principal an income receipt or disbursement other than one to

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which division (A) of section ~~1340.46~~ 5812.07 of the Revised Code 4734  
applies, if its due date occurs before a decedent dies in the case 4735  
of an estate or before an income interest begins in the case of a 4736  
trust or successive income interest. 4737

(B) A trustee shall allocate an income receipt or 4738  
disbursement to income if its due date occurs on or after the date 4739  
on which a decedent dies or an income interest begins and if it is 4740  
a periodic due date. An income receipt or disbursement shall be 4741  
treated as accruing from day to day if its due date is not 4742  
periodic or it has no due date. The portion of the receipt or 4743  
disbursement accruing before the date on which a decedent dies or 4744  
an income interest begins shall be allocated to principal, and the 4745  
balance shall be allocated to income. 4746

(C) For the purposes of this section, an item of income or an 4747  
obligation is due on the date the payer is required to make a 4748  
payment. If a payment date is not stated, there is no due date. 4749  
Distributions to shareholders or other owners from an entity to 4750  
which section ~~1340.57~~ 5812.18 of the Revised Code applies are 4751  
deemed to be due on the date fixed by the entity for determining 4752  
who is entitled to receive the distribution or, if no date is 4753  
fixed, on the declaration date for the distribution. A due date is 4754  
periodic for receipts or disbursements that must be paid at 4755  
regular intervals under a lease or an obligation to pay interest 4756  
or if an entity customarily makes distributions at regular 4757  
intervals. 4758

**Sec. ~~1340.53~~ 5812.14.** (A) As used in this section, 4759  
"undistributed income" means net income received before the date 4760  
on which an income interest ends. "Undistributed income" excludes 4761  
an item of income or expense that is due or accrued or net income 4762  
that has been added or is required to be added to principal under 4763  
the terms of the trust. 4764

(B) When a mandatory income interest ends, the trustee shall 4765  
pay to a mandatory income beneficiary that survives that date, or 4766  
the estate of a deceased mandatory income beneficiary whose death 4767  
causes the interest to end, the beneficiary's share of the 4768  
undistributed income that is not disposed of under the terms of 4769  
the trust, unless the beneficiary has an unqualified power to 4770  
revoke more than five per cent of the trust immediately before the 4771  
income interest ends. If the beneficiary has such power, the 4772  
undistributed income from the portion of the trust that may be 4773  
revoked shall be added to principal. 4774

(C) When a trustee's obligation to pay a fixed annuity or a 4775  
fixed fraction of the value of the trust's assets ends, the 4776  
trustee shall prorate the final payment if and to the extent 4777  
required by applicable law to accomplish a purpose of the trust or 4778  
its settlor relating to income, gift, estate, or other tax 4779  
requirements. 4780

**Sec. ~~1340.57~~ 5812.18.** (A) As used in this section, "entity" 4781  
means a corporation, partnership, limited liability company, 4782  
regulated investment company, real estate investment trust, common 4783  
trust fund, or any other organization in which a trustee has an 4784  
interest other than a trust or estate to which section ~~1340.58~~ 4785  
5812.19 of the Revised Code applies, a business or activity to 4786  
which section ~~1340.59~~ 5812.20 of the Revised Code applies, or an 4787  
asset-backed security to which section ~~1340.77~~ 5812.38 of the 4788  
Revised Code applies. 4789

(B) Except as otherwise provided in this section, a trustee 4790  
shall allocate to income money received from an entity. 4791

(C) A trustee shall allocate all of the following receipts 4792  
from an entity to principal: 4793

(1) Property other than money; 4794



(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity; 4795  
4796  
4797

(3) Money received in total or partial liquidation of the entity; 4798  
4799

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes. 4800  
4801  
4802  
4803

(D) Money is received in partial liquidation in either of the following circumstances: 4804  
4805

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; 4806  
4807  
4808

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty per cent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt. 4809  
4810  
4811  
4812  
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(E) Money is not received in partial liquidation, nor shall it be taken into account under division (D)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money. 4814  
4815  
4816  
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(F) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors. 4819  
4820  
4821  
4822  
4823  
4824

**Sec. ~~1340.58~~ 5812.19.** A trustee shall allocate to income an 4825  
amount received as a distribution of income from a trust or an 4826  
estate in which the trust has an interest other than a purchased 4827  
interest, and shall allocate to principal an amount received as a 4828  
distribution of principal from such a trust or estate. If a 4829  
trustee purchases an interest in a trust that is an investment 4830  
entity, or a decedent or donor transfers an interest in such a 4831  
trust to a trustee, section ~~1340.57~~ 5812.18 or ~~1340.77~~ 5812.38 of 4832  
the Revised Code applies to a receipt from the trust. 4833

**Sec. ~~1340.59~~ 5812.20.** (A) If a trust that conducts a business 4834  
or other activity determines that it is in the best interest of 4835  
all the beneficiaries to account separately for the business or 4836  
activity instead of accounting for it as part of the trust's 4837  
general accounting records, the trustee may maintain separate 4838  
accounting records for its transactions, whether or not its assets 4839  
are segregated from other trust assets. 4840

(B) A trustee that accounts separately for a business or 4841  
other activity may determine the extent to which its net cash 4842  
receipts must be retained for working capital, the acquisition or 4843  
replacement of fixed assets, and other reasonably foreseeable 4844  
needs of the business or activity, and the extent to which the 4845  
remaining net cash receipts are accounted for as principal or 4846  
income in the trust's general accounting records. If a trustee 4847  
sells assets of the business or other activity, other than in the 4848  
ordinary course of the business or activity, the trustee shall 4849  
account for the net amount received as principal in the trust's 4850  
general accounting records to the extent the trustee determines 4851  
that the amount received is no longer required in the conduct of 4852  
the business. 4853

(C) Activities for which a trustee may maintain separate 4854

accounting records under this section include all of the	4855
following:	4856
(1) Retail, manufacturing, service, and other traditional business activities;	4857 4858
(2) Farming;	4859
(3) Raising and selling livestock and other animals;	4860
(4) Management of rental properties;	4861
(5) Extraction of minerals and other natural resources;	4862
(6) Timber operations;	4863
(7) Activities to which section <del>1340.76</del> <u>5812.37</u> of the Revised Code applies.	4864 4865
<b>Sec. <del>1340.63</del> <u>5812.24</u>.</b> A trustee shall allocate to principal	4866
all of the following:	4867
(A) To the extent not allocated to income under sections	4868
<del>1340.40</del> <u>5812.01</u> to <del>1340.91</del> <u>5812.52</u> of the Revised Code, assets	4869
received from a transferor during the transferor's lifetime, a	4870
decedent's estate, a trust with a terminating income interest, or	4871
a payer under a contract naming the trust or its trustee as	4872
beneficiary;	4873
(B) Money or other property received from the sale, exchange,	4874
liquidation, or change in form of a principal asset, including	4875
realized profit, subject to sections <del>1340.57</del> <u>5812.18</u> to <del>1340.77</del>	4876
<u>5812.38</u> of the Revised Code;	4877
(C) Amounts recovered from third parties to reimburse the	4878
trust because of disbursements described in division (A)(7) of	4879
section <del>1340.82</del> <u>5812.43</u> of the Revised Code or for other reasons	4880
to the extent not based on the loss of income;	4881
(D) Proceeds of property taken by eminent domain, but a	4882

separate award made for the loss of income with respect to an 4883  
accounting period during which a current income beneficiary had a 4884  
mandatory income interest is income; 4885

(E) Net income received in an accounting period during which 4886  
there is no beneficiary to whom a trustee may or must distribute 4887  
income; 4888

(F) Other receipts as provided in sections ~~1340.70~~ 5812.31 to 4889  
~~1340.77~~ 5812.38 of the Revised Code. 4890

**Sec. ~~1340.64~~ 5812.25.** To the extent that a trustee accounts 4891  
for receipts from rental property pursuant to this section, the 4892  
trustee shall allocate to income an amount received as rent of 4893  
real or personal property, including an amount received for 4894  
cancellation or renewal of a lease. An amount received as a 4895  
refundable deposit, including a security deposit or a deposit that 4896  
is to be applied as rent for future periods, shall be added to 4897  
principal and held subject to the terms of the lease and shall not 4898  
be available for distribution to a beneficiary until the trustee's 4899  
contractual obligations have been satisfied with respect to that 4900  
amount. 4901

**Sec. ~~1340.65~~ 5812.26.** (A) An amount received as interest, 4902  
whether determined at a fixed, variable, or floating rate, on an 4903  
obligation to pay money to the trustee, including an amount 4904  
received as consideration for prepaying principal, shall be 4905  
allocated to income without any provision for amortization of 4906  
premium. 4907

(B) A trustee shall allocate to principal an amount received 4908  
from the sale, redemption, or other disposition of an obligation 4909  
to pay money to the trustee more than one year after the date it 4910  
is purchased or acquired by the trustee, including an obligation 4911  
whose purchase price or value when it is acquired is less than its 4912

value at maturity. If the obligation matures within one year after 4913  
the date it is purchased or acquired by the trustee, an amount 4914  
received in excess of its purchase price or its value when 4915  
acquired by the trust shall be allocated to income. 4916

(C) This section does not apply to an obligation to which 4917  
section ~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 4918  
5812.35, ~~1340.76~~ 5812.37, or ~~1340.77~~ 5812.38 of the Revised Code 4919  
applies. 4920

**Sec. ~~1340.66~~ 5812.27.** (A) Except as otherwise provided in 4921  
division (B) of this section, a trustee shall allocate to 4922  
principal the proceeds of a life insurance policy or other 4923  
contract in which the trust or its trustee is named as 4924  
beneficiary, including a contract that insures the trust or its 4925  
trustee against loss for damage to, destruction of, or loss of 4926  
title to a trust asset. The trustee shall allocate dividends on an 4927  
insurance policy to income if the premiums on the policy are paid 4928  
from income, and to principal if the premiums are paid from 4929  
principal. 4930

(B) A trustee shall allocate to income proceeds of a contract 4931  
that insures the trustee against loss of occupancy or other use by 4932  
an income beneficiary, loss of income, or, subject to section 4933  
~~1340.59~~ 5812.20 of the Revised Code, loss of profits from a 4934  
business. 4935

(C) This section does not apply to a contract to which 4936  
section ~~1340.71~~ 5812.32 of the Revised Code applies. 4937

**Sec. ~~1340.70~~ 5812.31.** If a trustee determines that an 4938  
allocation between principal and income required by section 4939  
~~1340.71~~ 5812.32, ~~1340.72~~ 5812.33, ~~1340.73~~ 5812.34, ~~1340.74~~ 4940  
5812.35, or ~~1340.77~~ 5812.38 of the Revised Code is insubstantial, 4941  
the trustee may allocate the entire amount to principal unless one 4942

of the circumstances described in division (C) of section ~~1340.42~~ 4943  
5812.03 of the Revised Code applies to the allocation. This power 4944  
may be exercised by a cotrustee in the circumstances described in 4945  
division (D) of that section and may be released for the reasons 4946  
and in the manner described in division (E) of the section. An 4947  
allocation is presumed to be insubstantial if either of the 4948  
following applies: 4949

(A) The amount of the allocation would increase or decrease 4950  
net income in an accounting period, as determined before the 4951  
allocation, by less than ten per cent. 4952

(B) The value of the asset producing the receipt for which 4953  
the allocation would be made is less than ten per cent of the 4954  
total value of the trust's assets at the beginning of the 4955  
accounting period. 4956

**Sec. ~~1340.71~~ 5812.32.** (A) As used in this section, "payment" 4957  
means a payment that a trustee may receive over a fixed number of 4958  
years or during the life of one or more individuals because of 4959  
services rendered or property transferred to the payer in exchange 4960  
for future payments. "Payment" includes a payment made in money or 4961  
property from the payer's general assets or from a separate fund 4962  
created by the payer, including a private or commercial annuity, 4963  
an individual retirement account, or a pension, profit-sharing, 4964  
stock-bonus, or stock-ownership plan. 4965

(B) To the extent that a payment is characterized as interest 4966  
or a dividend or a payment made in lieu of interest or a dividend, 4967  
a trustee shall allocate it to income. The trustee shall allocate 4968  
to principal the balance of the payment and any other payment 4969  
received in the same accounting period that is not characterized 4970  
as interest, a dividend, or an equivalent payment. 4971

(C) If no part of a payment is characterized as interest, a 4972

dividend, or an equivalent payment, and all or part of the payment  
is required to be made, a trustee shall allocate to income ten per  
cent of the part that is required to be made during the accounting  
period and the balance to principal. If no part of a payment is  
required to be made or the payment received is the entire amount  
to which the trustee is entitled, the trustee shall allocate the  
entire payment to principal. For purposes of this division, a  
payment is not "required to be made" to the extent that it is made  
because the trustee exercises a right of withdrawal.

(D) If, to obtain an estate tax marital deduction for a  
trust, a trustee must allocate more of a payment to income than is  
provided for by this section, the trustee shall allocate to income  
the additional amount necessary to obtain the marital deduction.

(E) This section does not apply to payments to which section  
~~1340.72~~ 5812.33 of the Revised Code applies.

**Sec. ~~1340.72~~ 5812.33.** (A) As used in this section,  
"liquidating asset" means an asset whose value will diminish or  
terminate because the asset is expected to produce receipts for a  
period of limited duration. "Liquidating asset" includes a  
leasehold, patent, copyright, royalty right, and right to receive  
payments during a period of more than one year under an  
arrangement that does not provide for the payment of interest on  
the unpaid balance. "Liquidating asset" excludes a payment subject  
to section ~~1340.71~~ 5812.32 of the Revised Code, resources subject  
to section ~~1340.73~~ 5812.34 of the Revised Code, timber subject to  
section ~~1340.74~~ 5812.35 of the Revised Code, an activity subject  
to section ~~1340.76~~ 5812.37 of the Revised Code, an asset subject  
to section ~~1340.77~~ 5812.38 of the Revised Code, or any asset for  
which the trustee establishes a reserve for depreciation under  
section ~~1340.83~~ 5812.44 of the Revised Code.

(B) A trustee shall allocate to income ten per cent of the

receipts from a liquidating asset and the balance to principal. 5004

**Sec. ~~1340.73~~ 5812.34.** (A) To the extent that a trustee 5005  
accounts for receipts from an interest in minerals or other 5006  
natural resources pursuant to this section, the trustee shall 5007  
allocate the receipts in accordance with all of the following: 5008

(1) If received as nominal delay rental or nominal annual 5009  
rent on a lease, a receipt shall be allocated to income. 5010

(2) If received from a production payment, a receipt shall be 5011  
allocated to income if and to the extent that the agreement 5012  
creating the production payment provides a factor for interest or 5013  
its equivalent. The balance shall be allocated to principal. 5014

(3) If an amount received as a royalty, shut-in-well payment, 5015  
take-or-pay payment, bonus, or delay rental is more than nominal, 5016  
ninety per cent shall be allocated to principal and the balance to 5017  
income. 5018

(4) If an amount is received from a working interest or any 5019  
other interest not provided for in division (A)(1), (2), or (3) of 5020  
this section, ninety per cent of the net amount received shall be 5021  
allocated to principal and the balance to income. 5022

(B) An amount received on account of an interest in water 5023  
that is renewable shall be allocated to income. If the water is 5024  
not renewable, ninety per cent of the amount shall be allocated to 5025  
principal and the balance to income. 5026

(C) This section applies whether or not a decedent or donor 5027  
was extracting minerals, water, or other natural resources before 5028  
the interest became subject to the trust. 5029

(D) If a trust owns an interest in minerals, water, or other 5030  
natural resources on ~~the effective date of this section~~ January 1, 5031  
2003, the trustee may allocate receipts from the interest as 5032  
provided in this section or in the manner used by the trustee 5033



before that date. If the trust acquires an interest in minerals, 5034  
water, or other natural resources after ~~the effective date of this~~ 5035  
~~section~~ January 1, 2003, the trustee shall allocate receipts from 5036  
the interest as provided in this section. 5037

**Sec. ~~1340.74~~ 5812.35.** (A) To the extent that a trustee 5038  
accounts for receipts from the sale of timber and related products 5039  
pursuant to this section, the trustee shall allocate the net 5040  
receipts in accordance with all of the following: 5041

(1) To income, to the extent that the amount of timber 5042  
removed from the land does not exceed the rate of growth of the 5043  
timber during the accounting periods in which a beneficiary has a 5044  
mandatory income interest; 5045

(2) To principal, to the extent that the amount of timber 5046  
removed from the land exceeds the rate of growth of the timber or 5047  
the net receipts are from the sale of standing timber; 5048

(3) To or between income and principal, if the net receipts 5049  
are from the lease of timberland or from a contract to cut timber 5050  
from land owned by a trust, by determining the amount of timber 5051  
removed from the land under the lease or contract and applying 5052  
divisions (A)(1) and (2) of this section; 5053

(4) To principal, to the extent that advance payments, 5054  
bonuses, and other payments are not allocated pursuant to division 5055  
(A)(1), (2), or (3) of this section. 5056

(B) In determining net receipts to be allocated pursuant to 5057  
division (A) of this section, a trustee shall deduct and transfer 5058  
to principal a reasonable amount for depletion. 5059

(C) This section applies whether or not a decedent or 5060  
transferor was harvesting timber from the property before it 5061  
became subject to the trust. 5062

(D) If a trust owns an interest in timberland on ~~the~~ 5063

~~effective date of this section~~ January 1, 2003, the trustee may 5064  
allocate net receipts from the sale of timber and related products 5065  
as provided in this section or in the manner used by the trustee 5066  
before that date. If the trust acquires an interest in timberland 5067  
after ~~the effective date of this section~~ January 1, 2003, the 5068  
trustee shall allocate net receipts from the sale of timber and 5069  
related products as provided in this section. 5070

