

**As Reported by the Senate Judiciary--Civil Justice Committee**

**128th General Assembly**

**Regular Session**

**2009-2010**

**Sub. S. B. No. 251**

**Senators Seitz, Schiavoni**

**Cosponsors: Senators Turner, Kearney**

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**A B I L L**

To amend sections 1337.092, 1337.12, 2101.24, 1  
2109.21, 2111.02, 2111.12, 2111.121, 5301.071, 2  
5747.02, 5801.10, 5804.12, 5808.14, 5808.17, and 3  
5810.13; to enact new section 2107.52 and sections 4  
1337.21 to 1337.64, 3793.31 to 3793.39, 5808.18, 5  
5808.19, 5809.031, 5810.14, and 5815.49; and to 6  
repeal sections 1337.09, 1337.091, 1337.093, 7  
1337.18, 1337.19, 1337.20, and 2107.52 of the 8  
Revised Code to adopt the Uniform Power of 9  
Attorney Act; to modify a trustee's duties with 10  
respect to life insurance policies, specify a 11  
trustee's power to distribute trust principal in 12  
further trust, provide for the titling of assets 13  
in trust form, and make other changes in the Trust 14  
Code; to modify the anti-lapse provisions 15  
regarding wills and adopt anti-lapse provisions 16  
applicable to trusts; to provide a mechanism for a 17  
probate court to order a person who suffers from 18  
alcohol and other drug abuse to undergo treatment; 19  
to provide a rule of construction interpreting 20  
federal estate tax and generation-skipping 21  
transfer tax formulas in wills and trusts due to 22  
the repeal of those taxes; and to declare an 23

emergency.

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

**Section 1.** That sections 1337.092, 1337.12, 2101.24, 2109.21, 2111.02, 2111.12, 2111.121, 5301.071, 5747.02, 5801.10, 5804.12, 5808.14, 5808.17, and 5810.13 be amended and new section 2107.52 and sections 1337.21, 1337.22, 1337.23, 1337.24, 1337.25, 1337.26, 1337.27, 1337.28, 1337.29, 1337.30, 1337.31, 1337.32, 1337.33, 1337.34, 1337.35, 1337.36, 1337.37, 1337.38, 1337.39, 1337.40, 1337.41, 1337.42, 1337.43, 1337.44, 1337.45, 1337.46, 1337.47, 1337.48, 1337.49, 1337.50, 1337.51, 1337.52, 1337.53, 1337.54, 1337.55, 1337.56, 1337.57, 1337.58, 1337.59, 1337.60, 1337.61, 1337.62, 1337.63, 1337.64, 3793.31, 3793.32, 3793.33, 3793.34, 3793.35, 3793.36, 3793.37, 3793.38, 3793.39, 5808.18, 5808.19, 5809.031, 5810.14, and 5815.49 of the Revised Code be enacted to read as follows:

**Sec. 1337.092.** (A) If an attorney in fact enters into a contract in the representative capacity of the attorney in fact, if the contract is within the authority of the attorney in fact, and if the attorney in fact discloses in the contract that it is being entered into in the representative capacity of the attorney in fact, the attorney in fact is not personally liable on the contract, unless the contract otherwise specifies. If the words or initialism "attorney in fact," "as attorney in fact," "AIF," "power of attorney," "POA," or any other word or words or initialism indicating representative capacity as an attorney in fact are included in a contract following the name or signature of an attorney in fact, the inclusion is sufficient disclosure for purposes of this division that the contract is being entered into in the attorney in fact's representative capacity as attorney in fact.

(B) An attorney in fact is not personally liable for a debt 53  
of the attorney in fact's principal, unless one or more of the 54  
following applies: 55

(1) The attorney in fact agrees to be personally responsible 56  
for the debt. 57

(2) The debt was incurred for the support of the principal, 58  
and the attorney in fact is liable for that debt because of 59  
another legal relationship that gives rise to or results in a duty 60  
of support relative to the principal. 61

(3) The negligence of the attorney in fact gave rise to or 62  
resulted in the debt. 63

(4) An act of the attorney in fact that was beyond the 64  
attorney in fact's authority gave rise to or resulted in the debt. 65

(5) An agreement to assist in the recovery of funds under 66  
section 169.13 of the Revised Code was the subject of the power of 67  
attorney that gave rise to or resulted in the debt. 68

(C) This section applies but is not limited to, and the terms 69  
"power of attorney" and "attorney in fact" include but are not 70  
limited to, an agency agreement and an agent under an agency 71  
agreement. 72

**Sec. 1337.12.** (A)(1) An adult who is of sound mind 73  
voluntarily may create a valid durable power of attorney for 74  
health care by executing a durable power of attorney, in 75  
accordance with ~~division (B) of section 1337.09~~ 1337.24 of the 76  
Revised Code, that authorizes an attorney in fact as described in 77  
division (A)(2) of this section to make health care decisions for 78  
the principal at any time that the attending physician of the 79  
principal determines that the principal has lost the capacity to 80  
make informed health care decisions for the principal. Except as 81  
otherwise provided in divisions (B) to (F) of section 1337.13 of 82

the Revised Code, the authorization may include the right to give 83  
informed consent, to refuse to give informed consent, or to 84  
withdraw informed consent to any health care that is being or 85  
could be provided to the principal. Additionally, to be valid, a 86  
durable power of attorney for health care shall satisfy both of 87  
the following: 88

(a) It shall be signed at the end of the instrument by the 89  
principal and shall state the date of its execution. 90

(b) It shall be witnessed in accordance with division (B) of 91  
this section or be acknowledged by the principal in accordance 92  
with division (C) of this section. 93

(2) Except as otherwise provided in this division, a durable 94  
power of attorney for health care may designate any competent 95  
adult as the attorney in fact. The attending physician of the 96  
principal and an administrator of any nursing home in which the 97  
principal is receiving care shall not be designated as an attorney 98  
in fact in, or act as an attorney in fact pursuant to, a durable 99  
power of attorney for health care. An employee or agent of the 100  
attending physician of the principal and an employee or agent of 101  
any health care facility in which the principal is being treated 102  
shall not be designated as an attorney in fact in, or act as an 103  
attorney in fact pursuant to, a durable power of attorney for 104  
health care, except that these limitations do not preclude a 105  
principal from designating either type of employee or agent as the 106  
principal's attorney in fact if the individual is a competent 107  
adult and related to the principal by blood, marriage, or 108  
adoption, or if the individual is a competent adult and the 109  
principal and the individual are members of the same religious 110  
order. 111

(3) A durable power of attorney for health care shall not 112  
expire, unless the principal specifies an expiration date in the 113

instrument. However, when a durable power of attorney contains an 114  
expiration date, if the principal lacks the capacity to make 115  
informed health care decisions for the principal on the expiration 116  
date, the instrument shall continue in effect until the principal 117  
regains the capacity to make informed health care decisions for 118  
the principal. 119

(B) If witnessed for purposes of division (A)(1)(b) of this 120  
section, a durable power of attorney for health care shall be 121  
witnessed by at least two individuals who are adults and who are 122  
not ineligible to be witnesses under this division. Any person who 123  
is related to the principal by blood, marriage, or adoption, any 124  
person who is designated as the attorney in fact in the 125  
instrument, the attending physician of the principal, and the 126  
administrator of any nursing home in which the principal is 127  
receiving care are ineligible to be witnesses. 128

The witnessing of a durable power of attorney for health care 129  
shall involve the principal signing, or acknowledging the 130  
principal's signature, at the end of the instrument in the 131  
presence of each witness. Then, each witness shall subscribe the 132  
witness's signature after the signature of the principal and, by 133  
doing so, attest to the witness's belief that the principal 134  
appears to be of sound mind and not under or subject to duress, 135  
fraud, or undue influence. The signatures of the principal and the 136  
witnesses under this division are not required to appear on the 137  
same page of the instrument. 138

(C) If acknowledged for purposes of division (A)(1)(b) of 139  
this section, a durable power of attorney for health care shall be 140  
acknowledged before a notary public, who shall make the 141  
certification described in section 147.53 of the Revised Code and 142  
also shall attest that the principal appears to be of sound mind 143  
and not under or subject to duress, fraud, or undue influence. 144

(D)(1) If a principal has both a valid durable power of 145

attorney for health care and a valid declaration, division (B) of 146  
section 2133.03 of the Revised Code applies. If a principal has 147  
both a valid durable power of attorney for health care and a DNR 148  
identification that is based upon a valid declaration and if the 149  
declaration supersedes the durable power of attorney for health 150  
care under division (B) of section 2133.03 of the Revised Code, 151  
the DNR identification supersedes the durable power of attorney 152  
for health care to the extent of any conflict between the two. A 153  
valid durable power of attorney for health care supersedes any DNR 154  
identification that is based upon a do-not-resuscitate order that 155  
a physician issued for the principal which is inconsistent with 156  
the durable power of attorney for health care or a valid decision 157  
by the attorney in fact under a durable power of attorney. 158

(2) As used in division (D) of this section: 159

(a) "Declaration" has the same meaning as in section 2133.01 160  
of the Revised Code. 161

(b) "Do-not-resuscitate order" and "DNR identification" have 162  
the same meanings as in section 2133.21 of the Revised Code. 163

Sec. 1337.21. Sections 1337.21 to 1337.64 of the Revised Code 164  
may be cited as the uniform power of attorney act. 165

Sec. 1337.22. As used in sections 1337.21 to 1337.64 of the 166  
Revised Code: 167

(A) "Agent" means a person granted authority to act for a 168  
principal under a power of attorney, whether denominated an agent, 169  
attorney in fact, or otherwise. "Agent" includes an original 170  
agent, coagent, successor agent, and a person to which an agent's 171  
authority is delegated. 172

(B) "Durable," with respect to a power of attorney, means not 173  
terminated by the principal's incapacity. 174

(C) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. 175  
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(D) "Good faith" means honesty in fact. 178

(E) "Incapacity" means inability of an individual to manage property or business affairs for either of the following reasons: 179  
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(1) The individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance. 181  
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(2) The individual is any of the following: 184

(a) Missing; 185

(b) Detained, including incarcerated in a penal system; 186

(c) Outside the United States and unable to return. 187

(F) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. 188  
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(G) "Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used. 193  
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(H) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, 196  
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the satisfaction of the ascertainable standard, or the passage of 205  
the specified period. The term does not include a power 206  
exercisable in a fiduciary capacity or only by will. 207

(I) "Principal" means an individual who grants authority to 208  
an agent in a power of attorney. 209

(J) "Property" means anything that may be the subject of 210  
ownership, whether real or personal, or legal or equitable, or any 211  
interest or right therein. 212

(K) "Record" means information that is inscribed on a 213  
tangible medium or that is stored in an electronic or other medium 214  
and is retrievable in perceivable form. 215

(L) "Sign" means, with present intent to authenticate or 216  
adopt a record, to execute or adopt a tangible symbol or to attach 217  
to or logically associate with the record an electronic sound, 218  
symbol, or process. 219

(M) "State" means a state of the United States, the District 220  
of Columbia, Puerto Rico, the United States Virgin Islands, or any 221  
territory or insular possession subject to the jurisdiction of the 222  
United States. 223

(N) "Stocks and bonds" means stocks, bonds, mutual funds, and 224  
all other types of securities and financial instruments, whether 225  
held directly, indirectly, or in any other manner, but does not 226  
include commodity futures contracts or call or put options on 227  
stocks or stock indexes. 228

**Sec. 1337.23. Sections 1337.21 to 1337.64 of the Revised Code** 229  
**apply to all powers of attorney except the following:** 230

(A) A power to the extent it is coupled with an interest in 231  
the subject of the power, including a power given to or for the 232  
benefit of a creditor in connection with a credit transaction; 233

(B) A power to make health-care decisions; 234



(C) A proxy or other delegation to exercise voting rights or management rights with respect to an entity; 235  
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(D) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose. 237  
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Sec. 1337.24. A power of attorney created under sections 1337.21 to 1337.64 of the Revised Code is durable unless it expressly provides that it is terminated by the incapacity of the principal. 240  
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Sec. 1337.25. A power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. 244  
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Sec. 1337.26. (A) A power of attorney executed in this state on or after the effective date of this section is valid if its execution complies with section 1337.25 of the Revised Code. 251  
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(B) A power of attorney executed in this state before the effective date of this section is valid if its execution complied with the law of this state as it existed at the time of execution. 254  
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(C) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section 1337.27 of the Revised Code or with the requirements for a military power of attorney pursuant to 10 U.S.C. 1044b. 257  
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(D) Except as otherwise provided by statute other than sections 1337.21 to 1337.64 of the Revised Code, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. 264  
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Sec. 1337.27. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed. 268  
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Sec. 1337.28. (A) In a power of attorney, a principal may nominate a guardian of the principal's person, estate, or both and may nominate a guardian of the person, the estate, or both of one or more of the principal's minor children, whether born at the time of the execution of the power of attorney or afterward. The nomination is for consideration by a court if proceedings for the appointment of a guardian for the principal's person, estate, or both or if proceedings for the appointment of a guardian of the person, the estate, or both of one or more of the principal's minor children are commenced at a later time. The principal may authorize the person nominated as guardian or the agent to nominate a successor guardian for consideration by a court. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination. Nomination of a person as a guardian or successor guardian of the person, the estate, or both of one or more of the principal's minor children under this division, and any subsequent appointment of the guardian or successor guardian as guardian under section 2111.02 of the Revised Code, does not vacate the jurisdiction of any other court that previously may have exercised jurisdiction over the person of the minor. 273  
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(B) The principal may direct that bond be waived for a person 294

nominated as guardian or as a successor guardian. 295

(C) If, after a principal executes a power of attorney, a 296  
court appoints a guardian of the principal's estate or other 297  
fiduciary charged with the management of some or all of the 298  
principal's property, the agent is accountable to the fiduciary as 299  
well as to the principal. The power of attorney is not terminated 300  
and the agent's authority continues unless limited, suspended, or 301  
terminated by the court after notice to the agent and upon a 302  
finding that limitation, suspension, or termination would be in 303  
the best interest of the principal. 304

(D) A power of attorney that contains the nomination of a 305  
person to be the guardian of the person, the estate, or both of 306  
one or more of the principal's minor children under this division 307  
may be filed with the probate court for safekeeping, and the 308  
probate court shall designate the nomination as the nomination of 309  
a standby guardian. 310

**Sec. 1337.29.** (A) A power of attorney is effective when 311  
executed unless the principal provides in the power of attorney 312  
that it becomes effective at a future date or upon the occurrence 313  
of a future event or contingency. 314

(B) If a power of attorney becomes effective upon the 315  
occurrence of a future event or contingency, the principal, in the 316  
power of attorney, may authorize one or more persons to determine 317  
in a writing or other record that the event or contingency has 318  
occurred. 319

(C) If a power of attorney becomes effective upon the 320  
principal's incapacity and the principal has not authorized a 321  
person to determine whether the principal is incapacitated, or the 322  
person authorized is unable or unwilling to make the 323  
determination, the power of attorney becomes effective upon one of 324  
the following determinations made in a writing or other record: 325

(1) A determination by a physician who has examined the principal or a licensed psychologist who has evaluated the principal that the principal is incapacitated within the meaning of division (E)(1) of section 1337.22 of the Revised Code; 326  
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(2) A determination by an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of division (E)(2) of section 1337.22 of the Revised Code. 330  
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(D) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to 42 U.S.C. 1320d to 1320d-8, and applicable regulations, to obtain access to the principal's health-care information and communicate with the principal's health-care provider. 334  
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**Sec. 1337.30.** (A) A power of attorney terminates when any of the following occurs: 340  
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(1) The principal dies; 342

(2) The principal becomes incapacitated, if the power of attorney is not durable; 343  
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(3) The principal revokes the power of attorney; 345

(4) The power of attorney provides that it terminates; 346

(5) The purpose of the power of attorney is accomplished; 347

(6) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney. 348  
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(B) An agent's authority terminates when any of the following occurs: 352  
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(1) The principal revokes the authority; 354

<u>(2) The agent dies, becomes incapacitated, or resigns;</u>	355
<u>(3) An action is filed for the divorce, dissolution, or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides;</u>	356 357 358
<u>(4) The power of attorney terminates.</u>	359
<u>(C) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under division (B) of this section, notwithstanding a lapse of time since the execution of the power of attorney.</u>	360 361 362 363
<u>(D) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.</u>	364 365 366 367 368 369
<u>(E) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.</u>	370 371 372 373 374 375
<u>(F) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.</u>	376 377 378 379 380
<b><u>Sec. 1337.31.</u></b> (A) <u>A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.</u>	381 382 383
<u>(B) A principal may designate one or more successor agents to</u>	384

act if an agent resigns, dies, becomes incapacitated, is not 385  
qualified to serve, or declines to serve. A principal may grant 386  
authority to designate one or more successor agents to an agent or 387  
other person designated by name, office, or function. Unless the 388  
power of attorney otherwise provides, a successor agent has the 389  
same authority as that granted to the original agent and may not 390  
act until all predecessor agents have resigned, died, become 391  
incapacitated, are no longer qualified to serve, or have declined 392  
to serve. 393

(C) Except as otherwise provided in the power of attorney and 394  
division (D) of this section, an agent that does not participate 395  
in or conceal a breach of fiduciary duty committed by another 396  
agent, including a predecessor agent, is not liable for the 397  
actions of the other agent. 398