**Sec. ~~1340.75~~ 5812.36.** (A) If a marital deduction is allowed 5071  
for all or part of a trust whose assets consist substantially of 5072  
property that does not provide the spouse with sufficient income 5073  
from or use of the trust assets, and if the amounts that the 5074  
trustee transfers from principal to income under section ~~1340.42~~ 5075  
5812.03 of the Revised Code and distributes to the spouse from 5076  
principal pursuant to the terms of the trust are insufficient to 5077  
provide the spouse with the beneficial enjoyment required to 5078  
obtain the marital deduction, the spouse may require the trustee 5079  
to make property productive of income, convert property within a 5080  
reasonable time, or exercise the power conferred by division (A) 5081  
of that section. The trustee may decide which action or 5082  
combination of actions to take. 5083

(B) In cases not governed by division (A) of this section, 5084  
proceeds from the sale or other disposition of an asset shall be 5085  
principal without regard to the amount of income the asset 5086  
produces during any accounting period. 5087

**Sec. ~~1340.76~~ 5812.37.** (A) As used in this section, 5088  
"derivative" means a contract or financial instrument or a 5089  
combination of contracts and financial instruments that gives a 5090  
trust the right or obligation to participate in some or all 5091  
changes in the price of a tangible or intangible asset or group of 5092  
assets, or changes in a rate, an index of prices or rates, or 5093  
other market indicator for an asset or a group of assets. 5094

(B) To the extent that a trustee does not account under 5095  
section ~~1340.59~~ 5812.20 of the Revised Code for transactions in 5096  
derivatives, the trustee shall allocate to principal receipts from 5097  
and disbursements made in connection with those transactions. 5098

(C) If a trustee grants an option to buy property from the 5099  
trust, whether or not the trust owns the property when the option 5100  
is granted, grants an option that permits another person to sell 5101  
property to the trust, or acquires an option to buy property for 5102  
the trust or an option to sell an asset owned by the trust, and 5103  
the trustee or other owner of the asset is required to deliver the 5104  
asset if the option is exercised, an amount received for granting 5105  
the option shall be allocated to principal. An amount paid to 5106  
acquire the option shall be paid from principal. A gain or loss 5107  
realized upon the exercise of an option, including an option 5108  
granted to a settlor of the trust for services rendered, shall be 5109  
allocated to principal. 5110

**Sec. ~~1340.77~~ 5812.38.** (A) As used in this section, 5111  
"asset-backed security" means an asset whose value is based upon 5112  
the right it gives the owner to receive distributions from the 5113  
proceeds of financial assets that provide collateral for the 5114  
security. "Asset-backed security" includes an asset that gives the 5115  
owner the right to receive from the collateral financial assets 5116  
only the interest or other current return or only the proceeds 5117  
other than interest or current return. "Asset-backed security" 5118  
excludes an asset to which section ~~1340.57~~ 5812.18 or ~~1340.71~~ 5119  
5812.32 of the Revised Code applies. 5120

(B) If a trust receives a payment from interest or other 5121  
current return and from other proceeds of the collateral financial 5122  
assets, the trustee shall allocate to income the portion of the 5123  
payment that the payer identifies as being from interest or other 5124  
current return and shall allocate the balance of the payment to 5125

principal. 5126

(C) If a trust receives one or more payments in exchange for 5127  
the trust's entire interest in an asset-backed security in one 5128  
accounting period, the trustee shall allocate the payments to 5129  
principal. If a payment is one of a series of payments that will 5130  
result in the liquidation of the trust's interest in the security 5131  
over more than one accounting period, the trustee shall allocate 5132  
ten per cent of the payment to income and the balance to 5133  
principal. 5134

**Sec. ~~1340.81~~ 5812.42.** A trustee shall make all of the 5135  
following disbursements from income to the extent that they are 5136  
not disbursements to which division (B)(2) or (3) of section 5137  
~~1340.46~~ 5812.07 of the Revised Code applies: 5138

(A) One-half of the regular compensation of the trustee and 5139  
of any person providing investment advisory or custodial services 5140  
to the trustee; 5141

(B) One-half of all expenses for accountings, judicial 5142  
proceedings, or other matters that involve both the income and 5143  
remainder interests; 5144

(C) All of the other ordinary expenses incurred in connection 5145  
with the administration, management, or preservation of trust 5146  
property and the distribution of income, including interest, 5147  
ordinary repairs, regularly recurring taxes assessed against 5148  
principal, and expenses of a proceeding or other matter that 5149  
concerns primarily the income interest; 5150

(D) Recurring premiums on insurance covering the loss of a 5151  
principal asset or the loss of income from or use of the asset. 5152

**Sec. ~~1340.82~~ 5812.43.** (A) A trustee shall make all of the 5153  
following disbursements from principal: 5154

(1) The remaining one-half of the disbursements described in divisions (A) and (B) of section <del>1340.81</del> <u>5812.42</u> of the Revised Code;	5155 5156 5157
(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;	5158 5159 5160
(3) Payments on the principal of a trust debt;	5161
(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;	5162 5163 5164
(5) Premiums paid on a policy of insurance not described in division (D) of section <del>1340.81</del> <u>5812.42</u> of the Revised Code of which the trust is the owner and beneficiary;	5165 5166 5167
(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust;	5168 5169
(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.	5170 5171 5172 5173 5174 5175 5176 5177 5178 5179
(B) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.	5180 5181 5182 5183 5184

**Sec. ~~1340.83~~ 5812.44.** (A) As used in this section, 5185  
"depreciation" means a reduction in value due to wear, tear, 5186  
decay, corrosion, or gradual obsolescence of a fixed asset having 5187  
a useful life of more than one year. 5188

(B) A trustee may transfer to principal a reasonable amount 5189  
of the net cash receipts from a principal asset that is subject to 5190  
depreciation, but shall not transfer any amount for depreciation 5191  
under any of the following circumstances: 5192

(1) Any amount for depreciation of that portion of real 5193  
property used or available for use by a beneficiary as a residence 5194  
or of tangible personal property held or made available for the 5195  
personal use or enjoyment of a beneficiary; 5196

(2) Any amount for depreciation during the administration of 5197  
a decedent's estate; 5198

(3) Any amount for depreciation under this section if the 5199  
trustee is accounting under section ~~1340.59~~ 5812.20 of the Revised 5200  
Code for the business or activity in which the asset is used. 5201

(C) An amount transferred to principal need not be held as a 5202  
separate fund. 5203

**Sec. ~~1340.84~~ 5812.45.** (A) If a trustee makes or expects to 5204  
make a principal disbursement described in this section, the 5205  
trustee may transfer an appropriate amount from income to 5206  
principal in one or more accounting periods to reimburse principal 5207  
or to provide a reserve for future principal disbursements. 5208

(B) Principal disbursements to which division (A) of this 5209  
section applies include all of the following, but only to the 5210  
extent that the trustee has not been and does not expect to be 5211  
reimbursed by a third party: 5212

(1) An amount chargeable to income but paid from principal 5213

because it is unusually large, including extraordinary repairs;	5214
(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;	5215 5216 5217
(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;	5218 5219 5220
(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments;	5221 5222 5223
(5) Disbursements described in division (A)(7) of section <del>1340.82</del> <u>5812.43</u> of the Revised Code.	5224 5225
(C) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in division (A) of this section.	5226 5227 5228 5229 5230
<b>Sec. <del>1340.85</del> <u>5812.46</u>.</b> (A) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.	5231 5232 5233
(B) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.	5234 5235 5236
(C) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately as follows:	5237 5238 5239
(1) From income, to the extent that receipts from the entity are allocated to income;	5240 5241
(2) From principal, as follows:	5242

(a) To the extent that receipts from the entity are allocated 5243  
to principal; and 5244

(b) To the extent that the trust's share of the entity's 5245  
taxable income exceeds the total receipts described in divisions 5246  
(C)(1) and (2)(a) of this section. 5247

(D) For purposes of this section, receipts allocated to 5248  
principal or income shall be reduced by the amount distributed to 5249  
a beneficiary from principal or income for which the trust 5250  
receives a deduction in calculating the tax. 5251

**Sec. ~~1340-86~~ 5812.47.** (A) A fiduciary may make adjustments 5252  
between principal and income to offset the shifting of economic 5253  
interests or tax benefits between income beneficiaries and 5254  
remainder beneficiaries that arise from any of the following: 5255

(1) Elections and decisions, other than those described in 5256  
division (B) of this section, that the fiduciary makes from time 5257  
to time regarding tax matters; 5258

(2) An income tax or any other tax that is imposed upon the 5259  
fiduciary or a beneficiary as a result of a transaction involving 5260  
or a distribution from the estate or trust; 5261

(3) The ownership by an estate or trust of an interest in an 5262  
entity whose taxable income, whether or not distributed, is 5263  
includable in the taxable income of the estate, trust, or 5264  
beneficiary. 5265

(B) If the amount of an estate tax marital deduction or 5266  
charitable contribution deduction is reduced because a fiduciary 5267  
deducts an amount paid from principal for income tax purposes 5268  
instead of deducting it for estate tax purposes, and as a result 5269  
estate taxes paid from principal are increased and income taxes 5270  
paid by an estate, trust, or beneficiary are decreased, each 5271  
estate, trust, or beneficiary that benefits from the decrease in 5272



income tax shall reimburse the principal from which the increase 5273  
in estate tax is paid. The total reimbursement shall equal the 5274  
increase in the estate tax to the extent that the principal used 5275  
to pay the increase would have qualified for a marital deduction 5276  
or charitable contribution deduction but for the payment. The 5277  
proportionate share of the reimbursement for each estate, trust, 5278  
or beneficiary whose income taxes are reduced shall be the same as 5279  
its proportionate share of the total decrease in income tax. An 5280  
estate or trust shall reimburse principal from income. 5281

**Sec. ~~1340.90~~ 5812.51.** (A) Sections ~~1340.40~~ 5812.01 to ~~1340.91~~ 5282  
5812.52 of the Revised Code may be cited as the "uniform principal 5283  
and income act (1997)". 5284

(B) In applying and construing the "uniform principal and 5285  
income act (1997)", consideration shall be given to the need to 5286  
promote uniformity of the law with respect to its subject matter 5287  
among states that enact the "uniform principal and income act 5288  
(1997)". 5289

**Sec. ~~1340.91~~ 5812.52.** Sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5290  
5812.51 of the Revised Code apply to every trust or decedent's 5291  
estate existing on ~~the effective date of this section~~ January 1, 5292  
2003, except as otherwise expressly provided in the will or terms 5293  
of the trust or in sections ~~1340.40~~ 5812.01 to ~~1340.90~~ 5812.51 of 5294  
the Revised Code. 5295

**Sec. ~~1340.31~~ 5813.01.** As used in sections ~~1340.31~~ 5813.01 to 5296  
~~1340.37~~ 5813.07 of the Revised Code: 5297

(A) "Institution" means an incorporated or unincorporated 5298  
organization that is organized and operated exclusively for 5299  
educational, religious, charitable, or other eleemosynary purposes 5300  
or a governmental organization to the extent that it holds funds 5301

exclusively for any of those purposes. 5302

(B) "Governing board" means the body responsible for the 5303  
management of an institution. 5304

(C) "Institutional trust fund" means a trust fund, or a part 5305  
of a trust fund, that is held by a trustee for the exclusive use, 5306  
benefit, or purposes of one or more institutions and that is not 5307  
wholly distributable to the institution or institutions on a 5308  
current basis under the terms of the applicable trust instrument. 5309  
"Institutional trust fund" does not include a fund in which a 5310  
beneficiary that is not an institution has an interest other than 5311  
a right that may arise upon a violation of a covenant under the 5312  
terms of the applicable trust instrument or upon a violation of or 5313  
the failure of the purposes of the fund. 5314

(D) "Applicable fund value" means for any particular fiscal 5315  
year the sum of the month-end values of the net assets of an 5316  
institutional trust fund for the prior fiscal year for those 5317  
months in which the institutional trust fund has been in existence 5318  
during such prior fiscal year divided by the number of those 5319  
months. The month-end values shall be determined by the trustee in 5320  
accordance with the trustee's records, and any such determination 5321  
made by a trustee in good faith is conclusive. 5322

(E) "Trust instrument" means a testamentary or inter vivos 5323  
trust under which the trustee of the trust holds an institutional 5324  
trust fund. 5325

(F) "Trustee" means an individual, corporation, institution, 5326  
or organization, including, but not limited to, a bank, trust 5327  
company, or other financial institution, serving as a trustee or 5328  
as sole trustee under a trust instrument. "Trustee" includes an 5329  
original trustee and any successor or added trustee. 5330

**Sec. ~~1340.32~~ 5813.02.** (A) Subject to division (D) of this 5331

section and section ~~1340.33~~ 5813.03 of the Revised Code, during 5332  
any fiscal year in which income may be or is required to be 5333  
distributed to an institution from an institutional trust fund, 5334  
income means the greater of the following: 5335

(1) The income from the assets of the institutional trust 5336  
fund for the fiscal year as determined in accordance with the 5337  
applicable trust instrument and applicable law without regard to 5338  
sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code; 5339

(2) The amount requested by the institution's governing board 5340  
for the fiscal year pursuant to division (B) of this section. 5341

(B) An institution's governing board may request that an 5342  
amount be distributed to the institution for the fiscal year, and 5343  
that amount shall not exceed the sum of both of the following: 5344

(1) Five per cent of the applicable fund value for the 5345  
institutional trust fund for the fiscal year; 5346

(2) If, in any prior fiscal year that is after ~~the effective~~ 5347  
~~date of this section~~ September 15, 1999, the governing board 5348  
requested less than five per cent of the applicable fund value for 5349  
~~such~~ that prior fiscal year and if the amount the institution 5350  
actually received from the institutional trust fund pursuant to 5351  
division (A) of this section was less than five per cent for ~~such~~ 5352  
that prior fiscal year, the aggregate difference between five per 5353  
cent of the applicable fund value with respect to each such prior 5354  
fiscal year and the amount the institution actually received 5355  
pursuant to division (A) of this section for ~~such~~ each prior 5356  
fiscal year. 5357

(C) If, under a trust instrument, more than one institution 5358  
is a beneficiary of an institutional trust fund, the trustee shall 5359  
take such actions that the trustee determines appropriate or 5360  
necessary to allow for the distributions of income as contemplated 5361  
by division (A) of this section, which actions may include 5362

dividing the institutional trust fund into separate shares 5363  
according to the interest that each institution has in the total 5364  
institutional trust fund held under the trust instrument. 5365

(D) This section does not limit the authority or obligation 5366  
of a trustee to distribute, or the authority of a governing board 5367  
to request, funds as permitted or required under the terms of the 5368  
applicable trust instrument. 5369

**Sec. ~~1340.33~~ 5813.03.** (A) Division (A) of section ~~1340.32~~ 5370  
5813.02 of the Revised Code does not apply if the applicable trust 5371  
instrument expressly indicates the settlor's intention that income 5372  
is to be otherwise than as defined in division (A) of section 5373  
~~1340.32~~ 5813.02 of the Revised Code. 5374

(B) A restriction upon the definition of income in division 5375  
(A) of section ~~1340.32~~ 5813.02 of the Revised Code may not be 5376  
inferred from a designation of an institutional trust fund as an 5377  
endowment; a direction or authorization in the applicable trust 5378  
instrument to use only "income," "interest," "dividends," or 5379  
"rents, issues, or profits," or "to preserve the principal 5380  
intact," or a direction that contains other words of a similar 5381  
import; a direction in a trust instrument that income and 5382  
principal are to be determined by reference to certain statutory 5383  
provisions; or, subject to division (A) of this section, the 5384  
inclusion of specified provisions in a trust instrument setting 5385  
forth the way in which income and principal are to be determined. 5386

(C) The rule of construction set forth in division (B) of 5387  
this section applies to trust instruments executed or in effect 5388  
before, on, or after ~~the effective date of this section~~ September 5389  
15, 1999. 5390

**Sec. ~~1340.34~~ 5813.04.** (A) In administering the powers to 5391  
request amounts from a trustee of an institutional trust fund in 5392

accordance with divisions (A) and (B) of section ~~1340.32~~ 5813.02 5393  
of the Revised Code, members of a governing board of an 5394  
institution shall exercise ordinary business care and prudence 5395  
under the facts and circumstances prevailing at the time of the 5396  
action or decision and shall make requests for amounts under 5397  
divisions (A) and (B) of section ~~1340.32~~ 5813.02 of the Revised 5398  
Code only as is prudent under this standard. In so doing, the 5399  
governing board shall consider the long- and short-term needs of 5400  
the institution in carrying out its educational, religious, 5401  
charitable, or other eleemosynary purposes; the institution's 5402  
present and anticipated financial requirements; the expected total 5403  
return on the investments held by the institution and held by the 5404  
trustee under the applicable trust instrument; price level trends; 5405  
and general economic conditions. 5406

(B) In determining the expected total return on the 5407  
investments held by a trustee of an institutional trust fund under 5408  
the applicable trust instrument, the members of the governing 5409  
board of an institution may follow, and are not required to 5410  
examine independently, the determination of the trustee regarding 5411  
the expected total return on the investments held by the trustee. 5412

(C) A trustee of an institutional trust fund has no duty to 5413  
inquire or ascertain whether the governing board of an institution 5414  
has satisfied the standards set forth in divisions (A) and (B) of 5415  
this section, and the trustee does not have any liability for the 5416  
failure of the governing board to satisfy those standards. 5417

**Sec. ~~1340.35~~ 5813.05.** Nothing in sections ~~1340.40~~ 5812.01 to 5418  
~~1340.91~~ 5812.52, or any other section of the Revised Code limits 5419  
or restricts the definition of income in division (A) of section 5420  
~~1340.32~~ 5813.02 of the Revised Code or limits or restricts a 5421  
governing board of an institution from requesting, or a trustee 5422  
from making, distributions from an institutional trust fund in 5423

accordance with sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code. 5424  
5425

**Sec. ~~1340.36~~ 5813.06.** (A) Nothing in sections ~~1340.31~~ 5813.01 to ~~1340.35~~ 5813.05 of the Revised Code affects the construction or interpretation of sections 1715.51 to 1715.59 of the Revised Code relating to the uniform management of institutional funds act. Specifically, neither the percentage set forth in division (B) of section 1340.32 of the Revised Code nor the amount actually requested by a governing board pursuant to section ~~1340.32~~ 5813.02 of the Revised Code shall be construed or interpreted to limit or expand what is a prudent amount that can be expended by a governing board of an institution under sections 1715.51 to 1715.59 of the Revised Code.

(B) If an institutional trust fund is also an institutional fund as defined in division (B) of section 1715.51 of the Revised Code with the result that sections 1715.51 to 1715.59 of the Revised Code also are applicable to the institutional trust fund, then sections 1715.51 to 1715.59 of the Revised Code apply to the institutional trust fund, and sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code do not apply to the institutional trust fund.

**Sec. ~~1340.37~~ 5813.07.** Sections ~~1340.31~~ 5813.01 to ~~1340.37~~ 5813.07 of the Revised Code may be cited as the "institutional trust funds act."

**Sec. ~~1339.31~~ 5814.01.** As used in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, unless the context otherwise requires:

(A) "Benefit plan" means any plan of an employer for the benefit of any employee, any plan for the benefit of any partner, or any plan for the benefit of a proprietor, and includes, but is

not limited to, any pension, retirement, death benefit, deferred 5454  
compensation, employment agency, stock bonus, option, or 5455  
profit-sharing contract, plan, system, account, or trust. 5456

(B) "Broker" means a person that is lawfully engaged in the 5457  
business of effecting transactions in securities for the account 5458  
of others. A "broker" includes a financial institution that 5459  
effects such transactions and a person who is lawfully engaged in 5460  
buying and selling securities for ~~his~~ the person's own account, 5461  
through a broker or otherwise, as a part of a regular business. 5462

(C) "Court" means the probate court. 5463

(D) "The custodial property" includes: 5464

(1) All securities, money, life or endowment insurance 5465  
policies, annuity contracts, benefit plans, real estate, tangible 5466  
and intangible personal property, proceeds of a life or endowment 5467  
insurance policy, an annuity contract, or a benefit plan, and 5468  
other types of property under the supervision of the same 5469  
custodian for the same minor as a consequence of a transfer or 5470  
transfers made to the minor, a gift or gifts made to the minor, or 5471  
a purchase made by the custodian for the minor, in a manner 5472  
prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5473  
Revised Code; 5474

(2) The income from the custodial property; 5475

(3) The proceeds, immediate and remote, from the sale, 5476  
exchange, conversion, investment, reinvestment, or other 5477  
disposition of the securities, money, life or endowment insurance 5478  
policies, annuity contracts, benefit plans, real estate, tangible 5479  
and intangible personal property, proceeds of a life or endowment 5480  
insurance policy, an annuity contract, or a benefit plan, other 5481  
types of property, and income. 5482

(E) "Custodian" or "successor custodian" means a person so 5483

designated in a manner prescribed in sections ~~1339.31~~ 5814.01 to 5484  
~~1339.39~~ 5814.09 of the Revised Code. 5485

(F) "Financial institution" means any bank, as defined in 5486  
section 1101.01, any building and loan association, as defined in 5487  
section 1151.01, any credit union as defined in section 1733.01 of 5488  
the Revised Code, and any federal credit union, as defined in the 5489  
"Federal Credit Union Act," 73 Stat. 628 (1959), 12 U.S.C.A. 1752, 5490  
as amended. 5491

(G) "Guardian of the minor" includes the general guardian, 5492  
guardian, tutor, or curator of the property, estate, or person of 5493  
a minor. 5494

(H) "Issuer" means a person who places or authorizes the 5495  
placing of ~~his~~ the person's name on a security, other than as a 5496  
transfer agent, to evidence that it represents a share, 5497  
participation, or other interest in ~~his~~ the person's property or 5498  
in an enterprise, or to evidence ~~his~~ the person's duty or 5499  
undertaking to perform an obligation that is evidenced by the 5500  
security, or who becomes responsible for or in place of any such 5501  
person. 5502

(I) "Legal representative" of a person means the executor, 5503  
administrator, general guardian, guardian, committee, conservator, 5504  
tutor, or curator of ~~his~~ the person's property or estate. 5505

(J) "Member of the minor's family" means a parent, 5506  
stepparent, spouse, grandparent, brother, sister, uncle, or aunt 5507  
of the minor, whether of the whole or half blood, or by adoption. 5508

(K) "Minor" means a person who has not attained the age of 5509  
twenty-one years. 5510

(L) "Security" includes any note, stock, treasury stock, 5511  
common trust fund, bond, debenture, evidence of indebtedness, 5512  
certificate of interest or participation in an oil, gas, or mining 5513



title or lease or in payments out of production under an oil, gas, 5514  
or mining title or lease, collateral trust certificate, 5515  
transferable share, voting trust certificate, or, in general, any 5516  
interest or instrument commonly known as a security, or any 5517  
certificate of interest or participation in, any temporary or 5518  
interim certificate, receipt or certificate of deposit for, or any 5519  
warrant or right to subscribe to or purchase, any of the 5520  
foregoing. A "security" does not include a security of which the 5521  
donor or transferor is the issuer. A security is in "registered 5522  
form" when it specifies a person who is entitled to it or to the 5523  
rights that it evidences and its transfer may be registered upon 5524  
books maintained for that purpose by or on behalf of the issuer. 5525

(M) "Transfer" means a disposition, other than a gift, by a 5526  
person who is eighteen years of age or older that creates 5527  
custodial property under sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5528  
5814.09 of the Revised Code. 5529

(N) "Transfer agent" means a person who acts as 5530  
authenticating trustee, transfer agent, registrar, or other agent 5531  
for an issuer in the registration of transfers of its securities, 5532  
in the issue of new securities, or in the cancellation of 5533  
surrendered securities. 5534

(O) "Transferor" means a person who is eighteen years of age 5535  
or older, who makes a transfer. 5536

(P) "Trust company" means a financial institution that is 5537  
authorized to exercise trust powers. 5538

(Q) "Administrator" includes an "administrator with the will 5539  
annexed." 5540

**Sec. ~~1339.32~~ 5814.02.** (A) A person who is eighteen years of 5541  
age or older may, during ~~his~~ the person's lifetime, make a gift or 5542  
transfer of a security, money, a life or endowment insurance 5543

policy, an annuity contract, a benefit plan, real estate, tangible 5544  
or intangible personal property, or any other property to, may 5545  
designate as beneficiary of a life or endowment insurance policy, 5546  
an annuity contract, or a benefit plan, or make a transfer by the 5547  
irrevocable exercise of a power of appointment in favor of, a 5548  
person who is a minor on the date of the gift or transfer: 5549

(1) If the subject of the gift or transfer is a security in 5550  
registered form, by registering it in the name of the donor or 5551  
transferor, another person who is eighteen years of age or older, 5552  
or a trust company, followed, in substance, by the words: "as 5553  
custodian for ..... (name of minor) under the Ohio 5554  
Transfers to Minors Act"; 5555

(2) If the subject of the gift or transfer is a security not 5556  
in registered form, by delivering it to the donor or transferor, 5557  
another person who is eighteen years of age or older, or a trust 5558  
company, accompanied by a statement of a gift or transfer in the 5559  
following form, in substance, signed by the donor or transferor 5560  
and the person or trust company designated as custodian: 5561

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 5562

I, ..... (name of donor or transferor), hereby 5563  
deliver to (name of custodian) as custodian for 5564  
..... (name of minor) under the Ohio Transfers to 5565  
Minors Act, the following security (ies): (insert an appropriate 5566  
description of the security or securities delivered, sufficient to 5567  
identify it or them). 5568

..... 5569

(signature of donor or transferor) 5570

..... (name of custodian) hereby acknowledges 5571  
receipt of the above described security (ies) as custodian for the 5572  
above minor under the Ohio Transfers to Minors Act. 5573

Dated: ..... 5574

(signature of custodian)" 5575

(3) If the subject of the gift or transfer is money, by 5576  
paying or delivering it to a broker, or a financial institution 5577  
for credit to an account in the name of the donor or transferor, 5578  
another person who is eighteen years of age or older, or a trust 5579  
company, followed, in substance, by the words: "as custodian for 5580  
..... (name of minor) under the Ohio Transfers to 5581  
Minors Act." 5582

(4) If the subject of the gift or transfer is a life or 5583  
endowment insurance policy, an annuity contract, or a benefit 5584  
plan, by assigning the policy, contract, or plan to the donor or 5585  
transferor, another person who is eighteen years of age or older, 5586  
or a trust company, followed, in substance by the words: "as 5587  
custodian for ..... (name of minor) under the Ohio 5588  
Transfers to Minors Act." 5589

(5) If the subject of the gift or transfer is an interest in 5590  
real estate, by executing and delivering in the appropriate manner 5591  
a deed, assignment, or similar instrument in the name of the donor 5592  
or transferor, another person who is eighteen years of age or 5593  
older, or a trust company, followed, in substance, by the words: 5594  
"as custodian for ..... (name of minor) under the Ohio 5595  
Transfers to Minors Act." 5596

(6) If the subject of the gift or transfer is tangible 5597  
personal property, by delivering it to the donor or transferor, 5598  
another person who is eighteen years of age or older, or a trust 5599  
company, accompanied by a statement of a gift or transfer in the 5600  
following form, in substance, signed by the donor or transferor 5601  
and the person or trust company designated as custodian: 5602

"GIFT OR TRANSFER UNDER THE OHIO TRANSFERS TO MINORS ACT 5603

I, ..... (name of donor or transferor), hereby 5604  
deliver to ..... (name of custodian) as custodian for 5605  
..... (name of minor) under the Ohio Transfers to 5606

Minors Act, the following property: (insert an appropriate  
description of the property delivered, sufficient to identify it).  
.....  
(signature of donor or transferor)  
..... (name of custodian) hereby acknowledges  
receipt of the above described property as custodian for the above  
minor under the Ohio Transfers to Minors Act.  
Dated: .....  
(signature of custodian)"

(7) If the subject of the gift or transfer is tangible  
personal property, title to which is evidenced by a certificate of  
title issued by a department or agency of a state or of the United  
States, by issuing title to the donor or transferor, another  
person who is eighteen years of age or older, or a trust company,  
accompanied by a statement of a gift or transfer in the following  
form, in substance: "as custodian for .....  
(name of minor) under the Ohio Transfers to Minors Act"; or by  
delivering the title to another person who is eighteen years of  
age or older or a trust company, endorsed to that person followed  
in substance by the following words: "as custodian for  
..... under the Ohio Transfers to Minors Act."

(8) If the subject of the gift or transfer is the designation  
of a minor as beneficiary of a life or endowment insurance policy,  
an annuity contract, or a benefit plan, by designating as  
beneficiary of the policy, contract, or plan the donor or  
transferor, another person who is eighteen years of age or older,  
or a trust company, followed, in substance, by the words: "as  
custodian for ..... (name of minor) under the Ohio  
Transfers to Minors Act."

(9) If the subject of the gift or transfer is an irrevocable  
exercise of a power of appointment in favor of a minor or is an

interest in any property that is not described in divisions (A)(1) 5638  
to (8) of this section, by causing the ownership of the property 5639  
to be transferred by any written document in the name of the donor 5640  
or transferor, another person who is eighteen years of age or 5641  
older, or a trust company, followed, in substance, by the words: 5642  
"as custodian for ..... (name of minor) under the 5643  
Ohio Transfers to Minors Act." 5644

(B) Trustees, inter vivos or testamentary, executors, and 5645  
administrators having authority to distribute or pay any trust or 5646  
estate property to or for the benefit of a minor, or having 5647  
authority to distribute or pay any trust or estate property to any 5648  
other person for the benefit of a minor may, if authorized by a 5649  
will or trust instrument, distribute or pay trust or estate 5650  
property of any type mentioned in division (A) of this section in 5651  
the manner and form provided in that division, and may name the 5652  
custodian or successor custodian of the property if the will or 5653  
trust instrument does not name an eligible custodian, or if the 5654  
will or trust does not name an eligible successor custodian and 5655  
the naming of a successor custodian is necessary. A person who is 5656  
eighteen years of age or older, in ~~his~~ the person's will or trust 5657  
instrument, may provide that the fiduciary shall make any payment 5658  
or distribution as provided in this division and may name the 5659  
custodian and a successor custodian of the trust or estate 5660  
property. As to any distribution or payment so made, the testator 5661  
of a will, under the provisions of which a testamentary trust or 5662  
estate is being administered, or the settlor of an inter vivos 5663  
trust shall be deemed the donor or transferor. 5664

(C) Any gift, transfer, payment, or distribution that is made 5665  
in a manner prescribed in division (A), (B), or (E) of this 5666  
section may be made to only one minor and only one person may be 5667  
the custodian. All gifts, transfers, payments, and distributions 5668  
made by a person in a manner prescribed in sections ~~1339-31~~ 5669

5814.01 to ~~1339.39~~ 5814.09 of the Revised Code to the same 5670  
custodian for the benefit of the same minor result in a single 5671  
custodianship. 5672

(D) A donor or transferor who makes a gift or transfer to a 5673  
minor in a manner prescribed in division (A) of this section and a 5674  
trustee, executor, or administrator acting under division (B) or 5675  
(E) of this section shall promptly do all things within ~~his~~ the 5676  
donor's, transferor's, trustee's, executor's, or administrator's 5677  
power to put the subject of the gift or transfer in the possession 5678  
and control of the custodian, but neither the donor's, 5679  
transferor's, trustee's, executor's, or administrator's failure to 5680  
comply with this division, nor ~~his~~ the designation by the donor, 5681  
transferor, trustee, executor, or administrator of an ineligible 5682  
custodian, nor the renunciation by the person or trust company 5683  
designated as custodian, affects the consummation of the gift or 5684  
transfer. 5685

(E) If there is no will, or if a will, trust, or other 5686  
governing instrument does not contain an authorization to make a 5687  
transfer as described in this division, a trustee, executor, or 5688  
administrator may make a transfer in a manner prescribed in 5689  
division (A) of this section to ~~himself~~ self, another person who 5690  
is eighteen years of age or older, or a trust company, as 5691  
custodian, if all of the following apply: 5692

(1) Irrespective of the value of the property, the trustee, 5693  
executor, or administrator considers the transfer to be in the 5694  
best interest of the minor; 5695

(2) Irrespective of the value of the property, the transfer 5696  
is not prohibited by or inconsistent with the applicable will, 5697  
trust agreement, or other governing instrument; 5698

(3) If the value of the property exceeds ten thousand 5699  
dollars, the transfer is authorized by the appropriate court. 5700

**Sec. ~~1339.33~~ 5814.03.** (A) A gift or transfer made in a manner 5701  
prescribed in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5702  
Revised Code, is irrevocable and conveys to the minor indefeasibly 5703  
vested legal title to the security, money, life or endowment 5704  
insurance policy, annuity contract, benefit plan, real estate, 5705  
tangible or intangible personal property, or other property given 5706  
or, subject to the right of the owner of the policy, contract, or 5707  
benefit plan to change the beneficiary if the custodian is not the 5708  
owner, to the proceeds of a life or endowment insurance policy, an 5709  
annuity contract, or a benefit plan given, but no guardian of the 5710  
minor has any right, power, duty, or authority with respect to the 5711  
custodial property except as provided in sections ~~1339.31~~ 5814.01 5712  
to ~~1339.39~~ 5814.09 of the Revised Code. 5713

(B) By making a gift or transfer in a manner prescribed in 5715  
sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, 5716  
the donor or transferor incorporates in ~~his~~ the gift or transfer 5717  
all the provisions of these sections and grants to the custodian, 5718  
and to any issuer, transfer agent, financial institution, broker, 5719  
or third person dealing with a person or trust company designated 5720  
as custodian, the respective powers, rights, and immunities 5721  
provided in these sections. 5722

**Sec. ~~1339.34~~ 5814.04.** (A) The custodian shall collect, hold, 5723  
manage, invest, and reinvest the custodial property. 5724

(B) The custodian shall pay over to the minor for expenditure 5725  
by the minor, or expend for the use or benefit of the minor, as 5726  
much of or all the custodial property as the custodian considers 5727  
advisable for the use and benefit of the minor in the manner, at 5728  
the time or times, and to the extent that the custodian in ~~his~~ the 5729  
custodian's discretion considers suitable and proper, with or 5730

without court order, with or without regard to the duty or ability 5731  
of the custodian or of any other person to support the minor or 5732  
~~his~~ the minor's ability to do so, and with or without regard to 5733  
any other income or property of the minor that may be applicable 5734  
or available for any purpose. Any payment or expenditure that is 5735  
made under this division is in addition to, is not a substitute 5736  
for, and does not affect the obligation of any person to support 5737  
the minor for whom the payment or expenditure is made. 5738

(C) The court, on the petition of a parent or guardian of the 5739  
minor or of the minor, if ~~he~~ the minor has attained the age of 5740  
fourteen years, may order the custodian to pay over to the minor 5741  
for expenditure by ~~him~~ the minor or to expend as much of or all 5742  
the custodial property as is necessary for the use and benefit of 5743  
the minor. 5744

(D)(1) Except as provided in division (D)(2) of this section, 5745  
to the extent that the custodial property is not so expended, the 5746  
custodian shall deliver or pay the custodial property over to the 5747  
minor on ~~his~~ the minor's attaining the age of twenty-one years or, 5748  
if the minor dies before attaining the age of twenty-one years, 5749  
shall, upon the minor's death, deliver or pay the custodial 5750  
property over to the estate of the minor. 5751

(2) If the donor or transferor, in the written instrument 5752  
that makes or provides for the gift or transfer, directs the 5753  
custodian to deliver or pay over the custodial property to the 5754  
minor on ~~his~~ the minor's attaining any age between eighteen and 5755  
twenty-one, the custodian shall deliver or pay over the custodial 5756  
property to the minor on ~~his~~ the minor's attaining that age, or, 5757  
if the minor dies before attaining that age, the custodian shall, 5758  
upon the minor's death, deliver or pay the custodial property over 5759  
to the estate of the minor. 5760

(E) The custodian, notwithstanding statutes restricting 5761  
investments by fiduciaries, shall invest and reinvest the 5762



custodial property as would a prudent person of discretion and  
intelligence dealing with the property of another, except that the  
custodian may, in the discretion of the custodian and without  
liability to the minor or the estate of the minor, retain any  
custodial property received in a manner prescribed in sections  
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code. If a  
custodian has special skills or is named custodian on the basis of  
representations of special skills or expertise, the custodian is  
under a duty to use those skills or that expertise.