(D) An agent that has actual knowledge of a breach or 399  
imminent breach of fiduciary duty by another agent shall notify 400  
the principal and, if the principal is incapacitated, take any 401  
action reasonably appropriate in the circumstances to safeguard 402  
the principal's best interest. An agent that fails to notify the 403  
principal or take action as required by this division is liable 404  
for the reasonably foreseeable damages that could have been 405  
avoided if the agent had notified the principal or taken action as 406  
required by this division. 407

Sec. 1337.32. Unless the power of attorney otherwise 408  
provides, an agent is entitled to reimbursement of expenses 409  
reasonably incurred on behalf of the principal and to compensation 410  
that is reasonable under the circumstances. 411

Sec. 1337.33. Except as otherwise provided in the power of 412  
attorney, a person accepts appointment as an agent under a power 413  
of attorney by exercising authority or performing duties as an 414

agent or by any other assertion or conduct indicating acceptance. 415

Sec. 1337.34. (A) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall do all of the following: 416  
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(1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest; 419  
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(2) Act in good faith; 422

(3) Act only within the scope of authority granted in the power of attorney; 423  
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(4) Attempt to preserve the principal's estate plan to the extent actually known by the agent if preserving the plan is consistent with the principal's best interest based on all relevant factors, including all of the following: 425  
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(a) The value and nature of the principal's property; 429

(b) The principal's foreseeable obligations and need for maintenance; 430  
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(c) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; 432  
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(d) Eligibility for a benefit, a program, or assistance under a statute or regulation. 434  
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(B) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall do all of the following: 436  
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(1) Act loyally for the principal's benefit; 438

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest; 439  
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(3) Act with the care, competence, and diligence ordinarily 442

exercised by agents in similar circumstances; 443

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal; 444  
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(5) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest. 446  
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(C) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan. 450  
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(D) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal. 453  
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(E) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances. 458  
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(F) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines. 464  
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(G) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person. 466  
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(H) Except as otherwise provided in the power of attorney, an 472



agent is not required to disclose receipts, disbursements, or 473  
transactions conducted on behalf of the principal unless ordered 474  
by a court or requested by the principal, a guardian, a 475  
conservator, another fiduciary acting for the principal, a 476  
governmental agency having authority to protect the welfare of the 477  
principal, or, upon the death of the principal, by the personal 478  
representative or successor in interest of the principal's estate. 479  
If so requested, within thirty days the agent shall comply with 480  
the request or provide a writing or other record substantiating 481  
why additional time is needed and shall comply with the request 482  
within an additional thirty days. 483

Sec. 1337.35. A provision in a power of attorney relieving an 484  
agent of liability for breach of duty is binding on the principal 485  
and the principal's successors in interest except to the extent 486  
that either of the following applies: 487

(A) The provision relieves the agent of liability for breach 488  
of duty committed dishonestly, with an improper motive, or with 489  
reckless indifference to the purposes of the power of attorney or 490  
the best interest of the principal. 491

(B) The provision was inserted as a result of an abuse of a 492  
confidential or fiduciary relationship with the principal. 493

Sec. 1337.36. (A) Any of the following persons may petition a 494  
court to construe a power of attorney or review the agent's 495  
conduct and grant appropriate relief: 496

(1) The principal or the agent; 497

(2) A guardian, conservator, or other fiduciary acting for 498  
the principal, including an executor or administrator of the 499  
estate of a deceased principal; 500

(3) A person authorized to make health-care decisions for the 501  
principal; 502

<u>(4) The principal's spouse, parent, or descendant;</u>	503
<u>(5) An individual who would qualify as a presumptive heir of the principal;</u>	504 505
<u>(6) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;</u>	506 507 508 509
<u>(7) A governmental agency having regulatory authority to protect the welfare of the principal;</u>	510 511
<u>(8) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare;</u>	512 513
<u>(9) A person asked to accept the power of attorney.</u>	514
<u>(B) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.</u>	515 516 517 518
<u>Sec. 1337.37. An agent that violates sections 1337.21 to 1337.64 of the Revised Code is liable to the principal or the principal's successors in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred and the amount required to reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.</u>	519 520 521 522 523 524 525 526
<u>Sec. 1337.38. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated, to whichever of the following applies:</u>	527 528 529 530
<u>(A) The guardian, if one has been appointed for the</u>	531

principal, and any coagent or successor agent; 532

(B) If there is no person described in division (A) of this section, to any of the following: 533  
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(1) The principal's caregiver; 535

(2) Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; 536  
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(3) A governmental agency having authority to protect the welfare of the principal. 538  
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**Sec. 1337.39.** Unless displaced by a provision of sections 1337.21 to 1337.64 of the Revised Code, the principles of law and equity supplement those sections. 540  
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**Sec. 1337.40.** In the event of a conflict between any provision of sections 1337.21 to 1337.64 of the Revised Code and any other provision of law applicable to financial institutions or other entities, the other provision of law controls. 543  
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**Sec. 1337.41.** The remedies provided under sections 1337.21 to 1337.64 of the Revised Code are not exclusive and do not abrogate any right or remedy under any other provision of law of this state. 547  
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**Sec. 1337.42.** (A) An agent under a power of attorney may do any of the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and if exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject, and, with respect to a revocable trust of which the principal was the settlor, if the trust agreement expressly authorizes the agent to exercise the principal's powers with respect to the revocation, amendment, or 551  
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<u>distribution:</u>	560
<u>(1) Create, amend, revoke, or terminate an inter vivos trust to the extent permitted by section 5801.05 of the Revised Code or any other provision of Title LVIII of the Revised Code;</u>	561 562 563
<u>(2) Make a gift;</u>	564
<u>(3) Create or change rights of survivorship;</u>	565
<u>(4) Create or change a beneficiary designation;</u>	566
<u>(5) Delegate authority granted under the power of attorney;</u>	567
<u>(6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;</u>	568 569 570
<u>(7) Exercise fiduciary powers that the principal has authority to delegate.</u>	571 572
<u>(B) Notwithstanding a grant of authority to do an act described in division (A) of this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.</u>	573 574 575 576 577 578 579 580
<u>(C) Subject to division (A), (B), (D), and (E) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 1337.45 to 1337.57 of the Revised Code.</u>	581 582 583 584 585
<u>(D) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 1337.58 of the Revised Code.</u>	586 587 588

(E) Subject to divisions (A), (B), and (D) of this section, 589  
if the subjects over which authority is granted in a power of 590  
attorney are similar or overlap, the broadest authority controls. 591

(F) Authority granted in a power of attorney is exercisable 592  
with respect to property that the principal has when the power of 593  
attorney is executed or acquires later, whether or not the 594  
property is located in this state and whether or not the authority 595  
is exercised or the power of attorney is executed in this state. 596

(G) An act performed by an agent pursuant to a power of 597  
attorney has the same effect and inures to the benefit of and 598  
binds the principal and the principal's successors in interest as 599  
if the principal had performed the act. 600

**Sec. 1337.43.** (A) An agent has authority described in 601  
sections 1337.42 to 1337.58 of the Revised Code if the power of 602  
attorney refers to general authority with respect to the 603  
descriptive term for the subjects stated in sections 1337.45 to 604  
1337.58 of the Revised Code or cites the section of the Revised 605  
Code in which the authority is described. 606

(B) A reference in a power of attorney to general authority 607  
with respect to the descriptive term for a subject in sections 608  
1337.45 to 1337.58 of the Revised Code or a citation to any of 609  
those sections incorporates the entire section as if it were set 610  
out in full in the power of attorney. 611

(C) A principal may modify authority incorporated by 612  
reference. 613

**Sec. 1337.44.** Except as otherwise provided in the power of 614  
attorney, by executing a power of attorney that incorporates by 615  
reference a subject described in sections 1337.45 to 1337.58 of 616  
the Revised Code or that grants to an agent authority to do all 617  
acts that a principal could do pursuant to division (C) of section 618

1337.42 of the Revised Code, a principal authorizes the agent, 619  
with respect to that subject, to do all of the following: 620

(A) Demand, receive, and obtain by litigation or otherwise, 621  
money or another thing of value to which the principal is, may 622  
become, or claims to be entitled, and conserve, invest, disburse, 623  
or use anything so received or obtained for the purposes intended; 624

(B) Contract in any manner with any person, on terms 625  
agreeable to the agent, to accomplish a purpose of a transaction 626  
and perform, rescind, cancel, terminate, reform, restate, release, 627  
or modify the contract or another contract made by or on behalf of 628  
the principal; 629

(C) Execute, acknowledge, seal, deliver, file, or record any 630  
instrument or communication the agent considers desirable to 631  
accomplish a purpose of a transaction, including creating at any 632  
time a schedule listing some or all of the principal's property 633  
and attaching it to the power of attorney; 634

(D) Initiate, participate in, submit to alternative dispute 635  
resolution, settle, oppose, or propose or accept a compromise with 636  
respect to a claim existing in favor of or against the principal 637  
or intervene in litigation relating to the claim; 638

(E) Seek on the principal's behalf the assistance of a court 639  
or other governmental agency to carry out an act authorized in the 640  
power of attorney; 641

(F) Engage, compensate, and discharge an attorney, 642  
accountant, discretionary investment manager, expert witness, or 643  
other advisor; 644

(G) Prepare, execute, and file a record, report, or other 645  
document to safeguard or promote the principal's interest under a 646  
statute or regulation; 647

(H) Communicate with any representative or employee of a 648

government or governmental subdivision, agency, or 649  
instrumentality, on behalf of the principal; 650

(I) Access communications intended for, and communicate on 651  
behalf of the principal, whether by mail, electronic transmission, 652  
telephone, or other means; 653

(J) Do any lawful act with respect to the subject and all 654  
property related to the subject. 655

**Sec. 1337.45. Unless the power of attorney otherwise** 656  
**provides, language in a power of attorney granting general** 657  
**authority with respect to real property authorizes the agent to do** 658  
**all of the following:** 659

(A) Demand, buy, lease, receive, accept as a gift or as 660  
security for an extension of credit, or otherwise acquire or 661  
reject an interest in real property or a right incident to real 662  
property; 663

(B) Sell; exchange; convey with or without covenants, 664  
representations, or warranties; quitclaim; release; surrender; 665  
retain title for security; encumber; partition; consent to 666  
partitioning; subject to an easement or covenant; subdivide; apply 667  
for zoning or other governmental permits; plat or consent to 668  
platting; develop; grant an option concerning; lease; sublease; 669  
contribute to an entity in exchange for an interest in that 670  
entity; or otherwise grant or dispose of an interest in real 671  
property or a right incident to real property; 672

(C) Pledge or mortgage an interest in real property or right 673  
incident to real property as security to borrow money or pay, 674  
renew, or extend the time of payment of a debt of the principal or 675  
a debt guaranteed by the principal; 676

(D) Release, assign, satisfy, or enforce by litigation or 677  
otherwise a mortgage, deed of trust, conditional sale contract, 678

encumbrance, lien, or other claim to real property that exists or 679  
is asserted; 680

(E) Manage or conserve an interest in real property or a 681  
right incident to real property owned or claimed to be owned by 682  
the principal, including all of the following: 683

(1) Insure against liability or casualty or other loss; 684

(2) Obtain or regain possession of or protecting the interest 685  
or right by litigation or otherwise; 686

(3) Pay, assess, compromise, or contest taxes or assessments 687  
or apply for and receive refunds in connection with taxes; 688

(4) Purchase supplies, hire assistance or labor, and make 689  
repairs or alterations to the real property. 690

(F) Use, develop, alter, replace, remove, erect, or install 691  
structures or other improvements upon real property in or incident 692  
to which the principal has, or claims to have, an interest or 693  
right; 694

(G) Participate in a reorganization with respect to real 695  
property or an entity that owns an interest in or right incident 696  
to real property and receive, and hold, and act with respect to 697  
stocks and bonds or other property received in a plan of 698  
reorganization, including all of the following: 699

(1) Sell or otherwise dispose of them; 700

(2) Exercise or sell an option, right of conversion, or 701  
similar right with respect to them; 702

(3) Exercise any voting rights in person or by proxy. 703

(H) Change the form of title of an interest in or right 704  
incident to real property; 705

(I) Dedicate to public use, with or without consideration, 706  
easements or other real property in which the principal has, or 707



claims to have, an interest. 708

Sec. 1337.46. Unless the power of attorney otherwise 709  
provides, language in a power of attorney granting general 710  
authority with respect to tangible personal property authorizes 711  
the agent to do all of the following: 712

(A) Demand, buy, receive, accept as a gift or as security for 713  
an extension of credit, or otherwise acquire or reject ownership 714  
or possession of tangible personal property or an interest in 715  
tangible personal property; 716

(B) Sell; exchange; convey with or without covenants, 717  
representations, or warranties; quitclaim; release; surrender; 718  
create a security interest in; grant options concerning; lease; 719  
sublease; or otherwise dispose of tangible personal property or an 720  
interest in tangible personal property; 721

(C) Grant a security interest in tangible personal property 722  
or an interest in tangible personal property as security to borrow 723  
money or pay, renew, or extend the time of payment of a debt of 724  
the principal or a debt guaranteed by the principal; 725

(D) Release, assign, satisfy, or enforce by litigation or 726  
otherwise a security interest, lien, or other claim on behalf of 727  
the principal with respect to tangible personal property or an 728  
interest in tangible personal property; 729

(E) Manage or conserve tangible personal property or an 730  
interest in tangible personal property on behalf of the principal, 731  
including all of the following: 732

(1) Insure against liability or casualty or other loss; 733

(2) Obtain or regain possession of or protect the property or 734  
interest, by litigation or otherwise; 735

(3) Pay, assess, compromise, or contest taxes or assessments 736  
or apply for and receive refunds in connection with taxes or 737

<u>assessments;</u>	738
<u>(4) Move the property from place to place;</u>	739
<u>(5) Store the property for hire or on a gratuitous bailment;</u>	740
<u>(6) Use and make repairs, alterations, or improvements to the property.</u>	741 742
<u>(F) Change the form of title of an interest in tangible personal property.</u>	743 744
<u>Sec. 1337.47. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to do all of the following:</u>	745 746 747 748
<u>(A) Buy, sell, and exchange stocks and bonds;</u>	749
<u>(B) Establish, continue, modify, or terminate an account with respect to stocks and bonds;</u>	750 751
<u>(C) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;</u>	752 753
<u>(D) Receive certificates and other evidences of ownership with respect to stocks and bonds;</u>	754 755
<u>(E) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.</u>	756 757 758
<u>Sec. 1337.48. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to do both of the following:</u>	759 760 761 762
<u>(A) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange;</u>	763 764 765

(B) Establish, continue, modify, and terminate option 766  
accounts. 767

Sec. 1337.49. Unless the power of attorney otherwise 768  
provides, language in a power of attorney granting general 769  
authority with respect to banks and other financial institutions 770  
authorizes the agent to do all of the following: 771

(A) Continue, modify, and terminate an account or other 772  
banking arrangement made by or on behalf of the principal; 773

(B) Establish, modify, and terminate an account or other 774  
banking arrangement with a bank, trust company, savings and loan 775  
association, credit union, thrift company, brokerage firm, or 776  
other financial institution selected by the agent; 777

(C) Contract for services available from a financial 778  
institution, including renting a safe deposit box or space in a 779  
vault; 780

(D) Withdraw, by check, order, electronic funds transfer, or 781  
otherwise, money or property of the principal deposited with or 782  
left in the custody of a financial institution; 783

(E) Receive statements of account, vouchers, notices, and 784  
similar documents from a financial institution and act with 785  
respect to them; 786

(F) Enter a safe deposit box or vault and withdraw or add to 787  
the contents; 788

(G) Borrow money and pledge as security personal property of 789  
the principal necessary to borrow money or pay, renew, or extend 790  
the time of payment of a debt of the principal or a debt 791  
guaranteed by the principal; 792

(H) Make, assign, draw, endorse, discount, guarantee, and 793  
negotiate promissory notes, checks, drafts, and other negotiable 794  
or nonnegotiable paper of the principal or payable to the 795

principal or the principal's order, transfer money, receive the 796  
cash or other proceeds of those transactions, and accept a draft 797  
drawn by a person upon the principal and pay it when due; 798

(I) Receive for the principal and act upon a sight draft, 799  
warehouse receipt, or other document of title whether tangible or 800  
electronic, or other negotiable or nonnegotiable instrument; 801

(J) Apply for, receive, and use letters of credit, credit and 802  
debit cards, electronic transaction authorizations, and traveler's 803  
checks from a financial institution and give an indemnity or other 804  
agreement in connection with letters of credit; 805

(K) Consent to an extension of the time of payment with 806  
respect to commercial paper or a financial transaction with a 807  
financial institution. 808

**Sec. 1337.50. Subject to the terms of a document or an** 809  
**agreement governing an entity or an entity ownership interest, and** 810  
**unless the power of attorney otherwise provides, language in a** 811  
**power of attorney granting general authority with respect to** 812  
**operation of an entity or business authorizes the agent to do all** 813  
**of the following:** 814

(A) Operate, buy, sell, enlarge, reduce, or terminate an 815  
ownership interest; 816

(B) Perform a duty or discharge a liability and exercise in 817  
person or by proxy a right, power, privilege, or option that the 818  
principal has, may have, or claims to have; 819

(C) Enforce the terms of an ownership agreement; 820

(D) Initiate, participate in, submit to alternative dispute 821  
resolution, settle, oppose, or propose or accept a compromise with 822  
respect to litigation to which the principal is a party because of 823  
an ownership interest; 824

(E) Exercise in person or by proxy, or enforce by litigation 825

or otherwise, a right, power, privilege, or option the principal 826  
has or claims to have as the holder of stocks and bonds; 827