(F) The custodian may sell, exchange, convert, or otherwise  
dispose of custodial property in the manner, at the time or times,  
for the price or prices, and upon the terms ~~he~~ the custodian  
considers advisable. ~~He~~ The custodian may vote in person or by  
general or limited proxy a security that is custodial property. ~~He~~  
The custodian may consent, directly or through a committee or  
other agent, to the reorganization, consolidation, merger,  
dissolution, or liquidation of an issuer of a security that is  
custodial property, and to the sale, lease, pledge, or mortgage of  
any property by or to such an issuer, and to any other action by  
such an issuer. ~~He~~ The custodian may purchase any life or  
endowment insurance policy or annuity contract on the life of the  
minor or any member of the family of the minor and pay, from funds  
in ~~his~~ the custodian's custody, any premiums on any life or  
endowment insurance policy or annuity contract held by ~~him~~ the  
custodian as custodial property. ~~He~~ The custodian may execute and  
deliver any and all instruments in writing that ~~he~~ the custodian  
considers advisable to carry out any of ~~his~~ the custodian's powers  
as custodian.

(G) The custodian shall register each security that is  
custodial property and in registered form in the name of the  
custodian, followed, in substance, by the words: "as custodian for  
..... (name of minor) under the Ohio Transfers to Minors

Act," or shall maintain each security that is custodial property 5795  
and in registered form in an account with a broker or in a 5796  
financial institution in the name of the custodian, followed, in 5797  
substance, by the words: "as custodian for ..... (name of 5798  
minor) under the Ohio Transfers to Minors Act." A security held in 5799  
account with a broker or in a financial institution in the name of 5800  
the custodian may be held in the name of the broker or financial 5801  
institution. A security that is custodial property and in 5802  
registered form and that is held by a broker or in a financial 5803  
institution in which the broker or financial institution does not 5804  
have a lien for indebtedness due to it from a custodial account 5805  
may not be pledged, lent, hypothecated, or disposed of except upon 5806  
the specific instructions of the custodian. The custodian shall 5807  
hold all money that is custodial property in an account with a 5808  
broker or in a financial institution in the name of the custodian, 5809  
followed, in substance, by the words: "as custodian for 5810  
..... (name of minor) under the Ohio Transfers to Minors 5811  
Act." The custodian shall hold all life or endowment insurance 5812  
policies, annuity contracts, or benefit plans that are custodial 5813  
property in the name of the custodian, followed, in substance, by 5814  
the words "as custodian for ..... (name of minor) under 5815  
the Ohio Transfers to Minors Act." The custodian shall take title 5816  
to all real estate that is custodial property in the name of the 5817  
custodian, followed, in substance, by the words: "as custodian for 5818  
..... (name of minor) under the Ohio Transfers to Minors 5819  
Act." The custodian shall keep all other custodial property 5820  
separate and distinct from ~~his~~ the custodian's own property in a 5821  
manner to identify it clearly as custodial property. 5822

(H) The custodian shall keep records of all transactions with 5823  
respect to the custodial property and make the records available 5824  
for inspection at reasonable intervals by a parent or legal 5825  
representative of the minor or by the minor, if ~~he~~ the minor has 5826

attained the age of fourteen years. 5827

(I) A custodian has, with respect to the custodial property, 5828  
in addition to the rights and powers provided in sections ~~1339.31~~ 5829  
5814.01 to ~~1339.39~~ 5814.09 of the Revised Code, all the rights and 5830  
powers that a guardian has with respect to property not held as 5831  
custodial property. 5832

(J) The custodian may invest in or pay premiums on any life 5833  
or endowment insurance policy or annuity contract on either of the 5834  
following: 5835

(1) The life of the minor, if the minor or the estate of the 5836  
minor is the sole beneficiary under the policy or contract; 5837

(2) The life of any person in whom the minor has an insurable 5838  
interest, if the minor, ~~his~~ the minor's estate, or the custodian 5839  
in ~~his~~ the custodian's capacity as custodian is the sole 5840  
beneficiary. 5841

(K) All of the rights, powers, and authority of the custodian 5842  
over custodial property, including all of the incidents of 5843  
ownership in any life or endowment insurance policy, annuity 5844  
contract, or benefit plan, are held only in the capacity of the 5845  
custodian as custodian. 5846

**Sec. ~~1339.35~~ 5814.05.** (A) A custodian is entitled to 5847  
reimbursement from the custodial property for ~~his~~ reasonable 5848  
expenses incurred in the performance of ~~his~~ the custodian's 5849  
duties. 5850

(B) A custodian may act without compensation for ~~his~~ the 5851  
custodian's services. 5852

(C) Unless ~~he~~ the custodian is a donor or transferor, ~~a~~ the 5853  
custodian may receive from custodial property reasonable 5854  
compensation for ~~his~~ the custodian's services determined by one of 5855  
the following standards in the order stated: 5856

(1) A direction by the donor or transferor when the gift or transfer is made;	5857 5858
(2) A statute of this state applicable to custodians;	5859
(3) The statute of this state applicable to guardians;	5860
(4) An order of the court.	5861
(D) Except as otherwise provided in sections <del>1339.31</del> <u>5814.01</u> to <del>1339.39</del> <u>5814.09</u> of the Revised Code, a custodian shall not be required to give a bond for the performance of <del>his</del> <u>the custodian's</u> duties.	5862 5863 5864 5865
(E) A custodian not compensated for <del>his</del> <u>the custodian's</u> services is not liable for losses to the custodial property unless they result from <del>his</del> <u>the custodian's</u> bad faith, intentional wrongdoing, or gross negligence or from <del>his</del> <u>the custodian's</u> failure to maintain the standard of prudence in investing the custodial property provided in sections <del>1339.31</del> <u>5814.01</u> to <del>1339.39</del> <u>5814.09</u> of the Revised Code.	5866 5867 5868 5869 5870 5871 5872
<b>Sec. <del>1339.36</del> <u>5814.06</u>.</b> An issuer, transfer agent, financial institution, broker, life insurance company, or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or transferor or dealing with any person or trust company purporting to act as a custodian is not required to do any of the following:	5873 5874 5875 5876 5877 5878
(A) Determine either of the following:	5879
(1) Whether the person or trust company designated by the purported donor or transferor, or the person or trust company purporting to act as a custodian, has been duly designated;	5880 5881 5882
(2) Whether any purchase, sale, or transfer to or by, or any other act of, any person or trust company purporting to act as a custodian is in accordance with or authorized by sections <del>1339.31</del>	5883 5884 5885

5814.01 to ~~1339.39~~ 5814.09 of the Revised Code. 5886

(B) Inquire into the validity or propriety under sections 5887  
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code of any 5888  
instrument or instructions executed or given by a person 5889  
purporting to act as a donor or transferor or by a person or trust 5890  
company purporting to act as a custodian; 5891

(C) See to the application by any person or trust company 5892  
purporting to act as a custodian of any money or other property 5893  
paid or delivered to the person or trust company. 5894

**Sec. ~~1339.37~~ 5814.07.** (A) Any person who is eighteen years of 5895  
age or older or a trust company is eligible to become a successor 5896  
custodian. A successor custodian has all the rights, powers, 5897  
duties, and immunities of a custodian designated in a manner 5898  
prescribed by sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the 5899  
Revised Code. 5900

(B) A custodian may resign and designate ~~his~~ the custodian's 5901  
successor by doing all of the following: 5902

(1) Executing an instrument of resignation that designates 5903  
the successor custodian; 5904

(2) Causing each security that is custodial property and in 5905  
registered form to be registered in the name of the successor 5906  
custodian followed, in substance, by the words: "as custodian for 5907  
..... under the Ohio Transfers 5908

(name of minor) 5909

to Minors Act;" 5910

(3) Executing in the appropriate manner a deed, assignment, 5911  
or similar instrument for all interest in real estate that is 5912  
custodial property in the name of the successor custodian, 5913  
followed, in substance, by the words: "as custodian for 5914  
..... under the Ohio Transfers to 5915

(name of minor)	5916
Minors Act";	5917
(4) Delivering to the successor custodian the instrument of	5918
resignation, each security registered in the name of the successor	5919
custodian, each deed, assignment, or similar instrument for all	5920
interest in real estate that is in the name of the successor	5921
custodian, and all other custodial property, together with any	5922
additional instruments that are required for the transfer of the	5923
custodial property.	5924
(C) A custodian may petition the court for permission to	5925
resign and for the designation of a successor custodian.	5926
(D) A custodian may designate by <del>his</del> <u>the custodian's</u> will a	5927
successor custodian, which designation is effective at the	5928
custodian's death. Upon the custodian's death, the custodian's	5929
legal representative shall do each of the following:	5930
(1) Cause each security that is custodial property and in	5931
registered form to be registered in the name of the successor	5932
custodian, followed, in substance, by the words: "as custodian for	5933
..... under the Ohio Transfers to	5934
(name of minor)	5935
Minors Act";	5936
(2) Execute in the appropriate manner a deed, assignment, or	5937
similar instrument for all interest in real estate that is	5938
custodial property in the name of the successor custodian,	5939
followed, in substance, by the words: "as custodian for	5940
..... under the Ohio Transfers to Minors	5941
(name of minor)	5942
Act";	5943
(3) Deliver to the successor custodian each security	5944

registered in the name of the successor custodian, each deed, 5945  
assignment, or similar instrument for all interest in real estate 5946  
that is in the name of the successor custodian, and all other 5947  
custodial property, together with any additional instruments that 5948  
are required for the transfer of the custodial property. 5949

(E) If no eligible successor custodian is designated by the 5950  
donor or transferor in ~~his~~ the donor's or transferor's will or 5951  
trust or by the custodian in ~~his~~ the custodian's will, or if the 5952  
custodian dies intestate or is adjudged to be an incompetent by a 5953  
court, the legal representative of the custodian may designate a 5954  
successor custodian. If the court in which the estate or 5955  
guardianship proceedings relative to the custodian are pending 5956  
approves the designation, the designation shall be regarded as 5957  
having been effective as of the date of the death of the custodian 5958  
or as of the date ~~he~~ the custodian was adjudged to be an 5959  
incompetent. Upon the approval of the court, the legal 5960  
representative of the custodian shall cause the custodial property 5961  
to be transferred or registered in the name of the successor 5962  
custodian as provided in divisions (D)(1) to (3) of this section. 5963

(F) If a person or entity designated as successor custodian 5964  
is not eligible, or renounces or dies before the minor attains the 5965  
age of twenty-one years, or if the custodian dies without 5966  
designating a successor custodian and division (E) of this section 5967  
does not apply because the custodian does not have a legal 5968  
representative, the guardian of the minor shall be the successor 5969  
custodian. If the minor does not have a guardian, a donor or 5970  
transferor, the legal representative of the donor or transferor, 5971  
the legal representative of the custodian, a member of the minor's 5972  
family who is eighteen years of age or older, or the minor, if ~~he~~ 5973  
the minor has attained the age of fourteen years, may petition the 5974  
court for the designation of a successor custodian. 5975

(G) A donor or transferor, the legal representative of a 5976

donor or transferor, a member of the minor's family who is 5977  
eighteen years of age or older, a guardian of the minor, or the 5978  
minor, if ~~he~~ the minor has attained the age of fourteen years, may 5979  
petition the court that, for cause shown in the petition, the 5980  
custodian be removed and a successor custodian be designated or, 5981  
in the alternative, that the custodian be required to give bond 5982  
for the performance of ~~his~~ the custodian's duties. 5983

(H) Upon the filing of a petition as provided in this 5984  
section, the court shall grant an order, directed to the persons 5985  
and returnable on any notice that the court may require, to show 5986  
cause why the relief prayed for in the petition should not be 5987  
granted and, in due course, grant any relief that the court finds 5988  
to be in the best interests of the minor. 5989

**Sec. ~~1339.38~~ 5814.08.** (A) The minor, if ~~he~~ the minor has 5990  
attained the age of fourteen years, or the legal representative of 5991  
the minor, a member of the minor's family who is eighteen years of 5992  
age or older, or a donor or transferor or ~~his~~ the donor's or 5993  
transferor's legal representative may petition the court for an 5994  
accounting by the custodian or ~~his~~ the custodian's legal 5995  
representative. A successor custodian may petition the court for 5996  
an accounting by the custodian that ~~he~~ the successor custodian 5997  
succeeded. 5998

(B) The court, in a proceeding under sections ~~1339.31~~ 5814.01 5999  
to ~~1339.39~~ 5814.09 of the Revised Code, or otherwise, may require 6000  
or permit the custodian or ~~his~~ the custodian's legal 6001  
representative to account and, if the custodian is removed, shall 6002  
so require and order delivery of all custodial property to the 6003  
successor custodian and the execution of all instruments required 6004  
for the transfer of the custodial property. 6005

**Sec. ~~1339.39~~ 5814.09.** (A) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 6006



5814.09 of the Revised Code shall be ~~so~~ construed ~~as~~ to effectuate  
their general purpose to make uniform the law of those states  
~~which~~ that enact similar provisions.

(B) Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the  
Revised Code shall not be construed as providing an exclusive  
method for making gifts or transfers to minors.

(C) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of  
the Revised Code, shall affect gifts made under former sections  
1339.19 to 1339.28 of the Revised Code, nor the powers, duties,  
and immunities conferred by gifts in such manner upon custodians  
and persons dealing with custodians. Sections ~~1339.31~~ 5814.01 to  
~~1339.39~~ 5814.09 of the Revised Code henceforth apply, however, to  
all gifts made in a manner and form prescribed in former sections  
1339.19 to 1339.28 of the Revised Code, except insofar as ~~such~~ the  
application impairs constitutionally vested rights. Sections  
~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code shall be  
construed as a continuation of the provisions of former sections  
1339.19 to 1339.28 of the Revised Code, according to the language  
employed, and not as a new enactment.

(D) Nothing in sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of  
the Revised Code, as of ~~the effective date of this amendment~~ May  
7, 1986, shall affect gifts made under those sections as they  
existed prior to ~~the effective date of this amendment~~ May 7, 1986,  
or the powers, duties, and immunities conferred by the gifts in  
any manner upon custodians and persons dealing with custodians.  
Sections ~~1339.31~~ 5814.01 to ~~1339.39~~ 5814.09 of the Revised Code,  
as of ~~the effective date of this amendment~~ May 7, 1986, hereafter  
apply to all gifts made in a manner and form prescribed in those  
sections as they existed prior to ~~the effective date of this~~  
~~amendment~~ May 7, 1986, except to the extent that the application  
of those sections, as of ~~the effective date of this amendment~~ May  
7, 1986, would impair constitutionally vested rights.

**Sec. ~~1339.031~~ 5815.01.** Except when the intent of the settlor  
clearly is to the contrary, the following rules of construction  
shall apply in interpreting the terms "inheritance" and "bequest":

(A) The term "inheritance," in addition to its meaning at  
common law or under any other section or sections of the Revised  
Code, includes any change of title to real property by reason of  
the death of the owner of that real property, regardless of  
whether the owner died testate or intestate.

(B) The term "bequest," in addition to its meaning at common  
law or under any other section or sections of the Revised Code,  
includes any disposition of real property that occurs as a result  
of the death of the settlor.

**Sec. ~~1339.01~~ 5815.02.** As used in sections ~~1339.01~~ 5815.02 and  
~~1339.02~~ 5815.03 of the Revised Code:

(A) "Fiduciary" includes a trustee under any trust,  
expressed, implied, resulting, or constructive; an executor,  
administrator, public administrator, guardian, committee,  
conservator, curator, receiver, trustee in bankruptcy, assignee  
for the benefit of creditors, partner, agent, officer of a public  
or private corporation, or public officer; or any other person  
acting in a fiduciary capacity for any person, trust, or estate.

(B) "Good faith" includes an act done honestly, whether it is  
done negligently or not.

(C) "Issuer" includes domestic corporations, companies,  
associations, and trusts; foreign corporations, companies,  
associations, and trusts, to the extent that securities issued by  
them are held of record by persons in this state or are held on  
deposit in this state, and to the extent that such foreign  
corporation, company, association, or trust is a holder of record  
of, or otherwise interested in, securities of domestic

corporations, companies, associations, or trusts; and also the  
transfer agents and registrars of the issuer and the depositories  
for its securities.