(F) Initiate, participate in, submit to alternative dispute 828  
resolution, settle, oppose, or propose or accept a compromise with 829  
respect to litigation to which the principal is a party concerning 830  
stocks and bonds; 831

(G) With respect to an entity or business owned solely by the 832  
principal, do all of the following: 833

(1) Continue, modify, renegotiate, extend, and terminate a 834  
contract made by or on behalf of the principal with respect to the 835  
entity or business before execution of the power of attorney; 836

(2) Determine all of the following: 837

(a) The location of its operation; 838

(b) The nature and extent of its business; 839

(c) The methods of manufacturing, selling, merchandising, 840  
financing, accounting, and advertising employed in its operation; 841

(d) The amount and types of insurance carried; 842

(e) The mode of engaging, compensating, and dealing with its 843  
employees and accountants, attorneys, or other advisors. 844

(3) Change the name or form of organization under which the 845  
entity or business is operated and enter into an ownership 846  
agreement with other persons to take over all or part of the 847  
operation of the entity or business; 848

(4) Demand and receive money due or claimed by the principal 849  
or on the principal's behalf in the operation of the entity or 850  
business and control and disburse the money in the operation of 851  
the entity or business. 852

(H) Put additional capital into an entity or business in 853  
which the principal has an interest; 854

(I) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business; 855  
856

(J) Sell or liquidate all or part of an entity or business; 857

(K) Establish the value of an entity or business under a buy-out agreement to which the principal is a party; 858  
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(L) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; 860  
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(M) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney. 863  
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**Sec. 1337.51. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to do all of the following:** 869  
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(A) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract; 873  
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(B) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and mode of payment; 878  
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(C) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent; 882  
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<u>(D) Apply for and receive a loan secured by a contract of insurance or annuity;</u>	885
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<u>(E) Surrender and receive the cash surrender value on a contract of insurance or annuity;</u>	887
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<u>(F) Exercise an election;</u>	889
<u>(G) Exercise investment powers available under a contract of insurance or annuity;</u>	890
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<u>(H) Change the manner of paying premiums on a contract of insurance or annuity;</u>	892
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<u>(I) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;</u>	894
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	896
<u>(J) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;</u>	897
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<u>(K) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;</u>	900
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<u>(L) Select the form and timing of the payment of proceeds from a contract of insurance or annuity;</u>	903
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<u>(M) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.</u>	905
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<u>Sec. 1337.52. (A) As used in this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled</u>	910
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to a share or payment. 914

(B) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to do all of the following: 915  
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(1) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest; 919  
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(2) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise; 922  
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(3) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal; 926  
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(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; 928  
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(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary; 933  
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(6) Conserve, invest, disburse, or use anything received for an authorized purpose; 937  
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(7) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor; 939  
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(8) Reject, renounce, disclaim, release, or consent to a 944  
reduction in or modification of a share in or payment from an 945  
estate, trust, or other beneficial interest. 946

Sec. 1337.53. Unless the power of attorney otherwise 947  
provides, language in a power of attorney granting general 948  
authority with respect to claims and litigation authorizes the 949  
agent to do all of the following: 950

(A) Assert and maintain before a court or administrative 951  
agency a claim, claim for relief, cause of action, counterclaim, 952  
offset, recoupment, or defense, including an action to recover 953  
property or other thing of value, recover damages sustained by the 954  
principal, eliminate or modify tax liability, or seek an 955  
injunction, specific performance, or other relief; 956

(B) Bring an action to determine adverse claims or intervene 957  
or otherwise participate in litigation; 958

(C) Seek an attachment, garnishment, order of arrest, or 959  
other preliminary, provisional, or intermediate relief and use an 960  
available procedure to effect or satisfy a judgment, order, or 961  
decree; 962

(D) Make or accept a tender, offer of judgment, or admission 963  
of facts, submit a controversy on an agreed statement of facts, 964  
consent to examination, and bind the principal in litigation; 965

(E) Submit to alternative dispute resolution, settle, and 966  
propose or accept a compromise; 967

(F) Waive the issuance and service of process upon the 968  
principal, accept service of process, appear for the principal, 969  
designate persons upon which process directed to the principal may 970  
be served, execute and file or deliver stipulations on the 971  
principal's behalf, verify pleadings, seek appellate review, 972  
procure and give surety and indemnity bonds, contract and pay for 973

the preparation and printing of records and briefs, receive, 974  
execute, and file or deliver a consent, waiver, release, 975  
confession of judgment, satisfaction of judgment, notice, 976  
agreement, or other instrument in connection with the prosecution, 977  
settlement, or defense of a claim or litigation; 978

(G) Act for the principal with respect to bankruptcy or 979  
insolvency, whether voluntary or involuntary, concerning the 980  
principal or some other person, or with respect to a 981  
reorganization, receivership, or application for the appointment 982  
of a receiver or trustee which affects an interest of the 983  
principal in property or other thing of value; 984

(H) Pay a judgment, award, or order against the principal or 985  
a settlement made in connection with a claim or litigation; 986

(I) Receive money or other thing of value paid in settlement 987  
of or as proceeds of a claim or litigation. 988

**Sec. 1337.54.** (A) Unless the power of attorney otherwise 989  
provides, language in a power of attorney granting general 990  
authority with respect to personal and family maintenance 991  
authorizes the agent to do all of the following: 992

(1) Perform the acts necessary to maintain the customary 993  
standard of living of the principal, the principal's spouse, and 994  
the following individuals, whether living when the power of 995  
attorney is executed or later born: 996

(a) Other individuals legally entitled to be supported by the 997  
principal; 998

(b) The individuals whom the principal has customarily 999  
supported or indicated the intent to support. 1000

(2) Make periodic payments of child support and other family 1001  
maintenance required by a court or governmental agency or an 1002  
agreement to which the principal is a party; 1003

<u>(3) Provide living quarters for the individuals described in</u>	1004
<u>division (A)(1) of this section by doing either of the following:</u>	1005
<u>(a) Purchasing, leasing, or otherwise contracting;</u>	1006
<u>(b) Paying the operating costs, including interest,</u>	1007
<u>amortization payments, repairs, improvements, and taxes, for</u>	1008
<u>premises owned by the principal or occupied by those individuals.</u>	1009
<u>(4) Provide normal domestic help, usual vacations and travel</u>	1010
<u>expenses, and funds for shelter, clothing, food, appropriate</u>	1011
<u>education, including postsecondary and vocational education, and</u>	1012
<u>other current living costs for the individuals described in</u>	1013
<u>division (A)(1) of this section;</u>	1014
<u>(5) Pay expenses for necessary health care and custodial care</u>	1015
<u>on behalf of the individuals described in division (A)(1) of this</u>	1016
<u>section;</u>	1017
<u>(6) Act as the principal's personal representative pursuant</u>	1018
<u>to 42 U.S.C. 1320d to 1320d-9 and applicable regulations in making</u>	1019
<u>decisions related to the past, present, or future payment for the</u>	1020
<u>provision of health care consented to by the principal or anyone</u>	1021
<u>authorized under the law of this state to consent to health care</u>	1022
<u>on behalf of the principal;</u>	1023
<u>(7) Continue any provision made by the principal for</u>	1024
<u>automobiles or other means of transportation, including</u>	1025
<u>registering, licensing, insuring, and replacing them, for the</u>	1026
<u>individuals described in division (A)(1) of this section;</u>	1027
<u>(8) Maintain credit and debit accounts for the convenience of</u>	1028
<u>the individuals described in division (A)(1) of this section and</u>	1029
<u>open new accounts;</u>	1030
<u>(9) Continue payments incidental to the membership or</u>	1031
<u>affiliation of the principal in a religious institution, club,</u>	1032
<u>society, order, or other organization or to continue contributions</u>	1033

to those organizations. 1034

(B) Authority with respect to personal and family maintenance 1035  
is neither dependent upon, nor limited by, authority that an agent 1036  
may or may not have with respect to gifts under sections 1337.21 1037  
to 1337.64 of the Revised Code. 1038

Sec. 1337.55. (A) As used in this section, "benefits from 1039  
governmental programs or civil or military service" means any 1040  
benefit, program or assistance provided under a statute or 1041  
regulation, including social security, medicare, and medicaid. 1042

(B) Unless the power of attorney otherwise provides, language 1043  
in a power of attorney granting general authority with respect to 1044  
benefits from governmental programs or civil or military service 1045  
authorizes the agent to do all of the following: 1046

(1) Execute vouchers in the name of the principal for 1047  
allowances and reimbursements payable by the United States or a 1048  
foreign government or by a state or subdivision of a state to the 1049  
principal, including allowances and reimbursements for 1050  
transportation of the individuals described in division (A)(1) of 1051  
section 1337.54 of the Revised Code, and for shipment of their 1052  
household effects; 1053

(2) Take possession and order the removal and shipment of 1054  
property of the principal from a post, warehouse, depot, dock, or 1055  
other place of storage or safekeeping, either governmental or 1056  
private, and execute and deliver a release, voucher, receipt, bill 1057  
of lading, shipping ticket, certificate, or other instrument for 1058  
that purpose; 1059

(3) Enroll in, apply for, select, reject, change, amend, or 1060  
discontinue, on the principal's behalf, a benefit or program; 1061

(4) Prepare, file, and maintain a claim of the principal for 1062  
a benefit or assistance, financial or otherwise, to which the 1063

principal may be entitled under a statute or regulation; 1064

(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; 1065  
1066  
1067  
1068  
1069

(6) Receive the financial proceeds of a claim described in division (B)(4) of this section and conserve, invest, disburse, or use for a lawful purpose anything so received. 1070  
1071  
1072

**Sec. 1337.56.** (A) As used in this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including any of the following plans or accounts: 1073  
1074  
1075  
1076  
1077

(1) An individual retirement account under section 408 of the Internal Revenue Code of 1986, 26 U.S.C. 408; 1078  
1079

(2) A Roth individual retirement account under section 408A of the Internal Revenue Code of 1986, 26 U.S.C. 408A; 1080  
1081

(3) A deemed individual retirement account under section 408(q) of the Internal Revenue Code of 1986, 26 U.S.C. 408(q); 1082  
1083

(4) An annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code of 1986, 26 U.S.C. 403(b); 1084  
1085

(5) A pension, profit-sharing, stock bonus, or other retirement plan qualified under section 401(a) of the Internal Revenue Code of 1986, 26 U.S.C. 401(a); 1086  
1087  
1088

(6) A plan under section 457(b) of the Internal Revenue Code of 1986, 26 U.S.C. 457(b); 1089  
1090

(7) A nonqualified deferred compensation plan under section 409A of the Internal Revenue Code of 1986, 26 U.S.C. 409A. 1091  
1092

(B) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to do all of the following: 1093  
1094  
1095

(1) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan; 1096  
1097

(2) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another; 1098  
1099

(3) Establish a retirement plan in the principal's name; 1100

(4) Make contributions to a retirement plan; 1101

(5) Exercise investment powers available under a retirement plan; 1102  
1103

(6) Borrow from, sell assets to, or purchase assets from a retirement plan. 1104  
1105

**Sec. 1337.57. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to do all of the following:** 1106  
1107  
1108  
1109

(A) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under section 2032A of the Internal Revenue Code of 1986, 26 U.S.C. 2032A, closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years; 1110  
1111  
1112  
1113  
1114  
1115  
1116  
1117  
1118  
1119  
1120

(B) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by 1121  
1122

the internal revenue service or other taxing authority; 1123

(C) Exercise any election available to the principal under 1124  
federal, state, local, or foreign tax law; 1125

(D) Act for the principal in all tax matters for all periods 1126  
before the internal revenue service, or other taxing authority. 1127

**Sec. 1337.58.** (A) As used in this section, a gift "for the 1128  
benefit of" a person includes a gift to a trust, an account under 1129  
the Uniform Transfers to Minors Act, and a tuition savings account 1130  
or prepaid tuition plan as defined under section 529 of the 1131  
Internal Revenue Code of 1986, 26 U.S.C. 529. 1132

(B) Unless the power of attorney otherwise provides, language 1133  
in a power of attorney granting general authority with respect to 1134  
gifts authorizes the agent to do only the following: 1135

(1) Make outright to, or for the benefit of, a person, a gift 1136  
of any of the principal's property, including by the exercise of a 1137  
presently exercisable general power of appointment held by the 1138  
principal, in an amount per donee not to exceed the annual dollar 1139  
limits of the federal gift tax exclusion under section 2503(b) of 1140  
the Internal Revenue Code of 1986, 26 U.S.C. 2503(b), without 1141  
regard to whether the federal gift tax exclusion applies to the 1142  
gift, or if the principal's spouse agrees to consent to a split 1143  
gift pursuant to section 2513 of the Internal Revenue Code of 1144  
1986, 26 U.S.C. 2513, in an amount per donee not to exceed twice 1145  
the annual federal gift tax exclusion limit; 1146

(2) Consent, pursuant to section 2513 of the Internal Revenue 1147  
Code of 1986, 26 U.S.C. 2513, to the splitting of a gift made by 1148  
the principal's spouse in an amount per donee not to exceed the 1149  
aggregate annual gift tax exclusions for both spouses. 1150

(C) An agent may make a gift of the principal's property, 1151  
outright or by amending, creating, or funding a trust, only as the 1152

agent determines is consistent with the principal's objectives if 1153  
actually known by the agent and, if unknown, as the agent 1154  
determines is consistent with the principal's best interest based 1155  
on all relevant factors, including all of the following: 1156

(1) The value and nature of the principal's property; 1157

(2) The principal's foreseeable obligations and need for 1158  
maintenance; 1159

(3) Minimization of taxes, including income, estate, 1160  
inheritance, generation-skipping transfer, and gift taxes; 1161

(4) Eligibility for a benefit, a program, or assistance under 1162  
a statute or regulation; 1163

(5) The principal's personal history of making or joining in 1164  
making gifts. 1165

**Sec. 1337.59.** In a power of attorney executed on or after 1166  
March 29, 2006, and before the effective date of this section that 1167  
either uses the statutory power of attorney form contained in 1168  
former section 1337.18 of the Revised Code or that incorporates by 1169  
reference any one or more of the powers contained in former 1170  
section 1337.20 of the Revised Code, the powers granted shall be 1171  
construed in accordance with former section 1337.20 of the Revised 1172  
Code. 1173

**Sec. 1337.60.** A document substantially in the following form 1174  
may be used to create a statutory form power of attorney that has 1175  
the meaning and effect prescribed by sections 1337.21 to 1337.64 1176  
of the Revised Code. 1177

[INSERT NAME OF JURISDICTION] 1178

STATUTORY FORM POWER OF ATTORNEY 1179

IMPORTANT INFORMATION 1180



This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act (sections 1337.221 to 1337.64 of the Revised Code).

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

ACTIONS REQUIRING EXPRESS AUTHORITY

Unless expressly authorized and initialed by me in the Special Instructions, this power of attorney does not grant authority to my agent to do any of the following:

(1) Create a trust;

(2) Amend, revoke, or terminate an inter vivos trust, even if

<u>specific authority to do so is granted to the agent in the trust</u>	1211
<u>agreement;</u>	1212
<u>(3) Make a gift;</u>	1213
<u>(4) Create or change rights of survivorship;</u>	1214
<u>(5) Create or change a beneficiary designation;</u>	1215
<u>(6) Delegate authority granted under the power of attorney;</u>	1216
<u>(7) Waive the principal's right to be a beneficiary of a</u>	1217
<u>joint and survivor annuity, including a survivor benefit under a</u>	1218
<u>retirement plan;</u>	1219
<u>(8) Exercise fiduciary powers that the principal has</u>	1220
<u>authority to delegate.</u>	1221
<u>CAUTION: Granting any of the above eight powers will give</u>	1222
<u>your agent the authority to take actions that could significantly</u>	1223
<u>reduce your property or change how your property is distributed at</u>	1224
<u>your death.</u>	1225
<u>If you have questions about the power of attorney or the</u>	1226
<u>authority you are granting to your agent, you should seek legal</u>	1227
<u>advice before signing this form.</u>	1228
<u>DESIGNATION OF AGENT</u>	1229
<u>I, .....</u> name the following	1230
<u>..... (Name of Principal) person as my agent:</u>	1231
<u>Name of Agent:</u>	1232
<u>.....</u>	1233
<u>Agent's Address:</u>	1234
<u>.....</u>	1235
<u>Agent's Telephone Number:</u>	1236
<u>.....</u>	1237
<u>DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)</u>	1238
<u>If my agent is unable or unwilling to act for me, I name as</u>	1239

<u>my successor agent:</u>	1240
<u>Name of Successor Agent:</u>	1241
.....	1242
<u>Successor Agent's Address:</u>	1243
.....	1244
<u>Successor Agent's Telephone Number:</u>	1245
.....	1246
<u>If my successor agent is unable or unwilling to act for me, I</u>	1247
<u>name as my second successor agent:</u>	1248
<u>Name of Second Successor Agent:</u>	1249
.....	1250
<u>Second Successor Agent's Address:</u>	1251
.....	1252
<u>Second Successor Agent's Telephone Number:</u>	1253
.....	1254
<u>GRANT OF GENERAL AUTHORITY</u>	1255
<u>I grant my agent and any successor agent general authority to</u>	1256
<u>act for me with respect to the following subjects as defined in</u>	1257
<u>the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of</u>	1258
<u>the Revised Code):</u>	1259
<u>(INITIAL each subject you want to include in the agent's</u>	1260
<u>general authority. If you wish to grant general authority over all</u>	1261
<u>of the subjects you may initial "All Preceding Subjects" instead</u>	1262
<u>of initialing each subject.)</u>	1263
<u>(...) Real Property</u>	1264
<u>(...) Tangible Personal Property</u>	1265
<u>(...) Stocks and Bonds</u>	1266
<u>(...) Commodities and Options</u>	1267
<u>(...) Banks and Other Financial Institutions</u>	1268
<u>(...) Operation of Entity or Business</u>	1269

<u>(...) Insurance and Annuities</u>	1270
<u>(...) Estates, Trusts, and Other Beneficial Interests</u>	1271
<u>(...) Claims and Litigation</u>	1272
<u>(...) Personal and Family Maintenance</u>	1273
<u>(...) Benefits from Governmental Programs or Civil or Military Service</u>	1274 1275
<u>(...) Retirement Plans</u>	1276
<u>(...) Taxes</u>	1277
<u>(...) All Preceding Subjects</u>	1278
<u>LIMITATION ON AGENT'S AUTHORITY</u>	1279
<u>An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.</u>	1280 1281 1282 1283
<u>SPECIAL INSTRUCTIONS (OPTIONAL)</u>	1284
<u>You may give special instructions on the following lines:</u>	1285
<u>.....</u>	1286
<u>.....</u>	1287
<u>.....</u>	1288
<u>.....</u>	1289
<u>.....</u>	1290
<u>.....</u>	1291
<u>.....</u>	1292
<u>.....</u>	1293
<u>.....</u>	1294
<u>EFFECTIVE DATE</u>	1295
<u>This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.</u>	1296 1297
<u>NOMINATION OF GUARDIAN (OPTIONAL)</u>	1298

If it becomes necessary for a court to appoint a guardian of 1299  
my estate or my person, I nominate the following person(s) for 1300  
appointment: 1301

Name of Nominee for guardian of my estate: 1302

..... 1303

Nominee's Address: 1304

..... 1305

Nominee's Telephone Number: 1306

..... 1307

Name of Nominee for guardian of my person: 1308

..... 1309

Nominee's Address: 1310

..... 1311

Nominee's Telephone Number: 1312

..... 1313

RELIANCE ON THIS POWER OF ATTORNEY 1314

Any person, including my agent, may rely upon the validity of 1315

this power of attorney or a copy of it unless that person knows it 1316

has terminated or is invalid. 1317

SIGNATURE AND ACKNOWLEDGMENT 1318

..... 1319

Your Signature Date 1320

..... 1321

Your Name Printed 1322

..... 1323

Your Address 1324

..... 1325

Your Telephone Number 1326

State of Ohio 1327

County of ..... 1328

This document was acknowledged before me on 1329

..... (Date), by ..... (Name	1330
of Principal).	1331
.....	1332
Signature of Notary	1333
My commission expires:	1334
.....	
This document prepared by:	1335
.....	1336
.....	1337
<u>IMPORTANT INFORMATION FOR AGENT</u>	1338
<u>Agent's Duties</u>	1339
<u>When you accept the authority granted under this power of</u>	1340
<u>attorney, a special legal relationship is created between you and</u>	1341
<u>the principal. This relationship imposes upon you legal duties</u>	1342
<u>that continue until you resign or the power of attorney is</u>	1343
<u>terminated or revoked. You must:</u>	1344
<u>(1) Do what you know the principal reasonably expects you to</u>	1345
<u>do with the principal's property or, if you do not know the</u>	1346
<u>principal's expectations, act in the principal's best interest;</u>	1347
<u>(2) Act in good faith;</u>	1348
<u>(3) Do nothing beyond the authority granted in this power of</u>	1349
<u>attorney;</u>	1350
<u>(4) Attempt to preserve the principal's estate plan if you</u>	1351
<u>know the plan and preserving the plan is consistent with the</u>	1352
<u>principal's best interest;</u>	1353
<u>(5) Disclose your identity as an agent whenever you act for</u>	1354
<u>the principal by writing or printing the name of the principal and</u>	1355
<u>signing your own name as "agent" in the following manner:</u>	1356
<u>(Principal's Name) by (Your Signature) as Agent</u>	1357
<u>Unless the Special Instructions in this power of attorney</u>	1358

<u>state otherwise, you must also:</u>	1359
<u>(1) Act loyally for the principal's benefit;</u>	1360
<u>(2) Avoid conflicts that would impair your ability to act in the principal's best interest;</u>	1361
<u>(3) Act with care, competence, and diligence;</u>	1362
<u>(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;</u>	1363
<u>(5) Cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest.</u>	1364
<u>Termination of Agent's Authority</u>	1365
<u>You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:</u>	1366
<u>(1) The death of the principal;</u>	1367
<u>(2) The principal's revocation of the power of attorney or your authority;</u>	1368
<u>(3) The occurrence of a termination event stated in the power of attorney;</u>	1369
<u>(4) The purpose of the power of attorney is fully accomplished;</u>	1370
<u>(5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.</u>	1371

<u>Liability of Agent</u>	1388
<u>The meaning of the authority granted to you is defined in the</u>	1389
<u>Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the</u>	1390
<u>Revised Code). If you violate the Uniform Power of Attorney Act or</u>	1391
<u>act outside the authority granted, you may be liable for any</u>	1392
<u>damages caused by your violation.</u>	1393
<u>If there is anything about this document or your duties that</u>	1394
<u>you do not understand, you should seek legal advice.</u>	1395
<b><u>Sec. 1337.61.</u></b> <u>The following optional form may be used by an</u>	1396
<u>agent to certify facts concerning a power of attorney.</u>	1397
<u>AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY</u>	1398
<u>AND AGENT'S AUTHORITY</u>	1399
<u>State of Ohio</u>	1400
<u>County of .....</u>	1401
<u>I, ..... (Name of Agent),</u>	1402
<u>certify under penalty of perjury that</u>	1403
<u>..... (Name of Principal) granted me</u>	1404
<u>authority as an agent or successor agent in a power of attorney</u>	1405
<u>dated .....</u>	1406
<u>I further certify that to my knowledge:</u>	1407
<u>(1) The Principal is alive and has not revoked the Power of</u>	1408
<u>Attorney or my authority to act under the Power of Attorney and</u>	1409
<u>the Power of Attorney and my authority to act under the Power of</u>	1410
<u>Attorney have not terminated;</u>	1411
<u>(2) If the Power of Attorney was drafted to become effective</u>	1412
<u>upon the happening of an event or contingency, the event or</u>	1413
<u>contingency has occurred;</u>	1414
<u>(3) If I was named as a successor agent, the prior agent is</u>	1415
<u>no longer able or willing to serve;</u>	1416





modify, limit, and supersede the "Electronic Signatures in Global and National Commerce Act," 15 U.S.C. 7001 et seq., with the exception of section 101(c) of that act, 15 U.S.C. 7001(c). 1446  
Sections 1337.21 to 1337.64 of the Revised Code do not authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b). 1447  
1448  
1449  
1450  
1451

**Sec. 1337.64.** (A) Except as otherwise provided in sections 1337.21 to 1337.64 of the Revised Code, on the effective date of this section, those sections apply to all of the following: 1452  
1453  
1454

(1) A power of attorney created before, on, or after the effective date of this section; 1455  
1456

(2) A judicial proceeding concerning a power of attorney commenced on or after the effective date of this section; 1457  
1458

(3) A judicial proceeding concerning a power of attorney commenced before the effective date of this section, unless the court finds that application of a provision of sections 1337.21 to 1337.64 of the Revised Code would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies. 1459  
1460  
1461  
1462  
1463  
1464  
1465

(B) Sections 1337.21 to 1337.64 of the Revised Code do not affect an act done before the effective date of this section. 1466  
1467

**Sec. 2101.24.** (A)(1) Except as otherwise provided by law, the probate court has exclusive jurisdiction: 1468  
1469

(a) To take the proof of wills and to admit to record authenticated copies of wills executed, proved, and allowed in the courts of any other state, territory, or country. If the probate judge is unavoidably absent, any judge of the court of common pleas may take proof of wills and approve bonds to be given, but 1470  
1471  
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1474

the record of these acts shall be preserved in the usual records	1475
of the probate court.	1476
(b) To grant and revoke letters testamentary and of	1477
administration;	1478
(c) To direct and control the conduct and settle the accounts	1479
of executors and administrators and order the distribution of	1480
estates;	1481
(d) To appoint the attorney general to serve as the	1482
administrator of an estate pursuant to section 2113.06 of the	1483
Revised Code;	1484
(e) To appoint and remove guardians, conservators, and	1485
testamentary trustees, direct and control their conduct, and	1486
settle their accounts;	1487
(f) To grant marriage licenses;	1488
(g) To make inquests respecting persons who are so mentally	1489
impaired as a result of a mental or physical illness or	1490
disability, or mental retardation, or as a result of chronic	1491
substance abuse, that they are unable to manage their property and	1492
affairs effectively, subject to guardianship;	1493
(h) To qualify assignees, appoint and qualify trustees and	1494
commissioners of insolvents, control their conduct, and settle	1495
their accounts;	1496
(i) To authorize the sale of lands, equitable estates, or	1497
interests in lands or equitable estates, and the assignments of	1498
inchoate dower in such cases of sale, on petition by executors,	1499
administrators, and guardians;	1500
(j) To authorize the completion of real estate contracts on	1501
petition of executors and administrators;	1502
(k) To construe wills;	1503
(l) To render declaratory judgments, including, but not	1504

limited to, those rendered pursuant to section 2107.084 of the Revised Code;	1505 1506
(m) To direct and control the conduct of fiduciaries and settle their accounts;	1507 1508
(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;	1509 1510
(o) To terminate a testamentary trust in any case in which a court of equity may do so;	1511 1512
(p) To hear and determine actions to contest the validity of wills;	1513 1514
(q) To make a determination of the presumption of death of missing persons and to adjudicate the property rights and obligations of all parties affected by the presumption;	1515 1516 1517
(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;	1518 1519 1520 1521 1522
(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;	1523 1524
(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;	1525 1526
(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;	1527 1528 1529
(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;	1530 1531 1532
(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised	1533 1534

Code;	1535
(x) To hear and determine complaints that pertain to the use	1536
or continuation, or the withholding or withdrawal, of	1537
life-sustaining treatment in connection with certain patients	1538
allegedly in a terminal condition or in a permanently unconscious	1539
state pursuant to division (E) of section 2133.08 of the Revised	1540
Code, in accordance with that division;	1541
(y) To hear and determine applications that pertain to the	1542
withholding or withdrawal of nutrition and hydration from certain	1543
patients allegedly in a permanently unconscious state pursuant to	1544
section 2133.09 of the Revised Code, in accordance with that	1545
section;	1546
(z) To hear and determine applications of attending	1547
physicians in accordance with division (B) of section 2133.15 of	1548
the Revised Code;	1549
(aa) To hear and determine actions relative to the use or	1550
continuation of comfort care in connection with certain principals	1551
under durable powers of attorney for health care, declarants under	1552
declarations, or patients in accordance with division (E) of	1553
either section 1337.16 or 2133.12 of the Revised Code;	1554
(bb) To hear and determine applications for an order	1555
relieving an estate from administration under section 2113.03 of	1556
the Revised Code;	1557
(cc) To hear and determine applications for an order granting	1558
a summary release from administration under section 2113.031 of	1559
the Revised Code;	1560
(dd) To hear and determine actions relating to the exercise	1561
of the right of disposition, in accordance with section 2108.90 of	1562
the Revised Code;	1563
(ee) To hear and determine actions relating to the	1564

disinterment and reinterment of human remains under section 517.23 1565  
of the Revised Code; 1566

(ff) To hear and determine petitions for an order for 1567  
treatment of a person suffering from alcohol and other drug abuse 1568  
filed under section 3793.34 of the Revised Code and to order 1569  
treatment of that nature in accordance with, and take other 1570  
actions afforded to the court under, sections 3793.31 to 3793.39 1571  
of the Revised Code. 1572

(2) In addition to the exclusive jurisdiction conferred upon 1573  
the probate court by division (A)(1) of this section, the probate 1574  
court shall have exclusive jurisdiction over a particular subject 1575  
matter if both of the following apply: 1576

(a) Another section of the Revised Code expressly confers 1577  
jurisdiction over that subject matter upon the probate court. 1578

(b) No section of the Revised Code expressly confers 1579  
jurisdiction over that subject matter upon any other court or 1580  
agency. 1581

(B)(1) The probate court has concurrent jurisdiction with, 1582  
and the same powers at law and in equity as, the general division 1583  
of the court of common pleas to issue writs and orders, and to 1584  
hear and determine actions as follows: 1585

(a) If jurisdiction relative to a particular subject matter 1586  
is stated to be concurrent in a section of the Revised Code or has 1587  
been construed by judicial decision to be concurrent, any action 1588  
that involves that subject matter; 1589

(b) Any action that involves an inter vivos trust; a trust 1590  
created pursuant to section 5815.28 of the Revised Code; a 1591  
charitable trust or foundation; subject to divisions (A)(1)(u) and 1592  
(z) of this section, a power of attorney, including, but not 1593  
limited to, a durable power of attorney; the medical treatment of 1594  
a competent adult; or a writ of habeas corpus. 1595

(2) Any action that involves a concurrent jurisdiction 1596  
subject matter and that is before the probate court may be 1597  
transferred by the probate court, on its order, to the general 1598  
division of the court of common pleas. 1599

(C) The probate court has plenary power at law and in equity 1600  
to dispose fully of any matter that is properly before the court, 1601  
unless the power is expressly otherwise limited or denied by a 1602  
section of the Revised Code. 1603

(D) The jurisdiction acquired by a probate court over a 1604  
matter or proceeding is exclusive of that of any other probate 1605  
court, except when otherwise provided by law. 1606

**Sec. 2107.52.** (A) As used in this section: 1607

(1) "Class member" means an individual who fails to survive 1608  
the testator but who would have taken under a devise in the form 1609  
of a class gift had the individual survived the testator. 1610

(2) "Descendant of a grandparent" means an individual who 1611  
qualifies as a descendant of a grandparent of the testator or of 1612  
the donor of a power of appointment under any of the following: 1613

(a) The rules of construction applicable to a class gift 1614  
created in the testator's will if the devise or the exercise of 1615  
the power of appointment is in the form of a class gift; 1616

(b) The rules for intestate succession if the devise or the 1617  
exercise of the power of appointment is not in the form of a class 1618  
gift. 1619

(3) "Devise" means an alternative devise, a devise in the 1620  
form of a class gift, or an exercise of a power of appointment. 1621

(4) "Devisee" means any of the following: 1622

(a) A class member if the devise is in the form of a class 1623  
gift; 1624

(b) An individual or class member who was deceased at the 1625  
time the testator executed the testator's will or an individual or 1626  
class member who was then living but who failed to survive the 1627  
testator; 1628

(c) An appointee under a power of appointment exercised by 1629  
the testator's will. 1630

(5) "Per stirpes" means that the shares of the descendants of 1631  
a devisee who does not survive the testator are determined in the 1632  
same way they would have been determined under division (A) of 1633  
section 2105.06 of the Revised Code if the devisee had died 1634  
intestate and unmarried on the date of the testator's death. 1635

(6) "Stepchild" means a child of the surviving, deceased, or 1636  
former spouse of the testator or of the donor of a power of 1637  
appointment and not of the testator or donor. 1638

(7) "Surviving devisee" or "surviving descendant" means a 1639  
devisee or descendant, whichever is applicable, who survives the 1640  
testator by at least one hundred twenty hours. 1641

(8) "Testator" includes the donee of a power of appointment 1642  
if the power is exercised in the testator's will. 1643

(B)(1) As used in "surviving descendants" in divisions 1644  
(B)(2)(a) and (b) of this section, "descendants" means the 1645  
descendants of a deceased devisee or class member under the 1646  
applicable division who would take under a class gift created in 1647  
the testator's will. 1648

(2) Unless a contrary intent appears in the will, if a 1649  
devisee fails to survive the testator and is a grandparent, a 1650  
descendant of a grandparent, or a stepchild of either the testator 1651  
or the donor of a power of appointment exercised by the testator's 1652  
will, either of the following applies: 1653

(a) If the devise is not in the form of a class gift and the 1654



deceased devisee leaves surviving descendants, a substitute gift 1655  
is created in the devisee's surviving descendants. The surviving 1656  
descendants take, per stirpes, the property to which the devisee 1657  
would have been entitled had the devisee survived the testator. 1658

(b) If the devise is in the form of a class gift, other than 1659  
a devise to "issue," "descendants," "heirs of the body," "heirs," 1660  
"next of kin," "relatives," or "family," or a class described by 1661  
language of similar import, a substitute gift is created in the 1662  
surviving descendants of any deceased devisee. The property to 1663  
which the devisees would have been entitled had all of them 1664  
survived the testator passes to the surviving devisees and the 1665  
surviving descendants of the deceased devisees. Each surviving 1666  
devisee takes the share to which the surviving devisee would have 1667  
been entitled had the deceased devisees survived the testator. 1668  
Each deceased devisee's surviving descendants who are substituted 1669  
for the deceased devisee take, per stirpes, the share to which the 1670  
deceased devisee would have been entitled had the deceased devisee 1671  
survived the testator. For purposes of division (B)(2)(b) of this 1672  
section, "deceased devisee" means a class member who failed to 1673  
survive the testator by at least one hundred twenty hours and left 1674  
one or more surviving descendants. 1675

(C) For purposes of this section, each of the following 1676  
applies: 1677

(1) Attaching the word "surviving" or "living" to a devise, 1678  
such as a gift "to my surviving (or living) children," is not, in 1679  
the absence of other language in the will or other evidence to the 1680  
contrary, a sufficient indication of an intent to negate the 1681  
application of division (B) of this section. 1682