(D) "Person" includes a corporation, partnership,  
association, or two or more persons having a joint or common  
interest.

(E) "Securities" includes the items in the following  
enumeration, which, however, is not exclusive:

(1) Shares, share certificates, and other certificates and  
evidences of ownership or participation in property, assets, or  
trust estate; bonds, notes, debentures, certificates, or evidences  
of indebtedness, certificates of interest or participation,  
collateral trust certificates, equipment-trust certificates,  
preorganization or subscription certificates or receipts, and  
voting-trust certificates; passbooks or certificates of deposit of  
money, securities, or other property; scrip certificates,  
fractional interests certificates, and, in general, interests or  
instruments commonly known as securities, and certificates of  
interest or participation in, temporary or interim certificates or  
receipts for, or warrants or rights to subscribe to, purchase, or  
receive, any of the foregoing, whether such securities were issued  
by the issuer in its corporate capacity, in its individual  
capacity, or in a fiduciary capacity;

(2) Securities ~~which~~ that were issued originally by other  
corporations, companies, associations, or trusts, but have become  
the securities of the present issuer, individually or as a  
fiduciary.

**Sec. ~~1339.02~~ 5815.03.** Unless there has been delivered to an  
issuer a certified copy of an order, judgment, or decree of a  
court, judge, or administrative body or official, the legal effect

of which is to restrict, suspend, or remove such capacity or 6099  
authority, ~~such~~ the issuer may treat all persons in whose names 6100  
its securities are of record on its records as being of full age 6101  
and competent and as having capacity and authority to exercise all 6102  
rights of ownership in respect of ~~such~~ the securities, including 6103  
the right to receive and to give receipts for payments and 6104  
distributions, the right to transfer ~~said~~ the securities, and the 6105  
right to vote or to give consent in person or by proxy, 6106  
notwithstanding any description, limitation, or qualification 6107  
appearing on ~~such~~ the securities or on ~~such~~ the records, any 6108  
reference thereon to another instrument or to any fiduciary or 6109  
pledgee or other relationship, or any knowledge or notice, actual 6110  
or constructive, of the right, interest, or claim of any other 6111  
person or of the infancy or lack of capacity or authority of the 6112  
persons in whose names ~~such~~ the securities are of record. 6113

~~Such~~ The issuer may treat a fiduciary as having capacity and 6114  
authority to exercise all ~~said~~ rights of ownership in respect of 6115  
~~such~~ the securities that are of record in the name of a decedent 6116  
holder, of a person in conservation, receivership, or bankruptcy, 6117  
or of a minor, incompetent person, or person under disability, and 6118  
~~such~~ the issuer shall be protected in any action taken or suffered 6119  
by it in reliance upon any instrument showing the appointment of 6120  
~~such~~ the fiduciary. 6121

~~Such~~ The issuer is not liable for loss caused by any act done 6122  
or omitted by it under this section. ~~Such~~ The issuer need not see 6123  
to the execution of any trust, or to the observance or performance 6124  
of any obligation of a holder of record, a fiduciary, or a pledgee 6125  
of ~~such~~ the securities, and it need not inquire or inform itself 6126  
concerning ~~the same~~ those matters. 6127

This section does not enlarge the capacity, right, or 6128  
authority of any holder of record of ~~such~~ the securities as 6129  
against any person other than ~~such~~ the issuer, nor prevent any 6130

court of competent jurisdiction from enforcing or protecting any 6131  
right, title, or interest in ~~such~~ the securities in any person who 6132  
is not a holder of record ~~thereof~~ the securities. 6133

This section does not protect any ~~such~~ issuer who 6134  
participates with a fiduciary in a breach of ~~his~~ the fiduciary's 6135  
trust with knowledge of such facts that the action of ~~such~~ the 6136  
issuer amounts to bad faith. 6137

**Sec. ~~1339.03~~ 5815.04.** As used in sections ~~1339.03~~ 5815.04 to 6138  
~~1339.13, inclusive,~~ 5815.11 of the Revised Code: 6139

(A) "Bank" includes any person, carrying on the business of 6140  
banking and any financial institution defined in section 5725.01 6141  
of the Revised Code. 6142

(B) "Fiduciary" includes a trustee under any trust, 6143  
expressed, implied, resulting, or constructive, an executor, 6144  
~~administrator~~ administrator, guardian, conservator, curator, 6145  
receiver, trustee in bankruptcy, assignee for the benefit of 6146  
creditors, partner, agent, officer of a corporation, public or 6147  
private, public officer, or any other person acting in a fiduciary 6148  
capacity for any person, trust, or estate. 6149

(C) "Person" includes a corporation, partnership, 6150  
association, or two or more persons having a joint or common 6151  
interest. 6152

(D) "Principal" includes any person to whom a fiduciary as 6153  
such owes an obligation. 6154

(E) "Good faith" includes an act when it is in fact done 6155  
honestly. 6156

**Sec. ~~1339.04~~ 5815.05.** A person who in good faith pays or 6157  
transfers to a fiduciary any money or other property ~~which~~ that 6158  
the fiduciary as such is authorized to receive is not responsible 6159

for the proper application ~~thereof~~ of the money or other property 6160  
by the fiduciary. Any right or title acquired from the fiduciary 6161  
in consideration of ~~such~~ the payment or transfer is not invalid 6162  
because of a misapplication by the fiduciary. 6163

**Sec. ~~1339-08~~ 5815.06.** If a deposit is made in a bank to the 6164  
credit of a fiduciary as such, the bank may pay the amount of the 6165  
deposit or any part thereof upon the check of the fiduciary, 6166  
signed with the name in which ~~such~~ the deposit is entered, without 6167  
being liable to the principal, unless the bank pays the check with 6168  
actual knowledge that the fiduciary is committing a breach of ~~his~~ 6169  
the obligation as fiduciary in drawing the check or with knowledge 6170  
of such facts that its action in paying the check amounts to bad 6171  
faith. 6172

If such a check is payable to the drawee bank and is 6173  
delivered to it in payment of or as security for a personal debt 6174  
of the fiduciary to it, the bank is liable to the principal if the 6175  
fiduciary in fact commits a breach of ~~his~~ the obligation as 6176  
fiduciary in drawing or delivering the check. 6177

**Sec. ~~1339-09~~ 5815.07.** If a check is drawn upon ~~his~~ the 6178  
principal's account by a fiduciary who is empowered to do so, the 6179  
bank may pay ~~such~~ the check without being liable to the principal, 6180  
unless the bank pays the check with actual knowledge that the 6181  
fiduciary is committing a breach of ~~his~~ the obligation as 6182  
fiduciary in drawing ~~such~~ the check or with knowledge of such 6183  
facts that its action in paying the check amounts to bad faith. 6184

If such a check is payable to the drawee bank and is 6185  
delivered to it in payment of or as security for a personal debt 6186  
of the fiduciary to it, the bank is liable to the principal if the 6187  
fiduciary in fact commits a breach of ~~his~~ the obligation as 6188  
fiduciary in drawing or delivering the check. 6189

**Sec. ~~1339.10~~ 5815.08.** If a fiduciary makes a deposit in a bank to ~~his~~ the fiduciary's personal credit of checks drawn by ~~him~~ the fiduciary upon an account in ~~his~~ the fiduciary's own name as fiduciary, checks payable to ~~him~~ the fiduciary as fiduciary, checks drawn by ~~him~~ the fiduciary upon an account in the name of ~~his~~ the principal if ~~he~~ the fiduciary is empowered to draw checks thereon, checks payable to ~~his~~ the principal and indorsed by ~~him~~ the fiduciary if ~~he~~ the fiduciary is empowered to indorse ~~such~~ the checks, or if ~~he~~ the fiduciary otherwise makes a deposit of funds held by ~~him~~ the fiduciary as fiduciary, the bank receiving ~~such~~ the deposit is not bound to inquire whether the fiduciary is committing a breach of ~~his~~ the obligation as fiduciary.

~~Such~~ The bank may pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of ~~his~~ the obligation as fiduciary in making ~~such~~ the deposit or in drawing ~~such~~ the check, or with knowledge of such facts that the action of ~~such~~ the bank in receiving the deposit or paying the check amounts to bad faith.

**Sec. ~~1339.11~~ 5815.09.** When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee authorized to do so by the other, neither the payee or other holder nor the bank is bound to inquire whether it is a breach of trust to authorize ~~such~~ the trustee to draw checks upon the trust account and neither is liable unless the circumstances are such that the action of the payee or other holder or the bank amounts to bad faith.

**Sec. ~~1339.12~~ 5815.10.** Sections ~~1339.03~~ 5815.04 to ~~1339.13,~~ inclusive, 5815.11 of the Revised Code shall be ~~so~~ construed ~~so as~~

to effectuate their general purpose ~~which is to make~~ of making the 6220  
law of this state uniform with the law of those states ~~which that~~ 6221  
enact similar legislation. 6222

**Sec. ~~1339.13~~ 5815.11.** In any case not provided for in 6223  
sections ~~1339.03~~ 5815.04 to ~~1339.13, inclusive,~~ 5815.11 of the 6224  
Revised Code, the rules of law and equity, including the law 6225  
merchant and those rules of law and equity relating to trusts, 6226  
agency, negotiable instruments, and banking apply. 6227

**Sec. ~~1339.15~~ 5815.12.** As used in sections ~~1339.15~~ 5815.13, 6228  
~~1339.16~~ 5815.14, and ~~1339.17~~ 5815.15 of the Revised Code, "power 6229  
of appointment" means any power ~~which that~~ is in effect a power to 6230  
appoint, however created, regardless of the nomenclature used in 6231  
creating the power and regardless of connotations under the law of 6232  
property, trusts, or wills. ~~Such~~ The power includes but is not 6233  
limited to powers which are special, general, limited, absolute, 6234  
in gross, appendant, appurtenant, or collateral. 6235

**Sec. ~~1339.151~~ 5815.13.** Any power of appointment ~~which that~~ is 6236  
not subject to an express condition that it may be exercised only 6237  
by a donee or holder of a greater age may be exercised by any 6238  
donee or holder of the age of eighteen years~~7~~ or over. 6239

**Sec. ~~1339.16~~ 5815.14.** Any power of appointment may be 6240  
released in whole or in part by the donee or holder of the power 6241  
by an instrument in writing, signed and acknowledged in the manner 6242  
prescribed for the execution of deeds. No such release is 6243  
ineffective because it was given either for or without 6244  
consideration, because it was signed and acknowledged before June 6245  
3, 1943, or because no delivery is made of a copy of the release 6246  
as provided for in section ~~1339.17~~ 5815.15 of the Revised Code. 6247

Sections ~~1339.16~~ 5815.14 and ~~1339.17~~ 5815.15 of the Revised 6248



Code do not affect the validity of a release of a power of 6249  
appointment effected in any other form or manner. 6250

A donee or holder of a power of appointment may disclaim the 6251  
same at any time, wholly or in part, in the same manner and to the 6252  
same extent as ~~he~~ the donee or holder of the power might release 6253  
it. 6254

**Sec. ~~1339.17~~ 5815.15.** No fiduciary or other person having the 6255  
possession or control of any property subject to a power of 6256  
appointment, other than the donee or holder of such power, has 6257  
notice of a release of the power until a copy of the release is 6258  
delivered to ~~him~~ the fiduciary or other person having possession 6259  
or control. 6260

No purchaser or mortgagee of real property subject to a power 6261  
of appointment has notice of a release of the power until a copy 6262  
of the release is delivered to the officer charged by law with the 6263  
recording of deeds in the county in which the property is 6264  
situated. If the property is in this state the county recorder to 6265  
whom a release is delivered shall record ~~such~~ the release in the 6266  
record of powers of attorney and shall charge a fee computed in 6267  
the same manner as the fee charged for recording deeds. 6268

**Sec. ~~1339.18~~ 5815.16.** (A) Absent an express agreement to the 6269  
contrary, an attorney who performs legal services for a fiduciary, 6270  
by reason of the attorney performing those legal services for the 6271  
fiduciary, has no duty or obligation in contract, tort, or 6272  
otherwise to any third party to whom the fiduciary owes fiduciary 6273  
obligations. 6274

(B) As used in this section, "fiduciary" means a trustee 6275  
under an express trust or an executor or administrator of a 6276  
decendent's estate. 6277

**Sec. ~~1339.41~~ 5815.21.** Whenever the executor of a will or the trustee of a testamentary or inter vivos trust is permitted or required to select assets in kind to satisfy a gift, devise, or bequest, whether outright or in trust, intended to qualify for the federal estate tax marital deduction prescribed by the United States "Internal Revenue Code of 1954," 68A Stat. 392, 26 U.S.C.A. 2056, or any comparable federal statute enacted after July 20, 1965, and the will or trust instrument empowers or requires the fiduciary to satisfy such gift, devise, or bequest by allocating assets thereto at any values other than market values at the date of satisfaction of such gift, devise, or bequest, the executor or trustee shall satisfy such gift, devise, or bequest by distribution of assets having a value fairly representative in the aggregate of appreciation or depreciation in the value of all property, including cash, available for distribution in satisfaction of such gift, devise, or bequest, unless the will or trust instrument expressly requires that distribution be made in a manner so as not to be fairly representative of such appreciation or depreciation.

**Sec. ~~1339.411~~ 5815.22.** (A)(1) Except as provided in divisions (A)(2), (3), and (4) of this section, a spendthrift provision in an instrument that creates an inter vivos or testamentary trust shall not cause any forfeiture or postponement of any interest in property that satisfies both of the following:

(a) It is granted to a surviving spouse of the testator or other settlor.

(b) It qualifies for the federal estate tax marital deduction allowed by Subtitle B, Chapter 11, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended, the estate tax marital deduction allowed by division (A) of section 5731.15 of the Revised Code, or the qualified terminable interest property

deduction allowed by division (B) of section 5731.15 of the Revised Code. 6309  
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(2) Division (A)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that obtaining a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section is less important than enforcing the forfeiture or postponement of the interest in property in accordance with the spendthrift provision in the instrument. 6311  
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(3) Division (A)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate. 6319  
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(4) Division (A)(1) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section. 6326  
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(B)(1) Except as provided in divisions (B)(2) and (3) of this section, if an instrument creating an inter vivos or testamentary trust includes a spendthrift provision and the trust holds shares in an S corporation, the spendthrift provision shall not cause any forfeiture or postponement of any beneficial interest, income, principal, or other interest in the shares of the S corporation 6334  
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held by the trust. For purposes of division (B)(1) of this 6340  
section, "S corporation" has the same meaning as in section 1361 6341  
of the "Internal Revenue Code of 1986," 26 U.S.C. 1361. 6342

(2) Division (B)(1) of this section does not apply if an 6343  
instrument that creates an inter vivos or testamentary trust 6344  
expressly states the intention of the testator or other settlor 6345  
that maintenance of the corporation's status as an S corporation 6346  
is less important than enforcing the forfeiture or postponement of 6347  
any beneficial interest, income, principal, or other interest in 6348  
the S corporation shares in accordance with the spendthrift 6349  
provision in the instrument. 6350

(3) Division (B)(1) of this section applies only to the 6351  
forfeiture or postponement portions of a spendthrift provision and 6352  
does not apply to any portion of a spendthrift provision that 6353  
prohibits a beneficiary from assigning, alienating, or otherwise 6354  
disposing of any beneficial interest in a trust or prohibits a 6355  
creditor of a beneficiary from attaching or otherwise encumbering 6356  
the trust estate. 6357

(C)(1) Except as provided in divisions (C)(2) and (3) of this 6358  
section, a spendthrift provision in an instrument that creates an 6359  
inter vivos or testamentary trust shall not cause any forfeiture 6360  
or postponement of any interest in property that satisfies both of 6361  
the following: 6362

(a) It is granted to a person who is a skip person under the 6363  
federal generation-skipping transfer tax imposed by Subtitle B, 6364  
Chapter 13, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 6365  
2601-2663, as amended. 6366

(b) It qualifies as a nontaxable gift under section 2642(c) 6367  
of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2642(c). 6368

(2) Division (C)(1) of this section does not apply if an 6369  
instrument that creates an inter vivos or testamentary trust 6370

expressly states the intention of the testator or other settlor 6371  
that qualifying as a nontaxable trust gift as described in 6372  
division (C)(1)(b) of this section is less important than 6373  
enforcing the forfeiture or postponement of the interest in 6374  
property in accordance with the spendthrift provision in the 6375  
instrument. 6376

(3) Division (C)(1) of this section applies only to the 6377  
forfeiture or postponement portions of a spendthrift provision and 6378  
does not apply to any portion of a spendthrift provision that 6379  
prohibits a beneficiary from assigning, alienating, or otherwise 6380  
disposing of any beneficial interest in a trust or prohibits a 6381  
creditor of a beneficiary from attaching or otherwise encumbering 6382  
the trust estate. 6383

(D) Divisions (A), (B), and (C) of this section are intended 6384  
to codify certain fiduciary and trust law principles relating to 6385  
the interpretation of a testator's or other settlor's intent with 6386  
respect to the provisions of a trust. Divisions (A), (B), and (C) 6387  
of this section apply to trust instruments executed prior to and 6388  
existing on August 29, 2000, and to trust instruments executed on 6389  
or after August 29, 2000. 6390

**Sec. ~~1339-412~~ 5815.23.** (A) Except as provided in division (B) 6391  
of this section, an instrument that creates an inter vivos or 6392  
testamentary trust shall not require or permit the accumulation 6393  
for more than one year of any income of property that satisfies 6394  
both of the following: 6395

(1) The property is granted to a surviving spouse of the 6396  
testator or other settlor. 6397

(2) The property qualifies for the federal estate tax marital 6398  
deduction allowed by subtitle B, Chapter 11 of the "Internal 6399  
Revenue Code of 1986," 26 U.S.C. 2056, as amended, the estate tax 6400

marital deduction allowed by division (A) of section 5731.15 of 6401  
the Revised Code, or the qualified terminable interest property 6402  
deduction allowed by division (B) of section 5731.15 of the 6403  
Revised Code. 6404

(B)(1) Division (A) of this section does not apply if an 6405  
instrument that creates an inter vivos or testamentary trust 6406  
expressly states the intention of the testator or other settlor 6407  
that obtaining a marital deduction or a qualified terminable 6408  
interest property deduction as described in division (A)(2) of 6409  
this section is less important than requiring or permitting the 6410  
accumulation of income of property in accordance with a provision 6411  
in the instrument that requires or permits the accumulation for 6412  
more than one year of any income of property. 6413

(2) Division (A) of this section does not apply to any 6414  
beneficiary of an inter vivos or testamentary trust other than the 6415  
surviving spouse of the testator or other settlor or to any inter 6416  
vivos or testamentary trust of which the surviving spouse of the 6417  
testator or other settlor is a beneficiary if an interest in 6418  
property does not qualify for a marital deduction or a qualified 6419  
terminable interest property deduction as described in division 6420  
(A)(2) of this section. 6421

(C)(1) The trustee of a trust that qualifies for an estate 6422  
tax marital deduction for federal or Ohio estate tax purposes and 6423  
that is the beneficiary of an individual retirement account has a 6424  
fiduciary duty, in regard to the income distribution provision of 6425  
the trust, to withdraw and distribute the income of the individual 6426  
retirement account, at least annually, to the surviving spouse of 6427  
the testator or other settlor. 6428

(2) A trustee's fiduciary duty as described in division 6429  
(C)(1) of this section is satisfied if the terms of the trust 6430  
instrument expressly provide the surviving spouse a right to 6431

withdraw all of the assets from the trust or a right to compel the trustee to withdraw and distribute the income of the individual retirement account to the surviving spouse.

(D) Divisions (A), (B), and (C)(1) of this section are intended to codify existing fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the income provisions of a trust. Divisions (A), (B), and (C) of this section apply to trust instruments executed prior to and existing on October 1, 1996, or executed thereafter. The trustee of a trust described in division (A) or (B) of this section, in a written trust amendment, may elect to not apply divisions (A) and (B) of this section to the trust. Any election of that nature, when made, is irrevocable.

**Sec. ~~1339.42~~ 5815.24.** (A) As used in this section, "fiduciary" means a trustee under any expressed, implied, resulting, or constructive trust; an executor, administrator, public administrator, committee, guardian, conservator, curator, receiver, trustee in bankruptcy, or assignee for the benefit of creditors; a partner, agent, officer of a public or private corporation, or public officer; or any other person acting in a fiduciary capacity for any person, trust, or estate.

(B) A fiduciary, or a custodian, who is a transferee of real or personal property that is held by a fiduciary other than the person or entity serving as the transferee, is not required to inquire into any act, or audit any account, of the transferor fiduciary, unless the transferee is specifically directed to do so in the instrument governing ~~him~~ the transferee or unless the transferee has actual knowledge of conduct of the transferor that would constitute a breach of the transferor's fiduciary responsibilities.

(C) If a trustee is authorized or directed in a trust

instrument to pay or advance all or any part of the trust property 6463  
to the personal representative of a decedent's estate for the 6464  
payment of the decedent's legal obligations, death taxes, 6465  
bequests, or expenses of administration, the trustee is not liable 6466  
for the application of the trust property paid or advanced to the 6467  
personal representative and is not liable for any act or omission 6468  
of the personal representative with respect to the trust property, 6469  
unless the trustee has actual knowledge, prior to the payment or 6470  
advancement of the trust property, that the personal 6471  
representative does not intend to use the trust property for such 6472  
purposes. 6473

**Sec. ~~1339.43~~ 5815.25.** (A) As used in this section, 6474  
"fiduciary" means a trustee under any testamentary, inter vivos, 6475  
or other trust, an executor or administrator, or any other person 6476  
who is acting in a fiduciary capacity for any person, trust, or 6477  
estate. 6478

(B) When an instrument under which a fiduciary acts reserves 6479  
to the grantor, or vests in an advisory or investment committee or 6480  
in one or more other persons, including one or more fiduciaries, 6481  
to the exclusion of the fiduciary or of one or more of several 6482  
fiduciaries, any power, including, but not limited to, the 6483  
authority to direct the acquisition, disposition, or retention of 6484  
any investment or the power to authorize any act that an excluded 6485  
fiduciary may propose, any excluded fiduciary is not liable, 6486  
either individually or as a fiduciary, for either of the 6487  
following: 6488

(1) Any loss that results from compliance with an authorized 6489  
direction of the grantor, committee, person, or persons; 6490

(2) Any loss that results from a failure to take any action 6491  
proposed by an excluded fiduciary that requires a prior 6492  
authorization of the grantor, committee, person, or persons if 6493



that excluded fiduciary timely sought but failed to obtain that authorization. 6494  
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(C) Any excluded fiduciary as described in division (B) of 6496  
this section is relieved from any obligation to perform investment 6497  
reviews and make recommendations with respect to any investments 6498  
to the extent the grantor, an advisory or investment committee, or 6499  
one or more other persons have authority to direct the 6500  
acquisition, disposition, or retention of any investment. 6501

(D) This section does not apply to the extent that the 6502  
instrument under which an excluded fiduciary as described in 6503  
division (B) of this section acts contains provisions that are 6504  
inconsistent with this section. 6505

**Sec. ~~1339.44~~ 5815.26.** (A) As used in this section: 6506

(1) "Fiduciary" means a trustee under any testamentary, inter 6507  
vivos, or other trust, an executor or administrator, or any other 6508  
person who is acting in a fiduciary capacity for a person, trust, 6509  
or estate. 6510

(2) "Short term trust-quality investment fund" means a short 6511  
term investment fund that meets both of the following conditions: 6512

(a) The fund may be either a collective investment fund 6513  
established pursuant to section 1111.14 of the Revised Code or a 6514  
registered investment company, including any affiliated investment 6515  
company whether or not the fiduciary has invested other funds held 6516  
by it in an agency or other nonfiduciary capacity in the 6517  
securities of the same registered investment company or affiliated 6518  
investment company. 6519

(b) The fund is invested in any one or more of the following 6520  
manners: 6521

(i) In obligations of the United States or of its agencies; 6522

(ii) In obligations of one or more of the states of the United States or their political subdivisions;	6523 6524
(iii) In variable demand notes, corporate money market instruments including, but not limited to, commercial paper rated at the time of purchase in either of the two highest classifications established by at least one nationally recognized standard rating service;	6525 6526 6527 6528 6529
(iv) In deposits in banks or savings and loan associations whose deposits are insured by the federal deposit insurance corporation, if the rate of interest paid on such deposits is at least equal to the rate of interest generally paid by such banks or savings and loan associations on deposits of similar terms or amounts;	6530 6531 6532 6533 6534 6535
(v) In fully collateralized repurchase agreements or other evidences of indebtedness that are of trust quality and are payable on demand or have a maturity date consistent with the purpose of the fund and the duty of fiduciary prudence.	6536 6537 6538 6539
(3) "Registered investment company" means any investment company that is defined in and registered under sections 3 and 8 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8.	6540 6541 6542 6543
(4) "Affiliated investment company" has the same meaning as in division (E)(1) of section 1111.10 of the Revised Code.	6544 6545
(B) A fiduciary is not required to invest cash that belongs to the trust and may hold that cash for the period prior to distribution if either of the following applies:	6546 6547 6548
(1) The fiduciary reasonably expects to do either of the following:	6549 6550
(a) Distribute the cash to beneficiaries of the trust on a quarterly or more frequent basis;	6551 6552

(b) Use the cash for the payment of debts, taxes, or expenses 6553  
of administration within the ninety-day period following the 6554  
receipt of the cash by the fiduciary. 6555

(2) Determined on the basis of the facilities available to 6556  
the fiduciary and the amount of the income that reasonably could 6557  
be earned by the investment of the cash, the amount of the cash 6558  
does not justify the administrative burden or expense associated 6559  
with its investment. 6560

(C) If a fiduciary wishes to hold funds that belong to the 6561  
trust in liquid form and division (B) of this section does not 6562  
apply, the fiduciary may so hold the funds as long as they are 6563  
temporarily invested as described in division (D) of this section. 6564

(D)(1) A fiduciary may make a temporary investment of cash 6565  
that ~~he may hold~~ be held uninvested in accordance with division 6566  
(B) of this section, and shall make a temporary investment of 6567  
funds held in liquid form pursuant to division (C) of this 6568  
section, in any of the following investments, unless the governing 6569  
instrument provides for other investments in which the temporary 6570  
investment of cash or funds is permitted: 6571

(a) A short term trust-quality investment fund; 6572

(b) Direct obligations of the United States or of its 6573  
agencies; 6574

(c) A deposit with a bank or savings and loan association, 6575  
including a deposit with the fiduciary itself or any bank 6576  
subsidiary corporation owned or controlled by the bank holding 6577  
company that owns or controls the fiduciary, whose deposits are 6578  
insured by the federal deposit insurance corporation, if the rate 6579  
of interest paid on that deposit is at least equal to the rate of 6580  
interest generally paid by that bank or savings and loan 6581  
association on deposits of similar terms or amounts. 6582

(2) A fiduciary that makes a temporary investment of cash or funds pursuant to division (D)(1) of this section may charge a reasonable fee for the services associated with that investment. The fee shall be in addition to the compensation to which the fiduciary is entitled for his ordinary fiduciary services.

(3) Fiduciaries that make one or more temporary investments of cash or funds pursuant to division (D)(1) of this section shall provide to the beneficiaries of the trusts involved, that are currently receiving income or have a right to receive income, a written disclosure of their temporary investment practices and, if applicable, the method of computing reasonable fees for their temporary investment services pursuant to division (D)(2) of this section. Fiduciaries may comply with this requirement in any appropriate written document, including, but not limited to, any periodic statement or account.

(4) A fiduciary that makes a temporary investment of cash or funds in an affiliated investment company pursuant to division (D)(1)(a) of this section shall, when providing any periodic account statements of its temporary investment practices, report the net asset value of the shares comprising the investment in the affiliated investment company.

(5) If a fiduciary that makes a temporary investment of cash or funds in an affiliated investment company pursuant to division (D)(1)(a) of this section invests in any mutual fund, the fiduciary shall provide to the beneficiaries of the trust involved, that are currently receiving income or have a right to receive income, a written disclosure, in at least ten-point boldface type, that the mutual fund is not insured or guaranteed by the federal deposit insurance corporation or by any other government agency or government-sponsored agency of the federal government or of this state.

**Sec. ~~1339.45~~ 5815.27.** (A) A provision in a will or trust agreement, which provision pertains to the payment of any taxes that are imposed by reason of the testator's or trust creator's death, does not include the payment of any portion of any tax that is imposed on any transfer under any other will or trust agreement by Chapter 13 of subtitle B of the "Internal Revenue Code of 1986," 100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, unless the provision of the will or trust agreement specifically states, using the words "generation-skipping transfer tax," that the payment of the tax imposed under that chapter is included within the provision of the will or trust agreement.

(B) This section applies to wills and trust agreements that are executed before or after March 14, 1979.

**Sec. ~~1339.51~~ 5815.28.** (A) As used in this section:

(1) "Ascertainable standard" includes a standard in a trust instrument requiring the trustee to provide for the care, comfort, maintenance, welfare, education, or general well-being of the beneficiary.

(2) "Disability" means any substantial, medically determinable impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least twelve months, except that "disability" does not include an impairment that is the result of abuse of alcohol or drugs.

(3) "Political subdivision" and "state" have the same meanings as in section 2744.01 of the Revised Code.

(4) "Supplemental services" means services specified by rule of the department of mental health under section 5119.01 of the Revised Code or the department of mental retardation and developmental disabilities under section 5123.04 of the Revised

Code that are provided to an individual with a disability in 6644  
addition to services the individual is eligible to receive under 6645  
programs authorized by federal or state law. 6646

(B) Any person may create a trust under this section to 6647  
provide funding for supplemental services for the benefit of 6648  
another individual who meets either of the following conditions: 6649

(1) The individual has a physical or mental disability and is 6650  
eligible to receive services through the department of mental 6651  
retardation and developmental disabilities or a county board of 6652  
mental retardation and developmental disabilities; 6653

(2) The individual has a mental disability and is eligible to 6654  
receive services through the department of mental health or a 6655  
board of alcohol, drug addiction, and mental health services. 6656

The trust may confer discretion upon the trustee and may 6657  
contain specific instructions or conditions governing the exercise 6658  
of the discretion. 6659

(C) The general division of the court of common pleas and the 6660  
probate court of the county in which the beneficiary of a trust 6661  
authorized by division (B) of this section resides or is confined 6662  
have concurrent original jurisdiction to hear and determine 6663  
actions pertaining to the trust. In any action pertaining to the 6664  
trust in a court of common pleas or probate court and in any 6665  
appeal of the action, all of the following apply to the trial or 6666  
appellate court: 6667

(1) The court shall render determinations consistent with the 6668  
testator's or other settlor's intent in creating the trust, as 6669  
evidenced by the terms of the trust instrument. 6670

(2) The court may order the trustee to exercise discretion 6671  
that the trust instrument confers upon the trustee only if the 6672  
instrument contains specific instructions or conditions governing 6673

the exercise of that discretion and the trustee has failed to  
comply with the instructions or conditions. In issuing an order  
pursuant to this division, the court shall require the trustee to  
exercise the trustee's discretion only in accordance with the  
instructions or conditions.

(3) The court may order the trustee to maintain the trust and  
distribute assets in accordance with rules adopted by the director  
of mental health under section 5119.01 of the Revised Code or the  
director of mental retardation and developmental disabilities  
under section 5123.04 of the Revised Code if the trustee has  
failed to comply with such rules.

(D) To the extent permitted by federal law and subject to the  
provisions of division (C)(2) of this section pertaining to the  
enforcement of specific instructions or conditions governing a  
trustee's discretion, a trust authorized by division (B) of this  
section that confers discretion upon the trustee shall not be  
considered an asset or resource of the beneficiary, the  
beneficiary's estate, the settlor, or the settlor's estate and  
shall be exempt from the claims of creditors, political  
subdivisions, the state, other governmental entities, and other  
claimants against the beneficiary, the beneficiary's estate, the  
settlor, or the settlor's estate, including claims based on  
provisions of Chapters 5111., 5121., or 5123. of the Revised Code  
and claims sought to be satisfied by way of a civil action,  
subrogation, execution, garnishment, attachment, judicial sale, or  
other legal process, if all of the following apply:

(1) At the time the trust is created, the trust principal  
does not exceed the maximum amount determined under division (E)  
of this section;

(2) The trust instrument contains a statement of the  
settlor's intent, or otherwise clearly evidences the settlor's

intent, that the beneficiary does not have authority to compel the trustee under any circumstances to furnish the beneficiary with minimal or other maintenance or support, to make payments from the principal of the trust or from the income derived from the principal, or to convert any portion of the principal into cash, whether pursuant to an ascertainable standard specified in the instrument or otherwise;

(3) The trust instrument provides that trust assets can be used only to provide supplemental services, as defined by rule of the director of mental health under section 5119.01 of the Revised Code or the director of mental retardation and developmental disabilities under section 5123.04 of the Revised Code, to the beneficiary;

(4) The trust is maintained and assets are distributed in accordance with rules adopted by the director of mental health under section 5119.01 of the Revised Code or the director of mental retardation and developmental disabilities under section 5123.04 of the Revised Code;

(5) The trust instrument provides that on the death of the beneficiary, a portion of the remaining assets of the trust, which shall be not less than fifty per cent of such assets, will be deposited to the credit of the services fund for individuals with mental illness created by section 5119.17 of the Revised Code or the services fund for individuals with mental retardation and developmental disabilities created by section 5123.40 of the Revised Code.

(E) In 1994, the trust principal maximum amount for a trust created under this section shall be two hundred thousand dollars. The maximum amount for a trust created under this section prior to November 11, 1994, may be increased to two hundred thousand dollars.