(2) Attaching other words of survivorship to a devise, such 1683  
as "to my child, if my child survives me," is, in the absence of 1684  
other language in the will or other evidence to the contrary, a 1685  
sufficient indication of an intent to negate the application of 1686

division (B) of this section. 1687

(3) A residuary clause is not a sufficient indication of an intent to negate the application of division (B) of this section unless the will specifically provides that upon lapse or failure the nonresiduary devise, or nonresiduary devisees in general, pass under the residuary clause. 1688  
1689  
1690  
1691  
1692

(4) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power of appointment. 1693  
1694  
1695  
1696  
1697  
1698

(D) Except as provided in division (A), (B), or (C) of this section, each of the following applies: 1699  
1700

(1) A devise, other than a residuary devise, that fails for any reason becomes a part of the residue. 1701  
1702

(2) If the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue. 1703  
1704  
1705  
1706  
1707

(3) If a residuary devise fails for any reason in its entirety, the residue passes by intestate succession. 1708  
1709

(E) This section applies only to outright devises and appointments. Devises and appointments in trust, including to a testamentary trust, are subject to section 5808.19 of the Revised Code. 1710  
1711  
1712  
1713

(F) This section applies to wills of decedents who die on or after the effective date of this section. 1714  
1715

**Sec. 2109.21.** (A) An administrator, special administrator, 1716

administrator de bonis non, or administrator with the will annexed 1717  
shall be a resident of this state and shall be removed on proof 1718  
that the administrator is no longer a resident of this state. 1719

(B)(1) To qualify for appointment as executor or trustee, an 1720  
executor or a trustee named in a will or nominated in accordance 1721  
with any power of nomination conferred in a will, may be a 1722  
resident of this state or, as provided in this division, a 1723  
nonresident of this state. To qualify for appointment, a 1724  
nonresident executor or trustee named in, or nominated pursuant 1725  
to, a will shall be an individual who is related to the maker of 1726  
the will by consanguinity or affinity, or a person who resides in 1727  
a state that has statutes or rules that authorize the appointment 1728  
of a nonresident person who is not related to the maker of a will 1729  
by consanguinity or affinity, as an executor or trustee when named 1730  
in, or nominated pursuant to, a will. No such executor or trustee 1731  
shall be refused appointment or removed solely because the 1732  
executor or trustee is not a resident of this state. 1733

The court may require that a nonresident executor or trustee 1734  
named in, or nominated pursuant to, a will assure that all of the 1735  
assets of the decedent that are in the county at the time of the 1736  
death of the decedent will remain in the county until distribution 1737  
or until the court determines that the assets may be removed from 1738  
the county. 1739

(2) In accordance with this division and section 2129.08 of 1740  
the Revised Code, the court shall appoint as an ancillary 1741  
administrator a person who is named in the will of a nonresident 1742  
decedent, or who is nominated in accordance with any power of 1743  
nomination conferred in the will of a nonresident decedent, as a 1744  
general executor of the decedent's estate or as executor of the 1745  
portion of the decedent's estate located in this state, whether or 1746  
not the person so named or nominated is a resident of this state. 1747

To qualify for appointment as an ancillary administrator, a 1748

person who is not a resident of this state and who is named or 1749  
nominated as described in this division, shall be an individual 1750  
who is related to the maker of the will by consanguinity or 1751  
affinity, or a person who resides in a state that has statutes or 1752  
rules that authorize the appointment of a nonresident of that 1753  
state who is not related to the maker of a will by consanguinity 1754  
or affinity, as an ancillary administrator when the nonresident is 1755  
named in a will or nominated in accordance with any power of 1756  
nomination conferred in a will. If a person who is not a resident 1757  
of this state and who is named or nominated as described in this 1758  
division so qualifies for appointment as an ancillary 1759  
administrator and if the provisions of section 2129.08 of the 1760  
Revised Code are satisfied, the court shall not refuse to appoint 1761  
the person, and shall not remove the person, as ancillary 1762  
administrator solely because the person is not a resident of this 1763  
state. 1764

The court may require that an ancillary administrator who is 1765  
not a resident of this state and who is named or nominated as 1766  
described in this division, assure that all of the assets of the 1767  
decedent that are in the county at the time of the death of the 1768  
decedent will remain in the county until distribution or until the 1769  
court determines that the assets may be removed from the county. 1770

(C)(1) A guardian shall be a resident of this state, except 1771  
that the court may appoint a nonresident of this state as a 1772  
guardian if any of the following applies: 1773

(a) The nonresident is named in a will by a parent of a 1774  
minor. 1775

(b) The nonresident is selected by a minor over the age of 1776  
fourteen years as provided by section 2111.12 of the Revised Code. 1777

(c) The nonresident is nominated in or pursuant to a durable 1778  
power of attorney ~~as described in division (D) of~~ under section 1779

~~1337.09~~ 1337.24 of the Revised Code or a writing as described in 1780  
division (A) of section 2111.121 of the Revised Code. 1781

(2) A guardian, other than a guardian named in a will by a 1782  
parent of a minor, selected by a minor over the age of fourteen 1783  
years, or nominated in or pursuant to a durable power of attorney 1784  
or writing described in division (C)(1)(c) of this section, may be 1785  
removed on proof that the guardian is no longer a resident of this 1786  
state. 1787

(D) Any fiduciary, whose residence qualifications are not 1788  
defined in this section, shall be a resident of this state, and 1789  
shall be removed on proof that the fiduciary is no longer a 1790  
resident of this state. 1791

(E) Any fiduciary, in order to assist in the carrying out of 1792  
the fiduciary's fiduciary duties, may employ agents who are not 1793  
residents of the county or of this state. 1794

**Sec. 2111.02.** (A) When found necessary, the probate court on 1795  
its own motion or on application by any interested party shall 1796  
appoint, subject to divisions (C) and (D) of this section and to 1797  
section 2109.21 and division (B) of section 2111.121 of the 1798  
Revised Code, a guardian of the person, the estate, or both, of a 1799  
minor or incompetent, provided the person for whom the guardian is 1800  
to be appointed is a resident of the county or has a legal 1801  
settlement in the county and, except in the case of a minor, has 1802  
had the opportunity to have the assistance of counsel in the 1803  
proceeding for the appointment of such guardian. An interested 1804  
party includes, but is not limited to, a person nominated in a 1805  
durable power of attorney ~~as described in division (D) of~~ under 1806  
section ~~1337.09~~ 1337.24 of the Revised Code or in a writing as 1807  
described in division (A) of section 2111.121 of the Revised Code. 1808

Except when the guardian of an incompetent is an agency under 1809  
contract with the department of developmental disabilities for the 1810

provision of protective services under sections 5123.55 to 5123.59 1811  
of the Revised Code, the guardian of an incompetent, by virtue of 1812  
such appointment, shall be the guardian of the minor children of 1813  
the guardian's ward, unless the court appoints some other person 1814  
as their guardian. 1815

When the primary purpose of the appointment of a guardian is, 1816  
or was, the collection, disbursement, or administration of moneys 1817  
awarded by the veterans administration to the ward, or assets 1818  
derived from such moneys, no court costs shall be charged in the 1819  
proceeding for the appointment or in any subsequent proceedings 1820  
made in pursuance of the appointment, unless the value of the 1821  
estate, including the moneys then due under the veterans 1822  
administration award, exceeds one thousand five hundred dollars. 1823

(B)(1) If the probate court finds it to be in the best 1824  
interest of an incompetent or minor, it may appoint pursuant to 1825  
divisions (A) and (C) of this section, on its own motion or on 1826  
application by an interested party, a limited guardian with 1827  
specific limited powers. The sections of the Revised Code, rules, 1828  
and procedures governing guardianships apply to a limited 1829  
guardian, except that the order of appointment and letters of 1830  
authority of a limited guardian shall state the reasons for, and 1831  
specify the limited powers of, the guardian. The court may appoint 1832  
a limited guardian for a definite or indefinite period. An 1833  
incompetent or minor for whom a limited guardian has been 1834  
appointed retains all of the incompetent's or minor's rights in 1835  
all areas not affected by the court order appointing the limited 1836  
guardian. 1837

(2) If a guardian appointed pursuant to division (A) of this 1838  
section is temporarily or permanently removed or resigns, and if 1839  
the welfare of the ward requires immediate action, at any time 1840  
after the removal or resignation, the probate court may appoint, 1841  
ex parte and with or without notice to the ward or interested 1842

parties, an interim guardian for a maximum period of fifteen days. 1843  
If the court appoints the interim guardian ex parte or without 1844  
notice to the ward, the court, at its first opportunity, shall 1845  
enter upon its journal with specificity the reason for acting ex 1846  
parte or without notice, and, as soon as possible, shall serve 1847  
upon the ward a copy of the order appointing the interim guardian. 1848  
For good cause shown, after notice to the ward and interested 1849  
parties and after hearing, the court may extend an interim 1850  
guardianship for a specified period, but not to exceed an 1851  
additional thirty days. 1852

(3) If a minor or incompetent has not been placed under a 1853  
guardianship pursuant to division (A) of this section and if an 1854  
emergency exists, and if it is reasonably certain that immediate 1855  
action is required to prevent significant injury to the person or 1856  
estate of the minor or incompetent, at any time after it receives 1857  
notice of the emergency, the court, ex parte, may issue any order 1858  
that it considers necessary to prevent injury to the person or 1859  
estate of the minor or incompetent, or may appoint an emergency 1860  
guardian for a maximum period of seventy-two hours. A written copy 1861  
of any order issued by a court under this division shall be served 1862  
upon the incompetent or minor as soon as possible after its 1863  
issuance. Failure to serve such an order after its issuance or 1864  
prior to the taking of any action under its authority does not 1865  
invalidate the order or the actions taken. The powers of an 1866  
emergency guardian shall be specified in the letters of 1867  
appointment, and shall be limited to those powers that are 1868  
necessary to prevent injury to the person or estate of the minor 1869  
or incompetent. If the court acts ex parte or without notice to 1870  
the minor or incompetent, the court, at its first opportunity, 1871  
shall enter upon its journal a record of the case and, with 1872  
specificity, the reason for acting ex parte or without notice. For 1873  
good cause shown, after notice to the minor or incompetent and 1874  
interested parties, and after hearing, the court may extend an 1875

emergency guardianship for a specified period, but not to exceed 1876  
an additional thirty days. 1877

(C) Prior to the appointment of a guardian or limited 1878  
guardian under division (A) or (B)(1) of this section, the court 1879  
shall conduct a hearing on the matter of the appointment. The 1880  
hearing shall be conducted in accordance with all of the 1881  
following: 1882

(1) The proposed guardian or limited guardian shall appear at 1883  
the hearing and, if appointed, shall swear under oath that the 1884  
proposed guardian or limited guardian has made and will continue 1885  
to make diligent efforts to file a true inventory in accordance 1886  
with section 2111.14 of the Revised Code and find and report all 1887  
assets belonging to the estate of the ward and that the proposed 1888  
guardian or limited guardian faithfully and completely will 1889  
fulfill the other duties of guardian, including the filing of 1890  
timely and accurate reports and accountings; 1891

(2) If the hearing is conducted by a referee, the procedures 1892  
set forth in Civil Rule 53 shall be followed; 1893

(3) If the hearing concerns the appointment of a guardian or 1894  
limited guardian for an alleged incompetent, the burden of proving 1895  
incompetency shall be by clear and convincing evidence; 1896

(4) Upon request of the applicant, the alleged incompetent 1897  
for whom the appointment is sought or the alleged incompetent's 1898  
counsel, or any interested party, a recording or record of the 1899  
hearing shall be made; 1900

(5) Evidence of a less restrictive alternative to 1901  
guardianship may be introduced, and when introduced, shall be 1902  
considered by the court; 1903

(6) The court may deny a guardianship based upon a finding 1904  
that a less restrictive alternative to guardianship exists; 1905



(7) If the hearing concerns the appointment of a guardian or limited guardian for an alleged incompetent, the alleged incompetent has all of the following rights:	1906 1907 1908
(a) The right to be represented by independent counsel of the alleged incompetent's choice;	1909 1910
(b) The right to have a friend or family member of the alleged incompetent's choice present;	1911 1912
(c) The right to have evidence of an independent expert evaluation introduced;	1913 1914
(d) If the alleged incompetent is indigent, upon the alleged incompetent's request:	1915 1916
(i) The right to have counsel and an independent expert evaluator appointed at court expense;	1917 1918
(ii) If the guardianship, limited guardianship, or standby guardianship decision is appealed, the right to have counsel appointed and necessary transcripts for appeal prepared at court expense.	1919 1920 1921 1922
(D)(1) When a person has been nominated to be a guardian of the estate of a minor in or pursuant to a durable power of attorney <del>as described in division (D) of</del> <u>under</u> section <del>1337.09</del> <u>1337.24</u> of the Revised Code or a writing as described in division (A) of section 2111.121 of the Revised Code, the person nominated has preference in appointment over a person selected by the minor. A person who has been nominated to be a guardian of the person of a minor in or pursuant to a durable power of attorney or writing of that nature does not have preference in appointment over a person selected by the minor, but the probate court may appoint the person named in the durable power of attorney or the writing, the person selected by the minor, or another person as guardian of the person of the minor.	1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935

(2) A person nominated as a guardian of an incompetent adult child pursuant to a durable power of attorney under section 1337.09 1337.24 or pursuant to section 2111.121 of the Revised Code shall have preference in appointment over a person applying to be guardian if the person nominated is competent, suitable, and willing to accept the appointment, and if the incompetent adult child does not have a spouse or an adult child and has not designated a guardian prior to the court finding the adult child incompetent.

**Sec. 2111.12.** (A) A minor over the age of fourteen years may select a guardian who shall be appointed if a suitable person. If such minor fails to select a suitable person, an appointment may be made without reference to the minor's wishes. The minor shall not select one person to be the guardian of the minor's estate only and another to be the guardian of the person only, unless the court which appoints is of the opinion that the interests of such minor will thereby be promoted.

(B) A surviving parent by last will in writing may appoint a guardian for any of the surviving parent's children, whether born at the time of making the will or afterward, to continue during the minority of the child or for a less time.

When the father or mother of a minor names a person as guardian of the estate of such minor in a will, the person named shall have preference in appointment over the person selected by such minor. A person named in such a will as guardian of the person of such minor shall have no preference in appointment over the person selected by such minor, but in such event the probate court may appoint the person named in the will, the person selected by the minor, or some other person.

Whenever a testamentary guardian is appointed, the testamentary guardian's duties, powers, and liabilities in all

other respects shall be governed by the law regulating guardians 1967  
not appointed by will. 1968

(C) A parent pursuant to a durable power of attorney ~~as~~ 1969  
~~described in division (D) of~~ under section ~~1337.09~~ 1337.24 or a 1970  
writing as described in division (A) of section 2111.121 of the 1971  
Revised Code may nominate a person to be a guardian for one or 1972  
more of the parent's minor children, whether born at the time of 1973  
the making of the petition or afterward. 1974

**Sec. 2111.121.** (A) A person may nominate in a writing, as 1975  
described in this division, another person to be the guardian of 1976  
the nominator's person, estate, or both or the guardian of the 1977  
person, the estate, or both, of one or more of the nominator's 1978  
minor or incompetent adult children, whether born at the time of 1979  
the execution of the writing or afterward, subject to notice and a 1980  
hearing pursuant to section 2111.02 of the Revised Code. The 1981  
nomination is for consideration by a court if proceedings for the 1982  
appointment of a guardian of the person, the estate, or both, for 1983  
the person making the nomination or if proceedings for the 1984  
appointment of a guardian as the guardian of the person, the 1985  
estate, or both of one or more of the nominator's minor or 1986  
incompetent adult children are commenced at a later time. The 1987  
person may authorize, in a writing of that nature, the person 1988  
nominated as guardian to nominate a successor guardian for 1989  
consideration by a court. The person also may direct, in a writing 1990  
of that nature, that bond be waived for a person nominated as 1991  
guardian in it or nominated as a successor guardian in accordance 1992  
with an authorization in it. 1993

To be effective as a nomination, the writing shall be signed 1994  
by the person making the nomination in the presence of two 1995  
witnesses; signed by the witnesses; contain, immediately prior to 1996  
their signatures, an attestation of the witnesses that the person 1997

making the nomination signed the writing in their presence; and be 1998  
acknowledged by the person making the nomination before a notary 1999  
public. 2000

(B) If a person has nominated, in a writing as described in 2001  
division (A) of this section or in a durable power of attorney ~~as~~ 2002  
~~described in division (D) of~~ under section ~~1337.09~~ 1337.24 of the 2003  
Revised Code, another person to be the guardian of the nominator's 2004  
person, estate, or both, and proceedings for the appointment of a 2005  
guardian for the person are commenced at a later time, the court 2006  
involved shall appoint the person nominated as guardian in the 2007  
writing or durable power of attorney most recently executed if the 2008  
person nominated is competent, suitable, and willing to accept the 2009  
appointment. If the writing or durable power of attorney contains 2010  
a waiver of bond, the court shall waive bond of the person 2011  
nominated as guardian unless it is of the opinion that the 2012  
interest of the trust demands it. 2013

(C) Nomination of a person as a guardian or successor 2014  
guardian of the person, the estate, or both of one or more of the 2015  
nominator's minor or incompetent adult children under division (A) 2016  
of this section, and any subsequent appointment of the guardian or 2017  
successor guardian as guardian under section 2111.02 of the 2018  
Revised Code, does not vacate the jurisdiction of any other court 2019  
that previously may have exercised jurisdiction over the person of 2020  
the minor or incompetent adult child. 2021