In 1995, the maximum amount for a trust created under this 6736  
section shall be two hundred two thousand dollars. Each year 6737  
thereafter, the maximum amount shall be the prior year's amount 6738  
plus two thousand dollars. 6739

(F) This section does not limit or otherwise affect the 6740  
creation, validity, interpretation, or effect of any trust that is 6741  
not created under this section. 6742

(G) Once a trustee takes action on a trust created by a 6743  
settlor under this section and disburses trust funds on behalf of 6744  
the beneficiary of the trust, then the trust may not be terminated 6745  
or otherwise revoked by a particular event or otherwise without 6746  
payment into the services fund created pursuant to section 5119.17 6747  
or 5123.40 of the Revised Code of an amount that is equal to the 6748  
disbursements made on behalf of the beneficiary for medical care 6749  
by the state from the date the trust vests but that is not more 6750  
than fifty per cent of the trust corpus. 6751

**Sec. ~~1339.62~~ 5815.31.** Unless the trust or separation 6752  
agreement provides otherwise, if, after executing a trust in which 6753  
~~he~~ the grantor reserves to ~~himself~~ self a power to alter, amend, 6754  
revoke, or terminate the provisions of the trust, a grantor is 6755  
divorced, obtains a dissolution of marriage, has ~~his~~ the grantor's 6756  
marriage annulled, or, upon actual separation from ~~his~~ the 6757  
grantor's spouse, enters into a separation agreement pursuant to 6758  
which the parties intend to fully and finally settle their 6759  
prospective property rights in the property of the other, whether 6760  
by expected inheritance or otherwise, the spouse or former spouse 6761  
of the grantor shall be deemed to have predeceased the grantor and 6762  
any provision in the trust conferring a general or special power 6763  
of appointment on the spouse or former spouse or nominating the 6764  
spouse or former spouse as trustee or trust advisor shall be 6765  
revoked. If the grantor remarries ~~his~~ the grantor's former spouse 6766

or if the separation agreement is terminated, the spouse shall not 6767  
be deemed to have predeceased the grantor and any provision in the 6768  
trust conferring a general or special power of appointment on the 6769  
spouse or former spouse or nominating the spouse or former spouse 6770  
as trustee or trust advisor shall not be revoked. 6771

**Sec. ~~1339.621~~ 5815.32.** If a principal executes a power of 6772  
attorney designating the principal's spouse as the attorney in 6773  
fact for the principal and if after executing the power of 6774  
attorney, the principal and the principal's spouse are divorced, 6775  
obtain a dissolution or annulment of their marriage, or enter into 6776  
a separation agreement pursuant to which they intend to fully and 6777  
finally settle each spouse's prospective property rights in the 6778  
property of the other, the designation in the power of attorney of 6779  
the spouse or former spouse of the principal to act as attorney in 6780  
fact for the principal is revoked, unless the power of attorney 6781  
provides otherwise. The subsequent remarriage of the principal to 6782  
the principal's former spouse, or the termination of a separation 6783  
agreement between the principal and the principal's spouse, does 6784  
not revive a power of attorney that is revoked under this section. 6785

**Sec. ~~1339.63~~ 5815.33.** (A) As used in this section: 6786

(1) "Beneficiary" means a beneficiary of a life insurance 6787  
policy, an annuity, a payable on death account, an individual 6788  
retirement plan, an employer death benefit plan, or another right 6789  
to death benefits arising under a contract. 6790

(2) "Employer death benefit plan" means any funded or 6791  
unfunded plan or program, or any fund, that is established to 6792  
provide the beneficiaries of an employee participating in the 6793  
plan, program, or fund with benefits that may be payable upon the 6794  
death of that employee. 6795

(3) "Individual retirement plan" means an individual 6796

retirement account or individual retirement annuity as defined in 6797  
section 408 of the "Internal Revenue Code of 1986," 100 Stat. 6798  
2085, 26 U.S.C.A. 408, as amended. 6799

(B)(1) Unless the designation of beneficiary or the judgment 6800  
or decree granting the divorce, dissolution of marriage, or 6801  
annulment specifically provides otherwise, and subject to division 6802  
(B)(2) of this section, if a spouse designates the other spouse as 6803  
a beneficiary or if another person having the right to designate a 6804  
beneficiary on behalf of the spouse designates the other spouse as 6805  
a beneficiary, and if, after either type of designation, the 6806  
spouse who made the designation or on whose behalf the designation 6807  
was made, is divorced from the other spouse, obtains a dissolution 6808  
of marriage, or has the marriage to the other spouse annulled, 6809  
then the other spouse shall be deemed to have predeceased the 6810  
spouse who made the designation or on whose behalf the designation 6811  
was made, and the designation of the other spouse as a beneficiary 6812  
is revoked as a result of the divorce, dissolution of marriage, or 6813  
annulment. 6814

(2) If the spouse who made the designation or on whose behalf 6815  
the designation was made remarries the other spouse, then, unless 6816  
the designation no longer can be made, the other spouse shall not 6817  
be deemed to have predeceased the spouse who made the designation 6818  
or on whose behalf the designation was made, and the designation 6819  
of the other spouse as a beneficiary is not revoked because of the 6820  
previous divorce, dissolution of marriage, or annulment. 6821

(C) An agent, bank, broker, custodian, issuer, life insurance 6822  
company, plan administrator, savings and loan association, 6823  
transfer agent, trustee, or other person is not liable in damages 6824  
or otherwise in a civil or criminal action or proceeding for 6825  
distributing or disposing of property in reliance on and in 6826  
accordance with a designation of beneficiary as described in 6827  
division (B)(1) of this section, if both of the following apply: 6828

(1) The distribution or disposition otherwise is proper; 6829

(2) The agent, bank, broker, custodian, issuer, life 6830  
insurance company, plan administrator, savings and loan 6831  
association, transfer agent, trustee, or other person did not have 6832  
any notice of the facts that resulted in the revocation of the 6833  
beneficiary designation by operation of division (B)(1) of this 6834  
section. 6835

**Sec. ~~1339-64~~ 5815.34.** (A)(1) Unless the judgment or decree 6836  
granting the divorce, dissolution of marriage, or annulment 6837  
specifically provides otherwise, and subject to division (A)(2) of 6838  
this section, if the title to any personal property is held by two 6839  
persons who are married to each other, if the title is so held for 6840  
the joint lives of the spouses and then to the survivor of them, 6841  
and if the marriage of the spouses subsequently is terminated by a 6842  
judgment or decree granting a divorce, dissolution of marriage, or 6843  
annulment, then the survivorship rights of the spouses terminate, 6844  
and each spouse shall be deemed the owner of an undivided interest 6845  
in common in the title to the personal property, that is in 6846  
proportion to ~~his~~ the spouse's net contributions to the personal 6847  
property. 6848

(2) If the spouses described in division (A)(1) of this 6849  
section remarry each other and the title to the personal property 6850  
continues to be held by them in accordance with that division, 6851  
then the survivorship rights of the spouses are not terminated, 6852  
and the spouses again hold title in the personal property for 6853  
their joint lives and then to the survivor of them. 6854

(B)(1) Unless the judgment or decree granting the divorce, 6855  
dissolution of marriage, or annulment specifically provides 6856  
otherwise, and subject to division (B)(2) of this section, if the 6857  
title to any personal property is held by more than two persons 6858  
and at least two of the persons are married to each other, if the 6859

title is so held for the joint lives of the titleholders and then 6860  
to the survivor or survivors of them, and if the marriage of any 6861  
of the titleholders who are married to each other subsequently is 6862  
terminated by a judgment or decree granting a divorce, dissolution 6863  
of marriage, or annulment, then the survivorship rights of the 6864  
titleholders who were married to each other terminate, the 6865  
survivorship rights of the other titleholders are not affected, 6866  
and each of the titleholders who were married to each other shall 6867  
be deemed to be the owner of an undivided interest in common in 6868  
the personal property, that is in proportion to ~~his~~ the net 6869  
contributions of the titleholders who were married to each other 6870  
to the personal property. 6871

(2) If the titleholders who were married to each other as 6872  
described in division (B)(1) of this section remarry each other, 6873  
and if the title to the personal property continues to be held by 6874  
them, and the other titleholders whose survivorship rights 6875  
continued unaffected, in accordance with that division, then the 6876  
survivorship rights of the remarried titleholders are not 6877  
terminated, and the remarried and other titleholders again hold 6878  
title in the personal property for their joint lives and then to 6879  
the survivor or survivors of them. 6880

(C) An agent, bank, broker, custodian, issuer, life insurance 6881  
company, plan administrator, savings and loan association, 6882  
transfer agent, trustee, or other person is not liable in damages 6883  
or otherwise in a civil or criminal action or proceeding for 6884  
distributing or disposing of personal property in reliance on and 6885  
in accordance with a registration in the form of a joint ownership 6886  
for life, with rights of survivorship, as described in division 6887  
(A)(1) or (B)(1) of this section, if both of the following apply: 6888

(1) The distribution or disposition otherwise is proper; 6889

(2) The agent, bank, broker, custodian, issuer, life 6890

insurance company, plan administrator, savings and loan 6891  
association, transfer agent, trustee, or other person did not have 6892  
any notice of the facts that resulted in the termination of the 6893  
rights of survivorship by operation of division (A)(1) or (B)(1) 6894  
of this section. 6895

**Sec. ~~1339.65~~ 5815.35.** (A)(1) As used in this division+ 6896

~~(a) "Fiduciary, fiduciary"~~ means any person, association, or 6897  
corporation, other than a trustee of a testamentary trust, an 6898  
assignee or trustee for an insolvent debtor, or a guardian under 6899  
Chapter 5905. of the Revised Code, that is appointed by and 6900  
accountable to the probate court, and that is acting in a 6901  
fiduciary capacity for another or charged with duties in relation 6902  
to any property, interest, ~~trust~~, or estate for another's benefit. 6903  
A fiduciary also includes an agency under contract with the 6904  
department of mental retardation and developmental disabilities 6905  
for the provision of protective service under sections 5123.55 to 6906  
5123.59 of the Revised Code, when appointed by ~~an~~ and accountable 6907  
to the probate court as a guardian or trustee for a mentally 6908  
retarded or developmentally disabled person. 6909

~~(b) "Trustee" means a trustee of an inter vivos trust.~~ 6910

(2) A ~~trustee or~~ fiduciary who enters a contract as ~~trustee~~ 6911  
~~or~~ fiduciary on or after March 22, 1984, is not personally liable 6912  
on that contract, unless the contract otherwise specifies, if the 6913  
contract is within the ~~trustee's or~~ fiduciary's authority and the 6914  
~~trustee or~~ fiduciary discloses that the contract is being entered 6915  
into in ~~his trustee or~~ a fiduciary capacity. In a contract, the 6916  
words "~~trustee,~~" "~~as trustee,~~" "fiduciary," or "as fiduciary," or 6917  
other words that indicate one's ~~trustee or~~ fiduciary capacity, 6918  
following the name or signature of a ~~trustee or~~ fiduciary ~~shall be~~ 6919  
are sufficient disclosure for purposes of this division. 6920

(B)(1) As used in this division+ 6921

~~(a) "Partnership, "partnership"~~ includes a partnership 6922  
composed of only general partners and a partnership composed of 6923  
general and limited partners. 6924

~~(b) "Revocable trust" means only a revocable trust that, by 6925  
its terms, becomes irrevocable upon the death of the settlor of 6926  
the trust. 6927~~

(2) Subject to division (D) of this section, an executor, or 6928  
~~administrator, or trustee~~ who acquires, in his a fiduciary 6929  
capacity, a general partnership interest upon the death of a 6930  
general partner of a partnership, ~~or a trustee of a revocable~~ 6931  
~~trust who, in his fiduciary capacity, is a general partner of a~~ 6932  
~~partnership,~~ is not personally liable for any debt, obligation, or 6933  
liability of the partnership that arises from his the executor's 6934  
or administrator's actions, except as provided in this division, 6935  
as a general partner, or for any debt, obligation, or liability of 6936  
the partnership for which he the executor or administrator 6937  
otherwise would be personally liable because ~~he~~ the executor or 6938  
administrator holds the general partnership interest, if ~~he~~ the 6939  
executor or administrator discloses that the general partnership 6940  
interest is held by ~~him~~ the executor or administrator in a 6941  
fiduciary capacity. This immunity does not apply if an executor, 6942  
or administrator, ~~or trustee~~ causes loss or injury to a person who 6943  
is not a partner in the partnership, by a wrongful act or 6944  
omission. This immunity is not available to an executor, or 6945  
administrator, ~~or trustee~~ who holds a general partnership interest 6946  
in his a fiduciary capacity if his the spouse or any ~~of his~~ lineal 6947  
descendants of the executor or administrator, or the executor, or 6948  
administrator, ~~or trustee himself~~ other than in his a fiduciary 6949  
capacity, holds any interest in the partnership. 6950

A partnership certificate that is filed pursuant to Chapter 6951

1777. or another chapter of the Revised Code and that indicates  
that an executor, or administrator, ~~or trustee~~ holds a general  
partnership interest in a fiduciary capacity by the use following  
the name or signature of the executor, or administrator, ~~or~~  
~~trustee~~ of the words "executor under the will of (name of  
decedent)," or "administrator of the estate of (name of  
decedent)," ~~or "trustee under the (will or trust) of (name of  
decedent or settlor),"~~ or other words that indicate the  
executor's, or administrator's, ~~or trustee's~~ fiduciary capacity,  
constitutes a sufficient disclosure for purposes of this division.

If a partnership certificate is not required to be filed  
pursuant to Chapter 1777. or another chapter of the Revised Code,  
a sufficient disclosure for purposes of this division can be made  
by an executor, or administrator, ~~or trustee~~ if a certificate that  
satisfies the following requirements is filed with the recorder of  
the county in which the partnership's principal office or place of  
business is situated and with the recorder of each county in which  
the partnership owns real estate:

(a) The certificate shall state in full the names of all  
persons holding interests in the partnership and their places of  
residence;

(b) The certificate shall be signed by all persons who are  
general partners in the partnership, and shall be acknowledged by  
a person authorized to take acknowledgements of deeds;

(c) The certificate shall use the words "executor under the  
will of (name of decedent)," or "administrator of the estate of  
(name of decedent)," ~~or "trustee under the (will or trust) of  
(name of decedent or settlor),"~~ or other words that indicate the  
executor's, or administrator's, ~~or trustee's~~ fiduciary capacity,  
following ~~his~~ the name or signature of the executor or  
administrator.



A contract or other written instrument delivered to a party 6983  
that contracts with the partnership in which an executor, or 6984  
administrator, ~~or trustee~~ holds a general partnership interest in 6985  
a fiduciary capacity, which indicates that the executor, or 6986  
administrator, ~~or trustee~~ so holds the interest, constitutes a 6987  
disclosure for purposes of this division with respect to 6988  
transactions between the party and the partnership. If a 6989  
disclosure has been made by a certificate in accordance with this 6990  
division, a disclosure for purposes of this division with respect 6991  
to such transactions exists regardless of whether a contract or 6992  
other instrument indicates the executor, or administrator, ~~or~~ 6993  
~~trustee~~ holds the general partnership interest in a fiduciary 6994  
capacity. 6995

~~If a trustee of a revocable trust, in his fiduciary capacity,~~ 6996  
~~is a general partner in a partnership, the settlor of the trust is~~ 6997  
~~personally liable for any debt, obligation, or liability of the~~ 6998  
~~partnership as if he were the general partner. If an executor, or~~ 6999  
~~administrator, ~~or trustee~~ acquires, in his a fiduciary capacity, a~~ 7000  
general partnership interest, the decedent's estate ~~or the trust~~ 7001  
is liable for debts, obligations, or liabilities of the 7002  
partnership. 7003

(C) An estate ~~or trust~~ that includes a general partnership 7004  
interest is not liable for the debts, obligations, or liabilities 7005  
of a partnership in which another estate ~~or trust~~ has a general 7006  
partnership interest, merely because the executor, or 7007  
administrator, ~~or trustee~~ of the estates ~~or trusts~~ holds a general 7008  
partnership interest in both of the partnerships in his the 7009  
executor's or administrator's fiduciary capacities. 7010

(D) Divisions (B) and (C) of this section apply to general 7011  
partnership interests held by executors, or administrators, ~~or~~ 7012  
~~trustees~~ in their fiduciary capacities prior to and on or after 7013  
the effective date of this section. If an appropriate disclosure 7014

is made pursuant to division (B) of this section, the immunity 7015  
acquired under that division extends only to debts, obligations, 7016  
and liabilities of the partnership arising on and after the date 7017  
of the disclosure and to debts, obligations, and liabilities of 7018  
the partnership that arose prior to the acquisition of the general 7019  
partnership interest by the executor, or administrator, ~~or trustee~~ 7020  
~~or prior to the trustee of a revocable trust~~ becoming a general 7021  
partner. 7022

**Sec. ~~1339.68~~ 5815.36.** (A) As used in this section: 7023

(1) "Disclaimant" means any person, any guardian or personal 7024  
representative of a person or estate of a person, or any 7025  
attorney-in-fact or agent of a person having a general or specific 7026  
authority to act granted in a written instrument, who is any of 7027  
the following: 7028

(a) With respect to testamentary instruments and intestate 7029  
succession, an heir, next of kin, devisee, legatee, donee, person 7030  
succeeding to a disclaimed interest, surviving joint tenant, 7031  
surviving tenant by the entirety, surviving tenant of a tenancy 7032  
with a right of survivorship, beneficiary under a testamentary 7033  
instrument, or person designated to take pursuant to a power of 7034  
appointment exercised by a testamentary instrument; 7035

(b) With respect to nontestamentary instruments, a grantee, 7036  
donee, person succeeding to a disclaimed interest, surviving joint 7037  
tenant, surviving tenant by the entirety, surviving tenant of a 7038  
tenancy with a right of survivorship, beneficiary under a 7039  
nontestamentary instrument, or person designated to take pursuant 7040  
to a power of appointment exercised by a nontestamentary 7041  
instrument; 7042

(c) With respect to fiduciary rights, privileges, powers, and 7043  
immunities, a fiduciary under a testamentary or nontestamentary 7044  
instrument. This section does not authorize a fiduciary to 7045

disclaim the rights of beneficiaries unless the instrument  
creating the fiduciary relationship authorizes such a disclaimer.

(d) Any person entitled to take an interest in property upon  
the death of a person or upon the occurrence of any other event.

(2) "Property" means all forms of property, real and  
personal, tangible and intangible.

(B)(1) A disclaimant, other than a fiduciary under an  
instrument who is not authorized by the instrument to disclaim the  
interest of a beneficiary, may disclaim, in whole or in part, the  
succession to any property by executing and by delivering, filing,  
or recording a written disclaimer instrument in the manner  
provided in this section.

(2) A disclaimant who is a fiduciary under an instrument may  
disclaim, in whole or in part, any right, power, privilege, or  
immunity, by executing and by delivering, filing, or recording a  
written disclaimer instrument in the manner provided in this  
section.