(D) The writing containing the nomination of a person to be 2022  
the guardian of the person, the estate, or both of one or more of 2023  
the nominator's minor or incompetent adult children under division 2024  
(A) of this section may be filed with the probate court for 2025  
safekeeping, and the probate court shall designate the nomination 2026  
as the nomination of a standby guardian. 2027

Sec. 3793.31. As used in sections 3793.31 to 3793.39 of the 2028

<u>Revised Code:</u>	2029
<u>(A) "Alcohol and other drug abuse" means alcoholism or drug addiction.</u>	2030 2031
<u>(B) "Alcoholism" and "drug addiction" have the same meanings as in section 3793.01 of the Revised Code.</u>	2032 2033
<u>(C) "Another drug" means a controlled substance as defined in section 3719.01 of the Revised Code or a harmful intoxicant as defined in section 2925.01 of the Revised Code.</u>	2034 2035 2036
<u>(D) "Board of alcohol, drug addiction, and mental health services" means a board of alcohol, drug addiction, and mental health services established under section 340.02 or 340.021 of the Revised Code.</u>	2037 2038 2039 2040
<u>(E) "Danger" or "threat of danger to self, family, or others" means substantial physical harm or threat of substantial physical harm upon self, family, or others.</u>	2041 2042 2043
<u>(F) "Hospital" has the same meaning as in section 3701.01 or 3727.01 of the Revised Code but does not include either a hospital operated by the department of mental health or an inpatient unit licensed by the department.</u>	2044 2045 2046 2047
<u>(G) "Intoxicated" means being under the influence of alcohol, another drug, or both alcohol and another drug and, as a result, having a significantly impaired ability to function.</u>	2048 2049 2050
<u>(H) "Petitioner" means a person who institutes a proceeding under sections 3793.32 to 3793.39 of the Revised Code.</u>	2051 2052
<u>(I) "Probate court" means the probate division of the court of common pleas.</u>	2053 2054
<u>(J) "Qualified health professional" means a person that is properly credentialed or licensed to conduct a drug and alcohol assessment and diagnosis under Ohio law.</u>	2055 2056 2057

(K) "Residence" means the legal residence of a person as 2058  
determined by applicable principles governing conflicts of law. 2059

(L) "Respondent" means a person alleged in a hearing under 2060  
sections 3793.32 to 3793.39 of the Revised Code to be a person who 2061  
is suffering from alcohol and other drug abuse and who should be 2062  
ordered under those sections to undergo treatment. 2063

(M) "Treatment" means services and programs for the care and 2064  
rehabilitation of intoxicated persons and persons suffering from 2065  
alcohol and other drug abuse. "Treatment" includes residential 2066  
treatment, a halfway house setting, and an intensive outpatient or 2067  
outpatient level of care. 2068

Sec. 3793.32. A probate court may order involuntary treatment 2069  
for a person suffering from alcohol and other drug abuse pursuant 2070  
to the procedures set forth in sections 3793.31 to 3793.39 of the 2071  
Revised Code. 2072

Sec. 3793.33. No person shall be ordered to undergo treatment 2073  
under sections 3793.31 to 3793.39 of the Revised Code unless all 2074  
of the following apply to that person: 2075

(A) The person suffers from alcohol and other drug abuse. 2076

(B) The person presents an imminent danger or imminent threat 2077  
of danger to self, family, or others as a result of alcohol and 2078  
other drug abuse, or there exists a substantial likelihood of such 2079  
a threat in the near future. 2080

(C) The person can reasonably benefit from treatment. 2081

Sec. 3793.34. (A) A person may initiate proceedings for 2082  
treatment for an individual suffering from alcohol and other drug 2083  
abuse by filing a verified petition in the probate court and 2084  
paying a filing fee in the same amount, if any, that is charged 2085  
for the filing under section 5122.11 of the Revised Code of an 2086

affidavit seeking the hospitalization of a person. The petition 2087  
and all subsequent court documents shall be entitled: "In the 2088  
interest of (name of respondent)." A spouse, relative, or guardian 2089  
of the individual concerning whom the petition is filed shall file 2090  
the petition. 2091

(B) A petition filed under division (A) of this section shall 2092  
set forth all of the following: 2093

(1) The petitioner's relationship to the respondent; 2094

(2) The respondent's name, residence address, and current 2095  
location, if known; 2096

(3) The name and residence of the respondent's parents, if 2097  
living and if known, or of the respondent's legal guardian, if any 2098  
and if known; 2099

(4) The name and residence of the respondent's spouse, if any 2100  
and if known; 2101

(5) The name and residence of the person having custody of 2102  
the respondent, if any, or if no such person is known, the name 2103  
and residence of a near relative or a statement that the person is 2104  
unknown; 2105

(6) The petitioner's belief, including the factual basis for 2106  
the belief, that the respondent is suffering from alcohol and 2107  
other drug abuse and presents an imminent danger or imminent 2108  
threat of danger to self, family, or others if not treated for 2109  
alcohol or other drug abuse. 2110

(C) Any petition filed pursuant to divisions (A) and (B) of 2111  
this section shall be accompanied by a guarantee, signed by the 2112  
petitioner or another person authorized under division (A) of this 2113  
section, obligating that person to pay all costs for treatment of 2114  
the respondent for alcohol and other drug abuse that is ordered by 2115  
the court and to pay any other costs of the respondent that are 2116

associated with a hearing conducted in accordance with section 2117  
3793.35 of the Revised Code and that the court determines to be 2118  
appropriate. 2119

Sec. 3793.35. (A) Upon receipt of a petition filed under 2120  
section 3793.34 of the Revised Code and the payment of the 2121  
appropriate filing fee, if any, the probate court shall examine 2122  
the petitioner under oath as to the contents of the petition. 2123

(B) If, after reviewing the allegations contained in the 2124  
petition and examining the petitioner under oath, it appears to 2125  
the probate court that there is probable cause to believe the 2126  
respondent should be ordered to undergo treatment, then the court 2127  
shall do all of the following: 2128

(1) Schedule a hearing to be held within seven days to 2129  
determine if there is probable cause to believe that the 2130  
respondent should be ordered to undergo treatment for alcohol and 2131  
other drug abuse; 2132

(2) Notify the respondent, the legal guardian, if any and if 2133  
known, and the spouse, parents, or nearest relative or friend of 2134  
the respondent concerning the allegations and contents of the 2135  
petition and of the date and purpose of the hearing; 2136

(3) Notify the respondent that the respondent may retain 2137  
counsel and have independent expert evaluation of the person's 2138  
physical and mental condition and, if the person is unable to 2139  
obtain an attorney or independent expert evaluation, that the 2140  
respondent may be represented by court-appointed counsel or have 2141  
independent expert evaluation of the person's physical or mental 2142  
condition, or both, at public expense if the person is indigent 2143  
and upon appointment of an attorney to represent the respondent 2144  
notify the respondent of the name, address, and telephone number 2145  
of the attorney appointed to represent the respondent; 2146



(4) Cause the respondent to be examined not later than 2147  
twenty-four hours before the hearing date by a physician for the 2148  
purpose of a physical examination and by a qualified health 2149  
professional for the purpose of a drug and alcohol addiction 2150  
assessment and diagnosis; 2151

(5) Conduct the hearing. 2152

(C) The physician and qualified health professional who 2153  
examine the respondent pursuant to division (B)(4) of this section 2154  
or who are obtained by or appointed for the respondent pursuant to 2155  
division (B)(3) of this section shall certify their findings to 2156  
the court within twenty-four hours of the examinations. The 2157  
findings of each qualified health professional shall include a 2158  
recommendation for treatment if the qualified health professional 2159  
determines that treatment is necessary. 2160

(D) If the probate court finds upon completion of the hearing 2161  
held under division (B) of this section that the respondent should 2162  
be ordered to undergo treatment, the court shall order the 2163  
treatment at a level of care and for a length of time recommended 2164  
by the qualified health professional who conducted the examination 2165  
of the respondent under this section. Failure of a respondent to 2166  
undergo treatment ordered pursuant to this division is contempt of 2167  
court. 2168

(E) If, at any time after a petition is filed under section 2169  
3793.34 of the Revised Code, the probate court finds that there is 2170  
not probable cause to continue treatment or if the petitioner 2171  
withdraws the petition, then the court shall dismiss the 2172  
proceedings against the respondent. 2173

**Sec. 3793.36.** (A) Following an examination by a qualified 2174  
health professional and a certification by that professional that 2175  
the person meets the criteria specified in section 3793.33 of the 2176  
Revised Code, a probate court may order the person hospitalized 2177

for a period not to exceed seventy-two hours if the court finds by 2178  
clear and convincing evidence that the person presents an imminent 2179  
threat of danger to self, family, or others as a result of alcohol 2180  
and other drug abuse. However, if the hearing to be held under 2181  
section 3793.35 of the Revised Code will not be held within 2182  
seventy-two hours, the court may order the person hospitalized 2183  
until the hearing. In making its order, the court shall inform the 2184  
person that the person may immediately make a reasonable number of 2185  
telephone calls or use other reasonable means to contact an 2186  
attorney, a licensed physician, or a qualified health 2187  
professional, to contact any other person or persons to secure 2188  
representation by counsel, or to obtain medical or psychological 2189  
assistance and that the person will be provided assistance in 2190  
making calls if the assistance is needed and requested. 2191

(B) Any person who has been admitted to a hospital under 2192  
division (A) of this section shall be released from the hospital 2193  
immediately upon the expiration of the time period established by 2194  
the court for the hospitalization. 2195

(C) No person ordered hospitalized under this section shall 2196  
be held in jail pending transportation to the hospital or 2197  
evaluation unless the probate court previously has found the 2198  
person to be in contempt of court for either failure to undergo 2199  
treatment or failure to appear at the evaluation ordered pursuant 2200  
to section 3793.35 of the Revised Code. 2201

**Sec. 3793.37.** When a probate court is authorized to issue an 2202  
order that the respondent be transported to a hospital, the court 2203  
may issue a summons. If the respondent fails to attend an 2204  
examination scheduled before the hearing under section 3793.35 of 2205  
the Revised Code, the court shall issue a summons. A summons so 2206  
issued shall be directed to the respondent and shall command the 2207  
respondent to appear at a time and place specified in the summons. 2208

If a respondent who has been summoned fails to appear at the hospital or the examination, the probate court may order the sheriff or any other peace officer to transport the respondent to a hospital on the list provided under section 3793.38 of the Revised Code for treatment. The sheriff or any other peace officer, upon agreement of a person authorized by the peace officer, may authorize a board of alcohol, drug addiction, and mental health services, a private agency under contract with a board of alcohol, drug addiction, and mental health services, or an ambulance service designated by a board of alcohol, drug addiction, and mental health services to transport the respondent to the hospital. The transportation costs of the sheriff, other peace officer, ambulance service, or other private agency under contract with the board of alcohol and drug addiction services shall be included in the costs of treatment for alcohol and other drug abuse to be paid by the petitioner.

**Sec. 3793.38.** Each board of alcohol, drug addiction, and mental health services on at least an annual basis shall submit each of the following lists to the clerk of the probate court in each county served by the board:

(A) A list of all hospitals in the counties served by the board that are able and willing to take respondents ordered to undergo seventy-two hours of treatment and observation pursuant to section 3793.36 of the Revised Code;

(B) A list of hospitals and treatment providers in the counties served by the board that are able and willing to provide treatment for alcohol and other drug abuse ordered pursuant to section 3793.35 of the Revised Code.

**Sec. 3793.39.** Sections 3793.12, 3793.13, and 3793.14 of the Revised Code apply to a person who is ordered to undergo treatment

under sections 3793.31 to 3793.39 of the Revised Code. 2239

**Sec. 5301.071.** No instrument conveying real estate property, 2240  
or any interest ~~therein~~ in real property, and of record in the 2241  
office of the county recorder of the county within this state in 2242  
which ~~such~~ that real estate property is situated shall be ~~deemed~~ 2243  
considered defective nor shall the validity of ~~such~~ that 2244  
conveyance be affected because of any of the following: 2245

(A) The dower interest of the spouse of any grantor was not 2246  
specifically released, but ~~such~~ that spouse executed ~~said the~~ 2247  
instrument in the manner provided in section 5301.01 of the 2248  
Revised Code. 2249

(B) The officer taking the acknowledgment of ~~such~~ the 2250  
instrument having an official seal did not affix ~~such~~ that seal to 2251  
the certificate of acknowledgment. 2252

(C) The certificate of acknowledgment is not on the same 2253  
sheet of paper as the instrument. 2254

(D) The executor, administrator, guardian, assignee, or 2255  
trustee making ~~such~~ the instrument signed or acknowledged the same 2256  
individually instead of in ~~his~~ a representative or official 2257  
capacity. 2258

(E)(1) The grantor or grantee of the instrument is a trust 2259  
rather than the trustee or trustees of the trust if the trust 2260  
named as grantor or grantee has been duly created under the laws 2261  
of the state of its existence at the time of the conveyance and a 2262  
memorandum of trust that complies with section 5301.255 of the 2263  
Revised Code and contains a description of the real property 2264  
conveyed by that instrument is recorded in the office of the 2265  
county recorder in which the instrument of conveyance is recorded. 2266  
Upon compliance with division (E)(1) of this section, a conveyance 2267  
to a trust shall be considered to be a conveyance to the trustee 2268

or trustees of the trust in furtherance of the manifest intention 2269  
of the parties. 2270

(2) Except as otherwise provided in division (E)(2) of this 2271  
section, division (E)(1) of this section shall be given 2272  
retroactive effect to the fullest extent permitted under section 2273  
28 of Article II, Ohio Constitution. Division (E) of this section 2274  
shall not be given retroactive or curative effect if to do so 2275  
would invalidate or supersede any instrument that conveys real 2276  
property, or any interest in the real property, recorded in the 2277  
office of the county recorder in which that real property is 2278  
situated prior to the date of recording of a curative memorandum 2279  
of trust or the effective date of this section, whichever event 2280  
occurs later. 2281

**Sec. 5747.02.** (A) For the purpose of providing revenue for 2282  
the support of schools and local government functions, to provide 2283  
relief to property taxpayers, to provide revenue for the general 2284  
revenue fund, and to meet the expenses of administering the tax 2285  
levied by this chapter, there is hereby levied on every 2286  
individual, trust, and estate residing in or earning or receiving 2287  
income in this state, on every individual, trust, and estate 2288  
earning or receiving lottery winnings, prizes, or awards pursuant 2289  
to Chapter 3770. of the Revised Code, and on every individual, 2290  
trust, and estate otherwise having nexus with or in this state 2291  
under the Constitution of the United States, an annual tax 2292  
measured in the case of individuals by Ohio adjusted gross income 2293  
less an exemption for the taxpayer, the taxpayer's spouse, and 2294  
each dependent as provided in section 5747.025 of the Revised 2295  
Code; measured in the case of trusts by modified Ohio taxable 2296  
income under division (D) of this section; and measured in the 2297  
case of estates by Ohio taxable income. The tax imposed by this 2298  
section on the balance thus obtained is hereby levied as follows: 2299

(1) For taxable years beginning in 2004:		2300
OHIO ADJUSTED GROSS INCOME LESS		2301
EXEMPTIONS (INDIVIDUALS)		
OR		2302
MODIFIED OHIO		2303
TAXABLE INCOME (TRUSTS)		2304
OR		2305
OHIO TAXABLE INCOME (ESTATES)	TAX	2306
\$5,000 or less	.743%	2307
More than \$5,000 but not more than \$10,000	\$37.15 plus 1.486% of the amount in excess of \$5,000	2308
More than \$10,000 but not more than \$15,000	\$111.45 plus 2.972% of the amount in excess of \$10,000	2309
More than \$15,000 but not more than \$20,000	\$260.05 plus 3.715% of the amount in excess of \$15,000	2310
More than \$20,000 but not more than \$40,000	\$445.80 plus 4.457% of the amount in excess of \$20,000	2311
More than \$40,000 but not more than \$80,000	\$1,337.20 plus 5.201% of the amount in excess of \$40,000	2312
More than \$80,000 but not more than \$100,000	\$3,417.60 plus 5.943% of the amount in excess of \$80,000	2313
More than \$100,000 but not more than \$200,000	\$4,606.20 plus 6.9% of the amount in excess of \$100,000	2314
More than \$200,000	\$11,506.20 plus 7.5% of the amount in excess of \$200,000	2315
(2) For taxable years beginning in 2005:		2316
OHIO ADJUSTED GROSS INCOME LESS		2317
EXEMPTIONS (INDIVIDUALS)		
OR		2318
MODIFIED OHIO		2319
TAXABLE INCOME (TRUSTS)		2320
OR		2321