(3) The written instrument of disclaimer shall be signed and  
acknowledged by the disclaimant and shall contain all of the  
following:

(a) A reference to the donative instrument;

(b) A description of the property, part of property, or  
interest disclaimed, and of any fiduciary right, power, privilege,  
or immunity disclaimed;

(c) A declaration of the disclaimer and its extent.

(4) The guardian of the estate of a minor or an incompetent,  
or the personal representative of a deceased person, with the  
consent of the probate division of the court of common pleas, may  
disclaim, in whole or in part, the succession to any property, or  
interest in property, that the ward, if an adult and competent, or

the deceased, if living, might have disclaimed. The guardian or  
personal representative, or any interested person may file an  
application with the probate division of the court of common pleas  
that has jurisdiction of the estate, asking that the court order  
the guardian or personal representative to execute and deliver,  
file, or record the disclaimer on behalf of the ward or estate.  
The court shall order the guardian or personal representative to  
execute and deliver, file, or record the disclaimer if the court  
finds, upon hearing after notice to interested parties and such  
other persons as the court shall direct, that:

(a) It is in the best interests of those interested in the  
estate of the person and of those who will take the disclaimed  
interest;

(b) It would not materially, adversely affect the minor or  
incompetent, or the beneficiaries of the estate of the decedent,  
taking into consideration other available resources and the age,  
probable life expectancy, physical and mental condition, and  
present and reasonably anticipated future needs of the minor or  
incompetent or the beneficiaries of the estate of the decedent.

A written instrument of disclaimer ordered by the court under  
this division shall be executed and be delivered, filed, or  
recorded within the time and in the manner in which the person  
could have disclaimed if the person were living, an adult, and  
competent.

(C) A partial disclaimer of property that is subject to a  
burdensome interest created by the donative instrument is not  
effective unless the disclaimed property constitutes a gift that  
is separate and distinct from undisclaimed gifts.

(D) The disclaimant shall deliver, file, or record the  
disclaimer, or cause the same to be done, not later than nine  
months after the latest of the following dates:

(1) The effective date of the donative instrument if both the taker and the taker's interest in the property are finally ascertained on that date;

(2) The date of the occurrence of the event upon which both the taker and the taker's interest in the property become finally ascertainable;

(3) The date on which the disclaimant attains twenty-one years of age or is no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under twenty-one years of age or an incompetent, and even if a guardian of a minor or incompetent had filed an application pursuant to division (B)(4) of this section and the probate division of the court of common pleas involved did not consent to the guardian executing a disclaimer.

(E) No disclaimer instrument is effective under this section if either of the following applies under the terms of the disclaimer instrument:

(1) The disclaimant has power to revoke the disclaimer.

(2) The disclaimant may transfer, or direct to be transferred, to self the entire legal and equitable ownership of the property subject to the disclaimer instrument.

(F)(1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed.

(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, by a transfer on death deed pursuant to section 5302.22 of the Revised Code, or by a certificate of title to a motor vehicle, watercraft, or outboard

motor that evidences ownership of the motor vehicle, watercraft,  
or outboard motor that is transferable on death pursuant to  
section 2131.13 of the Revised Code, the disclaimer instrument  
shall be filed in the probate division of the court of common  
pleas in the county in which proceedings for the administration of  
the decedent's estate have been commenced, and an executed copy of  
the disclaimer instrument shall be delivered personally or by  
certified mail to the personal representative of the decedent's  
estate.

(3) If no proceedings for the administration of the  
decedent's estate have been commenced, the disclaimer instrument  
shall be filed in the probate division of the court of common  
pleas in the county in which proceedings for the administration of  
the decedent's estate might be commenced according to law. The  
disclaimer instrument shall be filed and indexed, and fees  
charged, in the same manner as provided by law for an application  
to be appointed as personal representative to administer the  
decedent's estate. The disclaimer is effective whether or not  
proceedings thereafter are commenced to administer the decedent's  
estate. If proceedings thereafter are commenced for the  
administration of the decedent's estate, they shall be filed  
under, or consolidated with, the case number assigned to the  
disclaimer instrument.

(4) If an interest in real estate is disclaimed, an executed  
copy of the disclaimer instrument also shall be recorded in the  
office of the recorder of the county in which the real estate is  
located. The disclaimer instrument shall include a description of  
the real estate with sufficient certainty to identify it, and  
shall contain a reference to the record of the instrument that  
created the interest disclaimed. If title to the real estate is  
registered under Chapters 5309. and 5310. of the Revised Code, the  
disclaimer interest shall be entered as a memorial on the last

certificate of title. A spouse of a disclaimant has no dower or 7169  
other interest in the real estate disclaimed. 7170

(G) Unless the donative instrument expressly provides that, 7171  
if there is a disclaimer, there shall not be any acceleration of 7172  
remainders or other interests, the property, part of property, or 7173  
interest in property disclaimed, and any future interest that is 7174  
to take effect in possession or enjoyment at or after the 7175  
termination of the interest disclaimed, shall descend, be 7176  
distributed, or otherwise be disposed of, and shall be 7177  
accelerated, in the following manner: 7178

(1) If intestate or testate succession is disclaimed, as if 7179  
the disclaimant had predeceased the decedent; 7180

(2) If the disclaimant is one designated to take pursuant to 7181  
a power of appointment exercised by a testamentary instrument, as 7182  
if the disclaimant had predeceased the donee of the power; 7183

(3) If the donative instrument is a nontestamentary 7184  
instrument, as if the disclaimant had died before the effective 7185  
date of the nontestamentary instrument; 7186

(4) If the disclaimer is of a fiduciary right, power, 7187  
privilege, or immunity, as if the right, power, privilege, or 7188  
immunity was never in the donative instrument. 7189

(H) A disclaimer pursuant to this section is effective as of, 7190  
and relates back for all purposes to, the date upon which the 7191  
taker and the taker's interest have been finally ascertained. 7192

(I) A disclaimant who has a present and future interest in 7193  
property, and disclaims the disclaimant's present interest in 7194  
whole or in part, is considered to have disclaimed the 7195  
disclaimant's future interest to the same extent, unless a 7196  
contrary intention appears in the disclaimer instrument or the 7197  
donative instrument. A disclaimant is not precluded from 7198

receiving, as an alternative taker, a beneficial interest in the 7199  
property disclaimed, unless a contrary intention appears in the 7200  
disclaimer instrument or in the donative instrument. 7201

(J) The disclaimant's right to disclaim under this section is 7202  
barred if, before the expiration of the period within which the 7203  
disclaimant may disclaim the interest, the disclaimant does any of 7204  
the following: 7205

(1) Assigns, conveys, encumbers, pledges, or transfers, or 7206  
contracts to assign, convey, encumber, pledge, or transfer, the 7207  
property or any interest in it; 7208

(2) Waives in writing the disclaimant's right to disclaim and 7209  
executes and delivers, files, or records the waiver in the manner 7210  
provided in this section for a disclaimer instrument; 7211

(3) Accepts the property or an interest in it; 7212

(4) Permits or suffers a sale or other disposition of the 7213  
property pursuant to judicial action against the disclaimant. 7214

(K) A fiduciary's application for appointment or assumption 7215  
of duties as a fiduciary does not waive or bar the disclaimant's 7216  
right to disclaim a right, power, privilege, or immunity. 7217

(L) The right to disclaim under this section exists 7218  
irrespective of any limitation on the interest of the disclaimant 7219  
in the nature of a spendthrift provision or similar restriction. 7220

(M) A disclaimer instrument or written waiver of the right to 7221  
disclaim that has been executed and delivered, filed, or recorded 7222  
as required by this section is final and binding upon all persons. 7223

(N) The right to disclaim and the procedures for disclaimer 7224  
established by this section are in addition to, and do not exclude 7225  
or abridge, any other rights or procedures existing under any 7226  
other section of the Revised Code or at common law to assign, 7227  
convey, release, refuse to accept, renounce, waive, or disclaim 7228



property. 7229

(O)(1) No person is liable for distributing or disposing of 7230  
property in a manner inconsistent with the terms of a valid 7231  
disclaimer if the distribution or disposition is otherwise proper 7232  
and the person has no actual knowledge of the disclaimer. 7233

(2) No person is liable for distributing or disposing of 7234  
property in reliance upon the terms of a disclaimer that is 7235  
invalid because the right of disclaimer has been waived or barred 7236  
if the distribution or disposition is otherwise proper and the 7237  
person has no actual knowledge of the facts that constitute a 7238  
waiver or bar to the right to disclaim. 7239

(P)(1) A disclaimant may disclaim pursuant to this section 7240  
any interest in property that is in existence on September 27, 7241  
1976, if either the interest in the property or the taker of the 7242  
interest in the property is not finally ascertained on that date. 7243

(2) No disclaimer executed pursuant to this section destroys 7244  
or diminishes an interest in property that exists on September 27, 7245  
1976, in any person other than the disclaimant. 7246

**Sec. ~~1339.71~~ 5815.41.** As used in sections ~~1339.71~~ 5815.41 to 7247  
~~1339.78~~ 5815.48 of the Revised Code: 7248

(A) "Art dealer" means a person engaged in the business of 7249  
selling works of art, other than a person exclusively engaged in 7250  
the business of selling goods at public auction. 7251

(B) "Artist" means the creator of a work of art. 7252

(C) "On consignment" means delivered to an art dealer for the 7253  
purpose of sale or exhibition, or both, to the public by the art 7254  
dealer other than at a public auction. 7255

(D) "Work of art" means an original art work that is any of 7256  
the following: 7257

(1) A visual rendition including, but not limited to, a painting, drawing, sculpture, mosaic, or photograph;	7258 7259
(2) A work of calligraphy;	7260
(3) A work of graphic art, including, but not limited to, an etching, lithograph, offset print, or silk screen;	7261 7262
(4) A craft work in materials, including, but not limited to, clay, textile, fiber, wood, metal, plastic, or glass;	7263 7264
(5) A work in mixed media, including, but not limited to, a collage or a work consisting of any combination of the items listed in divisions (D)(1) to (4) of this section.	7265 7266 7267
<b>Sec. <del>1339.72</del> <u>5815.42</u>.</b> If an art dealer accepts a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art, the following consequences attach:	7268 7269 7270 7271
(A) The art dealer is, with respect to that work of art, the agent of the artist.	7272 7273
(B) The work of art is trust property and the art dealer is a trustee for the benefit of the artist until the work of art is sold to a bona fide third party or returned to the artist.	7274 7275 7276
(C) The proceeds of the sale of the work of art are trust property and the art dealer is a trustee for the benefit of the artist until the amount due the artist from the sale is paid.	7277 7278 7279
(D) The art dealer is strictly liable for the loss of, or damage to, the work of art while it is in the art dealer's possession or control. The value of the work of art is, for the purpose of this division, the value established in the written contract between the artist and art dealer entered into pursuant to section <del>1339.75</del> <u>5815.45</u> of the Revised Code.	7280 7281 7282 7283 7284 7285

**Sec. ~~1339.73~~ 5815.43.** (A) If a work of art is trust property 7286  
under section ~~1339.72~~ 5815.42 of the Revised Code when it is 7287  
initially received by the art dealer, it remains trust property, 7288  
notwithstanding the subsequent purchase of the work of art by the 7289  
art dealer directly or indirectly for the art dealer's own 7290  
account, until the purchase price specified pursuant to division 7291  
(A)(3) of section ~~1339.75~~ 5815.45 of the Revised Code is paid in 7292  
full to the artist. 7293

(B) If an art dealer resells a work of art that ~~he~~ the art 7294  
dealer purchased for ~~his~~ the art dealer's own account to a bona 7295  
fide third party before the artist has been paid in full, the work 7296  
of art ceases to be trust property and the proceeds of the resale 7297  
are trust funds in the possession or control of the art dealer for 7298  
the benefit of the artist to the extent necessary to pay any 7299  
balance still due to the artist. The trusteeship of the proceeds 7300  
continues until the artist is paid in full under the contract 7301  
entered into pursuant to section ~~1339.75~~ 5815.45 of the Revised 7302  
Code. 7303

**Sec. ~~1339.74~~ 5815.44.** A work of art that is trust property 7304  
under section ~~1339.72~~ 5815.42 or ~~1339.73~~ 5815.43 of the Revised 7305  
Code is not subject to the claims, liens, or security interests of 7306  
the creditors of the art dealer, notwithstanding Chapters 1301. to 7307  
1310. of the Revised Code. 7308

**Sec. ~~1339.75~~ 5815.45.** (A) An art dealer shall not accept a 7309  
work of art, on a fee, commission, or other compensation basis, on 7310  
consignment from the artist who created the work of art unless, 7311  
prior to or at the time of acceptance, the art dealer enters into 7312  
a written contract with the artist that contains all of the 7313  
following: 7314

(1) The value of the work of art and whether it may be sold; 7315

(2) The time within which the proceeds of the sale are to be paid to the artist, if the work of art is sold;

(3) The minimum price for the sale of the work of art;

(4) The fee or percentage of the sale price that is to be paid to the art dealer for displaying or selling the work of art.

(B) If an art dealer violates this section, a court, at the request of the artist, may void the obligation of the artist to that art dealer or to a person to whom the obligation is transferred, other than a holder in due course.

**Sec. ~~1339.76~~ 5815.46.** An art dealer who accepts a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art shall not use or display the work of art or a photograph of the work of art, or permit the use or display of the work of art or a photograph of the work of art, unless both of the following occur:

~~(1)~~(A) Notice is given to users or viewers that the work of art is the work of the artist;

~~(2)~~(B) The artist gives prior written consent to the particular use or display.

**Sec. ~~1339.77~~ 5815.47.** Any portion of an agreement that waives any provision of sections ~~1339.71~~ 5815.41 to ~~1339.78~~ 5815.48 of the Revised Code is void.

**Sec. ~~1339.78~~ 5815.48.** Any art dealer who violates section ~~1339.75~~ 5815.45 or ~~1339.76~~ 5815.46 of the Revised Code is liable to the artist for ~~his~~ the artist's reasonable attorney's fees and in an amount equal to the greater of either of the following:

(A) Fifty dollars;

(B) The actual damages, if any, including the incidental and

consequential damages, sustained by the artist by reason of the 7344  
violation. 7345

**Section 2.** That existing sections 1111.13, 1111.15, 1151.191, 7346  
1161.24, 1319.12, 1339.01, 1339.02, 1339.03, 1339.031, 1339.04, 7347  
1339.08, 1339.09, 1339.10, 1339.11, 1339.12, 1339.13, 1339.15, 7348  
1339.151, 1339.16, 1339.17, 1339.18, 1339.31, 1339.32, 1339.33, 7349  
1339.34, 1339.35, 1339.36, 1339.37, 1339.38, 1339.39, 1339.41, 7350  
1339.411, 1339.412, 1339.42, 1339.43, 1339.44, 1339.45, 1339.51, 7351  
1339.52, 1339.53, 1339.54, 1339.55, 1339.56, 1339.57, 1339.58, 7352  
1339.59, 1339.60, 1339.61, 1339.62, 1339.621, 1339.63, 1339.64, 7353  
1339.65, 1339.68, 1339.71, 1339.72, 1339.73, 1339.74, 1339.75, 7354  
1339.76, 1339.77, 1339.78, 1340.31, 1340.32, 1340.33, 1340.34, 7355  
1340.35, 1340.36, 1340.37, 1340.40, 1340.41, 1340.42, 1340.46, 7356  
1340.47, 1340.51, 1340.52, 1340.53, 1340.57, 1340.58, 1340.59, 7357  
1340.63, 1340.64, 1340.65, 1340.66, 1340.70, 1340.71, 1340.72, 7358  
1340.73, 1340.74, 1340.75, 1340.76, 1340.77, 1340.81, 1340.82, 7359  
1340.83, 1340.84, 1340.85, 1340.86, 1340.90, 1340.91, 1775.03, 7360  
1775.14, 1775.15, 1775.17, 1775.33, 1782.24, 2101.24, 2107.33, 7361  
2109.24, 2109.37, 2109.62, 2109.68, 2111.131, 2113.861, 2305.121, 7362  
2305.22, 5111.15, 5111.151, 5119.01, 5119.17, 5121.04, 5121.10, 7363  
5121.30, 5121.52, 5123.04, 5123.28, and 5123.40 and sections 7364  
1335.01, 1339.14, 1339.66, 1339.67, 1339.69, 1340.21, 1340.22, and 7365  
1340.23 of the Revised Code are hereby repealed. 7366

**Section 3.** Sections 1 and 2 of this act shall take effect on 7367  
January 1, 2007. 7368

**Section 4.** In enacting divisions (B) to (D) of section 7369  
5808.14 of the Revised Code in Section 1 of this act, the General 7370  
Assembly hereby declares its intent to codify certain fiduciary 7371  
and trust law principles, previously codified in sections 1340.21 7372  
to 1340.23 of the Revised Code, relating to a fiduciary's conflict 7373

of interests and, in general, to provide for the exercise of 7374  
certain discretionary powers to distribute either principal or 7375  
income to a beneficiary by a beneficially interested fiduciary for 7376  
the beneficially interested fiduciary's own benefit to the extent 7377  
of an ascertainable standard. 7378

**Section 5.** Section 5123.04 of the Revised Code is presented 7379  
in this act as a composite of the section as amended by both Sub. 7380  
H.B. 670 and Am. Sub. S.B. 285 of the 121st General Assembly. The 7381  
General Assembly, applying the principle stated in division (B) of 7382  
section 1.52 of the Revised Code that amendments are to be 7383  
harmonized if reasonably capable of simultaneous operation, finds 7384  
that the composite is the resulting version of the section in 7385  
effect prior to the effective date of the section as presented in 7386  
this act. 7387