OHIO TAXABLE INCOME (ESTATES)	TAX	2322
\$5,000 or less	.712%	2323
More than \$5,000 but not more than \$10,000	\$35.60 plus 1.424% of the amount in excess of \$5,000	2324
More than \$10,000 but not more than \$15,000	\$106.80 plus 2.847% of the amount in excess of \$10,000	2325
More than \$15,000 but not more than \$20,000	\$249.15 plus 3.559% of the amount in excess of \$15,000	2326
More than \$20,000 but not more than \$40,000	\$427.10 plus 4.27% of the amount in excess of \$20,000	2327
More than \$40,000 but not more than \$80,000	\$1,281.10 plus 4.983% of the amount in excess of \$40,000	2328
More than \$80,000 but not more than \$100,000	\$3,274.30 plus 5.693% of the amount in excess of \$80,000	2329
More than \$100,000 but not more than \$200,000	\$4,412.90 plus 6.61% of the amount in excess of \$100,000	2330
More than \$200,000	\$11,022.90 plus 7.185% of the amount in excess of \$200,000	2331
(3) For taxable years beginning in 2006:		2332
OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS)		2333
OR		2334
MODIFIED OHIO TAXABLE INCOME (TRUSTS)		2335
OR		2336
OHIO TAXABLE INCOME (ESTATES)	TAX	2337
\$5,000 or less	.681%	2338
More than \$5,000 but not more than \$10,000	\$34.05 plus 1.361% of the amount in excess of \$5,000	2339
More than \$10,000 but not more than \$15,000	\$102.10 plus 2.722% of the amount in excess of \$10,000	2340
More than \$15,000 but not more than \$20,000	\$238.20 plus 3.403% of the amount in excess of \$15,000	2341
		2342

More than \$20,000 but not more than \$40,000	\$408.35 plus 4.083% of the amount in excess of \$20,000	2343
More than \$40,000 but not more than \$80,000	\$1,224.95 plus 4.764% of the amount in excess of \$40,000	2344
More than \$80,000 but not more than \$100,000	\$3,130.55 plus 5.444% of the amount in excess of \$80,000	2345
More than \$100,000 but not more than \$200,000	\$4,219.35 plus 6.32% of the amount in excess of \$100,000	2346
More than \$200,000	\$10,539.35 plus 6.87% of the amount in excess of \$200,000	2347
(4) For taxable years beginning in 2007:		2348
OHIO ADJUSTED GROSS INCOME LESS EXEMPTIONS (INDIVIDUALS)		2349
OR		2350
MODIFIED OHIO		2351
TAXABLE INCOME (TRUSTS)		2352
OR		2353
OHIO TAXABLE INCOME (ESTATES)	TAX	2354
\$5,000 or less	.649%	2355
More than \$5,000 but not more than \$10,000	\$32.45 plus 1.299% of the amount in excess of \$5,000	2356
More than \$10,000 but not more than \$15,000	\$97.40 plus 2.598% of the amount in excess of \$10,000	2357
More than \$15,000 but not more than \$20,000	\$227.30 plus 3.247% of the amount in excess of \$15,000	2358
More than \$20,000 but not more than \$40,000	\$389.65 plus 3.895% of the amount in excess of \$20,000	2359
More than \$40,000 but not more than \$80,000	\$1,168.65 plus 4.546% of the amount in excess of \$40,000	2360
More than \$80,000 but not more than \$100,000	\$2,987.05 plus 5.194% of the amount in excess of \$80,000	2361
More than \$100,000 but not more than \$200,000	\$4,025.85 plus 6.031% of the amount in excess of \$100,000	2362



More than \$200,000	\$10,056.85 plus 6.555% of the amount in excess of \$200,000	2363
(5) For taxable years beginning in 2008, 2009, or 2010:		2364
OHIO ADJUSTED GROSS INCOME LESS		2365
EXEMPTIONS (INDIVIDUALS)		
OR		2366
MODIFIED OHIO		2367
TAXABLE INCOME (TRUSTS)		2368
OR		2369
OHIO TAXABLE INCOME (ESTATES)	TAX	2370
\$5,000 or less	.618%	2371
More than \$5,000 but not more than \$10,000	\$30.90 plus 1.236% of the amount in excess of \$5,000	2372
More than \$10,000 but not more than \$15,000	\$92.70 plus 2.473% of the amount in excess of \$10,000	2373
More than \$15,000 but not more than \$20,000	\$216.35 plus 3.091% of the amount in excess of \$15,000	2374
More than \$20,000 but not more than \$40,000	\$370.90 plus 3.708% of the amount in excess of \$20,000	2375
More than \$40,000 but not more than \$80,000	\$1,112.50 plus 4.327% of the amount in excess of \$40,000	2376
More than \$80,000 but not more than \$100,000	\$2,843.30 plus 4.945% of the amount in excess of \$80,000	2377
More than \$100,000 but not more than \$200,000	\$3,832.30 plus 5.741% of the amount in excess of \$100,000	2378
More than \$200,000	\$9,573.30 plus 6.24% of the amount in excess of \$200,000	2379
(6) For taxable years beginning in 2011 or thereafter:		2380
OHIO ADJUSTED GROSS INCOME LESS		2381
EXEMPTIONS (INDIVIDUALS)		
OR		2382
MODIFIED OHIO		2383

TAXABLE INCOME (TRUSTS)		2384
OR		2385
OHIO TAXABLE INCOME (ESTATES)	TAX	2386
\$5,000 or less	.587%	2387
More than \$5,000 but not more than \$10,000	\$29.35 plus 1.174% of the amount in excess of \$5,000	2388
More than \$10,000 but not more than \$15,000	\$88.05 plus 2.348% of the amount in excess of \$10,000	2389
More than \$15,000 but not more than \$20,000	\$205.45 plus 2.935% of the amount in excess of \$15,000	2390
More than \$20,000 but not more than \$40,000	\$352.20 plus 3.521% of the amount in excess of \$20,000	2391
More than \$40,000 but not more than \$80,000	\$1,056.40 plus 4.109% of the amount in excess of \$40,000	2392
More than \$80,000 but not more than \$100,000	\$2,700.00 plus 4.695% of the amount in excess of \$80,000	2393
More than \$100,000 but not more than \$200,000	\$3,639.00 plus 5.451% of the amount in excess of \$100,000	2394
More than \$200,000	\$9,090.00 plus 5.925% of the amount in excess of \$200,000	2395
In July of each year, beginning in 2010, the tax commissioner shall adjust the income amounts prescribed in this division by multiplying the percentage increase in the gross domestic product deflator computed that year under section 5747.025 of the Revised Code by each of the income amounts resulting from the adjustment under this division in the preceding year, adding the resulting product to the corresponding income amount resulting from the adjustment in the preceding year, and rounding the resulting sum to the nearest multiple of fifty dollars. The tax commissioner also shall recompute each of the tax dollar amounts to the extent necessary to reflect the adjustment of the income amounts. The rates of taxation shall not be adjusted.		2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407
The adjusted amounts apply to taxable years beginning in the		2408

calendar year in which the adjustments are made. The tax 2409  
commissioner shall not make such adjustments in any year in which 2410  
the amount resulting from the adjustment would be less than the 2411  
amount resulting from the adjustment in the preceding year. 2412

(B) If the director of budget and management makes a 2413  
certification to the tax commissioner under division (B) of 2414  
section 131.44 of the Revised Code, the amount of tax as 2415  
determined under division (A) of this section shall be reduced by 2416  
the percentage prescribed in that certification for taxable years 2417  
beginning in the calendar year in which that certification is 2418  
made. 2419

(C) The levy of this tax on income does not prevent a 2420  
municipal corporation, a joint economic development zone created 2421  
under section 715.691, or a joint economic development district 2422  
created under section 715.70 or 715.71 or sections 715.72 to 2423  
715.81 of the Revised Code from levying a tax on income. 2424

(D) This division applies only to taxable years of a trust 2425  
beginning in 2002 or thereafter. 2426

(1) The tax imposed by this section on a trust shall be 2427  
computed by multiplying the Ohio modified taxable income of the 2428  
trust by the rates prescribed by division (A) of this section. 2429

(2) A ~~nonresident~~ resident trust may claim a credit against 2430  
the tax computed under division (D) of this section equal to the 2431  
lesser of (1) the tax paid to another state or the District of 2432  
Columbia on the ~~nonresident~~ resident trust's modified nonbusiness 2433  
income, other than the portion of the ~~nonresident~~ resident trust's 2434  
nonbusiness income that is qualifying investment income as defined 2435  
in section 5747.012 of the Revised Code, or (2) the effective tax 2436  
rate, based on modified Ohio taxable income, multiplied by the 2437  
~~nonresident~~ resident trust's modified nonbusiness income other 2438  
than the portion of the ~~nonresident~~ resident trust's nonbusiness 2439

income that is qualifying investment income. The credit applies 2440  
before any other applicable credits. 2441

(3) The credits enumerated in divisions (A)(1) to (13) of 2442  
section 5747.98 of the Revised Code do not apply to a trust 2443  
subject to division (D) of this section. Any credits enumerated in 2444  
other divisions of section 5747.98 of the Revised Code apply to a 2445  
trust subject to division (D) of this section. To the extent that 2446  
the trust distributes income for the taxable year for which a 2447  
credit is available to the trust, the credit shall be shared by 2448  
the trust and its beneficiaries. The tax commissioner and the 2449  
trust shall be guided by applicable regulations of the United 2450  
States treasury regarding the sharing of credits. 2451

(E) For the purposes of this section, "trust" means any trust 2452  
described in Subchapter J of Chapter 1 of the Internal Revenue 2453  
Code, excluding trusts that are not irrevocable as defined in 2454  
division (I)(3)(b) of section 5747.01 of the Revised Code and that 2455  
have no modified Ohio taxable income for the taxable year, 2456  
charitable remainder trusts, qualified funeral trusts and preneed 2457  
funeral contract trusts established pursuant to sections 4717.31 2458  
to 4717.38 of the Revised Code that are not qualified funeral 2459  
trusts, endowment and perpetual care trusts, qualified settlement 2460  
trusts and funds, designated settlement trusts and funds, and 2461  
trusts exempted from taxation under section 501(a) of the Internal 2462  
Revenue Code. 2463

**Sec. 5801.10.** (A) As used in this section, "creditor" means 2464  
any of the following: 2465

(1) A person holding a debt or security for a debt entered 2466  
into by a trustee on behalf of the trust; 2467

(2) A person holding a debt secured by one or more assets of 2468  
the trust; 2469

(3) A person having a claim against the trustee or the assets of the trust under section 5805.06 of the Revised Code;	2470 2471
(4) A person who has attached through legal process a beneficiary's interest in the trust.	2472 2473
(B) The parties to an agreement under this section shall be all of the following, or their representatives under the representation provisions of Chapter 5803. of the Revised Code, except that only the settlor and any trustee are required to be parties to an amendment of any revocable trust:	2474 2475 2476 2477 2478
(1) The settlor if living and if no adverse income or transfer tax results would arise from the settlor's participation;	2479 2480
(2) All beneficiaries;	2481
(3) All currently serving trustees;	2482
(4) Creditors, if their interest is to be affected by the agreement;	2483 2484
<u>(5) The attorney general if an agreement described in division (C)(7) of this section is being made and either of the following applies:</u>	2485 2486 2487
<u>(a) An organization with one or more purposes that are described in division (A) of section 5804.05 of the Revised Code is a beneficiary.</u>	2488 2489 2490
<u>(b) The trust is a charitable trust.</u>	2491
(C) The persons specified in division (B) of this section may by written instrument enter into an agreement with respect to any matter concerning the construction of, administration of, or distributions under the terms of the trust, the investment of income or principal held by the trustee, or other matters. The agreement may not effect a termination of the trust before the date specified for the trust's termination in the terms of the trust, change the interests of the beneficiaries in the trust	2492 2493 2494 2495 2496 2497 2498 2499

except as necessary to effect a modification described in division 2500  
(C)(5) ~~or~~, (6), or (7) of this section, or include terms and 2501  
conditions that could not be properly approved by the court under 2502  
Chapters 5801. to 5811. of the Revised Code or other applicable 2503  
law. The invalidity of any provision of the agreement does not 2504  
affect the validity of other provisions of the agreement. Matters 2505  
that may be resolved by a private settlement agreement include, 2506  
but are not limited to, all of the following: 2507

(1) Determining classes of creditors, beneficiaries, heirs, 2508  
next of kin, or other persons; 2509

(2) Resolving disputes arising out of the administration or 2510  
distribution under the terms of the trust, including disputes over 2511  
the construction of the language of the trust instrument or 2512  
construction of the language of other writings that affect the 2513  
terms of the trust; 2514

(3) Granting to the trustee necessary or desirable powers not 2515  
granted in the terms of the trust or otherwise provided by law, to 2516  
the extent that those powers either are not inconsistent with the 2517  
express provisions or purposes of the terms of the trust or, if 2518  
inconsistent with the express provisions or purposes of the terms 2519  
of the trust, are necessary for the due administration of the 2520  
terms of the trust; 2521

(4) Modifying the terms of the trust, if the modification is 2522  
not inconsistent with any dominant purpose or objective of the 2523  
trust; 2524

(5) Modifying the terms of the trust in the manner required 2525  
to qualify the gift under the terms of the trust for the 2526  
charitable estate or gift tax deduction permitted by federal law, 2527  
including the addition of mandatory governing instrument 2528  
requirements for a charitable remainder trust as required by the 2529  
Internal Revenue Code and regulations promulgated under it in any 2530

case in which all parties interested in the trust have submitted 2531  
written agreements to the proposed changes or written disclaimer 2532  
of interest; 2533

(6) Modifying the terms of the trust in the manner required 2534  
to qualify any gift under the terms of the trust for the estate 2535  
tax marital deduction available to noncitizen spouses, including 2536  
the addition of mandatory governing instrument requirements for a 2537  
qualified domestic trust under section 2056A of the Internal 2538  
Revenue Code and regulations promulgated under it in any case in 2539  
which all parties interested in the trust have submitted written 2540  
agreements to the proposed changes or written disclaimer of 2541  
interest; 2542

(7)(a) Modifying the terms of a trust that do not refer to 2543  
the repeal of the federal estate tax or federal 2544  
generation-skipping transfer tax and the effect of that repeal on 2545  
the disposition of the trust if all of the following apply: 2546

(i) One or both of those taxes do not apply as of a 2547  
decedent's death by reason of their repeal. 2548

(ii) The terms of the trust contain one or more federal 2549  
estate tax terms or a division of trust property based on federal 2550  
estate tax imposition or contains one or more federal 2551  
generation-skipping transfer tax terms or a division of trust 2552  
property based on federal generation-skipping transfer tax 2553  
imposition. 2554

(iii) The parties are entering into the agreement in order to 2555  
give effect to the settlor's intent in interpreting the effect of 2556  
one or more of the federal estate tax terms or a division of trust 2557  
property based on federal estate tax imposition or of one or more 2558  
federal generation-skipping transfer tax terms or a division of 2559  
trust property based on federal generation-skipping transfer tax 2560  
imposition, whether or not that agreement alters the impact of 2561

division (B) of section 5815.49 of the Revised Code that would 2562  
have applied absent the agreement. 2563

(b) An action of the congress of the United States following 2564  
the death of a decedent that purports to enact federal estate tax 2565  
or federal generation-skipping transfer tax retroactively so that 2566  
it would purport to apply as of the death of the decedent will not 2567  
prevent the condition set forth in division (C)(7)(a)(i) of this 2568  
section from being met. However, the parties to the agreement may 2569  
provide for the impact of that retroactive legislation. 2570

(c) As used in division (C)(7) of this section, "federal 2571  
estate tax term," "division of trust property based on federal 2572  
estate tax imposition," "federal generation-skipping transfer tax 2573  
term," and "division of trust property based on federal 2574  
generation-skipping transfer tax imposition" have the same 2575  
meanings as in section 5815.49 of the Revised Code. 2576

(8) Resolving any other matter that arises under Chapters 2577  
5801. to 5811. of the Revised Code. 2578

(D) No agreement shall be entered into under this section 2579  
affecting the rights of a creditor without the creditor's consent 2580  
or affecting the collection rights of federal, state, or local 2581  
taxing authorities. 2582

(E) Any agreement entered into under this section that 2583  
complies with the requirements of division (C) of this section 2584  
shall be final and binding on the trustee, the settlor if living, 2585  
all beneficiaries, creditors who are parties to the agreement, and 2586  
their heirs, successors, and assigns. 2587

(F) Notwithstanding anything in this section, in division (D) 2588  
of section 5803.03 of the Revised Code, or in any other rule of 2589  
law to the contrary, a trustee serving under the terms of the 2590  
trust shall only represent its own individual or corporate 2591  
interests in negotiating or entering into an agreement subject to 2592



this section. No trustee serving under the terms of the trust 2593  
shall be considered to represent any settlor, beneficiary, or the 2594  
interests of any settlor or beneficiary in negotiating or entering 2595  
into an agreement subject to this section. 2596

(G) Any party to a private settlement agreement entered into 2597  
under this section may request the court to approve the agreement, 2598  
to determine whether the representation as provided in Chapter 2599  
5803. of the Revised Code was adequate, and to determine whether 2600  
the agreement contains terms and conditions the court could have 2601  
properly approved. 2602

(H) If an agreement entered into under this section contains 2603  
a provision requiring binding arbitration of any disputes arising 2604  
under the agreement, the provision is enforceable. 2605

(I) Nothing in this section affects any of the following: 2606

(1) The right of a beneficiary to disclaim under section 2607  
5815.36 of the Revised Code; 2608

(2) The termination or modification of a trust under section 2609  
5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16 2610  
of the Revised Code; 2611

(3) The ability of a trustee to divide or consolidate a trust 2612  
under section 5804.17 of the Revised Code; 2613

(4) The power of the trustee to make distributions pursuant 2614  
to section 5808.18 of the Revised Code. 2615

(J) Nothing in this section restricts or limits the 2616  
jurisdiction of any court to dispose of matters not covered by 2617  
agreements under this section or to supervise the acts of trustees 2618  
appointed by that court. 2619

(K) This section shall be liberally construed to favor the 2620  
validity and enforceability of agreements entered into under it. 2621

(L) A trustee serving under the trust instrument is not 2622

liable to any third person arising from any loss due to that 2623  
trustee's actions or inactions taken or omitted in good faith 2624  
reliance on the terms of an agreement entered into under this 2625  
section. 2626

(M) ~~This~~ Subject to divisions (B)(5) and (C)(7) of this 2627  
section, this section does not apply to any of the following: 2628

(1) A charitable trust that has one or more charitable 2629  
organizations as qualified beneficiaries; 2630

(2) A charitable trust the terms of which authorize or direct 2631  
the trustee to distribute trust income or principal to one or more 2632  
charitable organizations to be selected by the trustee, or for one 2633  
or more charitable purposes described in division (A) of section 2634  
5804.05 of the Revised Code, if any of the following apply: 2635

(a) The distributions may be made on the date that an 2636  
agreement under this section would be entered into. 2637

(b) The distributions could be made on the date that an 2638  
agreement under this section would be entered into if the 2639  
interests of the current beneficiaries of the trust terminated on 2640  
that date, but the termination of those interests would not cause 2641  
the trust to terminate. 2642

(c) The distributions could be made on the date that an 2643  
agreement under this section would be entered into if the trust 2644  
terminated on that date. 2645

**Sec. 5804.12.** (A) The court may modify the administrative or 2646  
dispositive terms of a trust or terminate the trust if because of 2647  
circumstances not anticipated by the settlor modification or 2648  
termination will further the purposes of the trust. To the extent 2649  
practicable, the court shall make the modification in accordance 2650  
with the settlor's probable intention. 2651

(B) The court may modify the administrative terms of a trust 2652

if continuation of the trust on its existing terms would be 2653  
impracticable or impair the trust's administration. 2654

(C) Upon termination of a trust under this section, the 2655  
trustee shall distribute the trust property in a manner consistent 2656  
with the purposes of the trust. 2657

(D)(1) The court may modify or interpret the terms of a 2658  
trust, including, but not limited to, a charitable trust or a 2659  
trust having as a beneficiary an organization with one or more 2660  
purposes that are described in division (A) of section 5804.05 of 2661  
the Revised Code, that contains a federal estate tax term or a 2662  
division of trust property based on federal estate tax imposition, 2663  
or contains a federal generation-skipping transfer tax term or a 2664  
division of trust property based on federal generation-skipping 2665  
transfer tax imposition, but does not refer to the inapplicability 2666  
of the federal estate tax or federal generation-skipping transfer 2667  
tax by reason of their repeal and the effect of the 2668  
inapplicability on the disposition of the trust. 2669

(2) As used in division (D)(1) of this section, "federal 2670  
estate tax term," "division of trust property based on federal 2671  
estate tax imposition," "federal generation-skipping transfer tax 2672  
term," and "division of trust property based on federal 2673  
generation-skipping transfer tax imposition" have the same 2674  
meanings as in section 5815.49 of the Revised Code. 2675

**Sec. 5808.14.** (A) The judicial standard of review for 2676  
discretionary trusts is that the trustee shall exercise a 2677  
discretionary power reasonably, in good faith, and in accordance 2678  
with the terms and purposes of the trust and the interests of the 2679  
beneficiaries, except that with respect to distribution decisions 2680  
a reasonableness standard shall not be applied to the exercise of 2681  
discretion by the trustee of a wholly discretionary trust. The 2682  
greater the grant of discretion by the settlor to the trustee, the 2683

broader the range of permissible conduct by the trustee in 2684  
exercising it. 2685

(B) Subject to division (D) of this section, and unless the 2686  
terms of the trust expressly indicate that a rule in this division 2687  
does not apply: 2688

(1) A person other than a settlor who is a beneficiary and 2689  
trustee of a trust that confers on the trustee a power to make 2690  
discretionary distributions to or for the trustee's personal 2691  
benefit may exercise the power only in accordance with an 2692  
ascertainable standard. 2693

(2) A trustee may not exercise a power to make discretionary 2694  
distributions to satisfy a legal obligation of support that the 2695  
trustee personally owes another person. 2696

(C) A power whose exercise is limited or prohibited by 2697  
division (B) of this section may be exercised by a majority of the 2698  
remaining trustees whose exercise of the power is not so limited 2699  
or prohibited. If the power of all trustees is so limited or 2700  
prohibited, the court may appoint a special fiduciary with 2701  
authority to exercise the power. 2702

(D) Division (B) of this section does not apply to any of the 2703  
following: 2704

(1) A power held by the settlor's spouse who is the trustee 2705  
of a trust for which a marital deduction, as defined in section 2706  
2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously 2707  
allowed; 2708

(2) Any trust during any period that the trust may be revoked 2709  
or amended by its settlor; 2710

(3) A trust if contributions to the trust qualify for the 2711  
annual exclusion under section 2503(c) of the Internal Revenue 2712  
Code. 2713

(E) For purposes of division (A) of this section, a trustee who acts reasonably and in good faith in exercising the power to distribute trust income or principal to the trustee of a second trust in accordance with division (A) or (B) of section 5808.18 of the Revised Code is presumed to have acted in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

**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.

(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.

(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.

(D) If a beneficiary who was entitled to receive a distribution is deceased, the beneficiary's death did not terminate the beneficiary's right to receive the distribution, and an administration of the beneficiary's estate is open, the trustee shall make the distribution to the personal representative of the beneficiary's estate. If a beneficiary who was entitled to receive

a distribution is deceased, the beneficiary's death did not 2745  
terminate the beneficiary's right to receive the distribution, and 2746  
an administration of the beneficiary's estate is not open, the 2747  
trustee, without liability, may make the distribution directly to 2748  
the beneficiary's heirs or devisees without requiring the opening 2749  
or re-opening of estate administration proceedings if the trustee 2750  
does not know of an adverse claim to the distribution and one of 2751  
the following applies: 2752

(1) The beneficiary's estate was administered as an intestate 2753  
estate in the jurisdiction in which the beneficiary was domiciled 2754  
at death, and the trustee does both of the following: 2755

(a) Distributes the personal property included in the 2756  
distribution to the person or persons who were determined to be 2757  
the heirs of the beneficiary in that administration, in the same 2758  
manner as the personal property would have been distributed if it 2759  
had been part of the beneficiary's intestate estate; 2760

(b) Distributes the real property included in the 2761  
distribution to the person or persons the trustee reasonably 2762  
determines were the beneficiary's heirs under the statutes of 2763  
descent and distribution, in effect at the time of the 2764  
beneficiary's death, of the jurisdiction or jurisdictions in which 2765  
the real property is located. 2766

(2) The beneficiary's estate was administered as a testate 2767  
estate in the jurisdiction in which the deceased beneficiary was 2768  
domiciled at death, and the trustee does both of the following: 2769

(a) Distributes the personal property included in the 2770  
distribution to the residuary devisee or devisees under the 2771  
beneficiary's will, in the same manner as the personal property 2772  
would have been distributed in that administration if it had been 2773  
part of the beneficiary's testate estate; 2774

(b) Distributes the real property included in the 2775

distribution to the person or persons the trustee reasonably 2776  
determines would have received the real property under the law of 2777  
the jurisdiction or jurisdictions in which the real property is 2778  
located. 2779

(3) Division (D)(1) or (2) of this section does not apply, 2780  
the beneficiary's death occurred at least six months before the 2781  
trustee makes the distribution, and all of the following apply: 2782

(a) The trustee determines that the beneficiary had created a 2783  
trust during the beneficiary's life that remained in existence at 2784  
the beneficiary's death. 2785

(b) The beneficiary had executed a will that the trustee 2786  
reasonably determines would have been admitted to probate if it 2787  
had been offered for probate. 2788

(c) The beneficiary's will described in division (D)(3)(b) of 2789  
this section devised the residue of the beneficiary's estate to 2790  
the trustee of the trust described in division (D)(3)(a) of this 2791  
section to be held under the terms of that trust. 2792

(d) The trustee makes the distribution to the trustee of the 2793  
trust described in division (D)(3)(a) of this section. 2794

(4) Division (D)(1), (2), or (3) of this section does not 2795  
apply, the beneficiary's death occurred at least six months before 2796  
the trustee makes the distribution, and all of the following 2797  
apply: 2798

(a) The trustee, exercising reasonable diligence, determines 2799  
that an administration of the beneficiary's estate has not been 2800  
commenced in the jurisdiction in which the trustee reasonably 2801  
determines the beneficiary was domiciled at death. 2802

(b) The trustee does not know of an administration of the 2803  
beneficiary's estate having been commenced in any other 2804  
jurisdiction. 2805

(c) The trustee does not know of a purported last will and testament of the beneficiary. 2806  
2807

(d) The trustee does both of the following: 2808

(i) Distributes the personal property included in the distribution to the person or persons the trustee reasonably determines were the beneficiary's heirs under the statutes of descent and distribution, in effect at the time of the beneficiary's death, of the jurisdiction in which the trustee reasonably determines the beneficiary was domiciled at death; 2809  
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(ii) Distributes the real property included in the distribution to the person or persons the trustee reasonably determines were the beneficiary's heirs under the statutes of descent and distribution, in effect at the time of the beneficiary's death, of the jurisdiction or jurisdictions in which the real property is located. 2815  
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(E) The trustee's protection from liability for making distributions under division (D) of this section has no effect on the ability of third parties to pursue claims against the recipients of those distributions. 2821  
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**Sec. 5808.18.** (A) Unless the trust instrument expressly provides otherwise and subject to the limitations set forth in this section, all of the following apply: 2825  
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(1) If a trustee of a trust, referred to in this section as "first trust," has absolute power under the terms of the first trust to make distributions of principal to one or more current beneficiaries, that trustee may exercise that power by distributing all or any part of the principal subject to the power, and all or any part of any income that is not otherwise currently required to be distributed, to the trustee of another trust, referred to in this section as "second trust," that is for 2828  
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the benefit of one or more current beneficiaries of the first 2836  
trust. The second trust may be a trust under the trust instrument 2837  
for the first trust or under a different governing instrument, 2838  
including a governing instrument created by the trustee of the 2839  
first trust. A trustee of the first trust who is authorized to 2840  
make distributions to the trustee of a second trust pursuant to 2841  
division (A) of this section may do so at any time, whether or not 2842  
the trustee of the first trust would otherwise have made a 2843  
distribution at that time to, or for the benefit of, any 2844  
beneficiary pursuant to the terms of the first trust. 2845

(2) In determining whether the trustee has absolute power to 2846  
make distributions of principal to any current beneficiary and the 2847  
identity of the current beneficiaries, all of the following apply: 2848

(a) An absolute power to distribute principal includes any 2849  
power to make distributions of principal that is not limited by 2850  
reasonably definite standards or ascertainable standards, whether 2851  
or not the word "absolute" is used in the trust instrument. 2852

(b) A power to make distributions of principal for purposes 2853  
that include best interests, welfare, comfort or happiness, or 2854  
words of similar import, if not otherwise limited by reasonably 2855  
definite standards or ascertainable standards, constitutes an 2856  
absolute power not limited by reasonably definite standards or 2857  
ascertainable standards, regardless of any requirement to take 2858  
into account other resources of the current beneficiary or 2859  
beneficiaries to whom those distributions may be made. 2860

(c) If the current beneficiaries of the first trust are 2861  
defined, in whole or in part, as a class of persons, that class 2862  
includes any person who falls within that class of persons after 2863  
the distribution to the second trust. 2864

(d) A power to make distributions for the benefit of a 2865  
beneficiary is considered a power to make distributions to that 2866

beneficiary. 2867

(3) If property is distributed pursuant to the authority 2868  
described in division (A) of this section, the governing 2869  
instrument for the second trust, without limitation, may do either 2870  
of the following: 2871

(a) Grant a power of appointment to one or more of the 2872  
beneficiaries for whose benefit the property was so distributed, 2873  
including a power to appoint trust property to the power holder, 2874  
the power holder's creditors, the power holder's estate, the 2875  
creditors of the power holder's estate, or any other person, 2876  
whether or not that person is a beneficiary of the first trust or 2877  
the second trust; 2878

(b) Provide that, at a time or upon an event specified in 2879  
that governing instrument, the remaining trust property shall 2880  
thereafter be held for the benefit of the beneficiaries of the 2881  
first trust upon terms and conditions that are substantially 2882  
identical to the terms and conditions of the trust instrument for 2883  
the first trust, except that any current beneficiary or 2884  
beneficiaries for whose benefit the property could have been, but 2885  
was not, so distributed may be excluded from having any beneficial 2886  
interest in the second trust. 2887

(4) For purposes of division (A)(3) of this section: 2888

(a) "Terms and conditions" refer only to those terms and 2889  
conditions that govern the interests of the beneficiaries. 2890

(b) Charitable organizations that are not expressly 2891  
designated in the terms of the first trust to receive 2892  
distributions but to which the trustee of the first trust, in the 2893  
discretion of the trustee, or in the discretion of any other 2894  
person directing the trustee and acting in a fiduciary capacity, 2895  
may at any time make a distribution, are considered beneficiaries 2896  
of the first trust. 2897

(B) Unless the trust instrument expressly provides otherwise 2898  
and subject to the limitations set forth in this section, a 2899  
trustee of a first trust who has power, other than absolute power 2900  
as described in division (A) of this section, under the terms of 2901  
the first trust to make distributions of principal to one or more 2902  
current beneficiaries may exercise that power by distributing all 2903  
or any part of the principal subject to the power, and all or any 2904  
part of any income that is not otherwise required to be 2905  
distributed, to the trustee of a second trust. The second trust 2906  
may be a trust under the trust instrument for the first trust or 2907  
under a different governing instrument, including a governing 2908  
instrument created by the trustee of the first trust. The power 2909  
described in this division may be exercised whether or not there 2910  
is a current need to distribute trust principal under any standard 2911  
contained in the first trust. The exercise of a trustee's power 2912  
under this division is valid only if the governing instrument for 2913  
the second trust does not materially change the interests of the 2914  
beneficiaries of the first trust. For purposes of this division, a 2915  
power to make distributions for the benefit of a beneficiary shall 2916  
be considered a power to make distributions to that beneficiary. 2917

(C) The exercise of the power to make distributions to a 2918  
second trust under division (A) or (B) of this section is subject 2919  
to the following additional limitations: 2920

(1)(a) The distribution to the trustee of the second trust 2921  
shall not result in the reduction, limitation, or modification of 2922  
any of the following rights or interests of a beneficiary of the 2923  
first trust if the right or interest has come into effect with 2924  
respect to the beneficiary: 2925

(i) The current right to a mandatory distribution of income 2926  
or principal of the first trust; 2927

(ii) The current mandatory annuity or unitrust interest in 2928  
the property of the first trust; 2929

(iii) The right annually to withdraw a percentage of the 2930  
value of the first trust or a specified dollar amount. 2931

(b) For purposes of division (C)(1)(a)(i) of this section, a 2932  
beneficiary's current right to a distribution of income is not 2933  
considered to be mandatory if, under the terms of the first trust, 2934  
current distributions of principal may be made to any person other 2935  
than that current beneficiary. 2936

(2) If any transfer to the first trust qualified, or if not 2937  
for the provisions of division (A) or (B) of this section would 2938  
have qualified, for a marital or charitable deduction for purposes 2939  
of any federal income, gift, or estate tax under the Internal 2940  
Revenue Code, or for purposes of any state income, gift, estate, 2941  
or inheritance tax, the governing instrument for the second trust 2942  
shall not include or omit any term that, if included in or omitted 2943  
from the trust instrument for the first trust, would have 2944  
prevented the first trust from qualifying for that deduction, or 2945  
would have reduced the amount of the deduction, under the same 2946  
provisions of the Internal Revenue Code or under the same 2947  
provisions of the applicable state law under which the transfer to 2948  
the first trust so qualified. 2949

(3) If any transfer to the first trust has been treated, or 2950  
if not for the provisions of division (A) or (B) of this section 2951  
would have been treated, as a gift qualifying for the exclusion 2952  
from the gift tax described in section 2503(b) of the Internal 2953  
Revenue Code, the governing instrument for the second trust shall 2954  
not include or omit any term that, if included in or omitted from 2955  
the trust instrument for the first trust, would have prevented any 2956  
gift to the first trust from so qualifying under the same 2957  
provisions of section 2503 of the Internal Revenue Code under 2958  
which the transfer to the first trust so qualified. 2959

(4) If the assets of the first trust include any shares of 2960  
stock in an S corporation, as defined in section 1361 of the 2961

Internal Revenue Code, and the first trust is, or if not for the 2962  
provisions of division (A) or (B) of this section would be, a 2963  
permitted shareholder under any provision of section 1361 of the 2964  
Internal Revenue Code, the governing instrument for the second 2965  
trust shall not include or omit any term that, if included in or 2966  
omitted from the trust instrument for the first trust, would have 2967  
prevented the first trust from qualifying as a permitted 2968  
shareholder of shares of stock in an S corporation under the same 2969  
provisions of section 1361 of the Internal Revenue Code under 2970  
which the first trust so qualified. 2971

(5) If any transfer to the first trust has been treated, or 2972  
if not for the provisions of division (A) or (B) of this section 2973  
would have been treated, as a gift qualifying for a zero inclusion 2974  
ratio for purposes of the federal generation-skipping transfer tax 2975  
under section 2642(c) of the Internal Revenue Code, the governing 2976  
instrument for the second trust shall not include or omit any term 2977  
that, if included in or omitted from the trust instrument for the 2978  
first trust, would have prevented the transfer to the first trust 2979  
from so qualifying. 2980

(6) If the assets of the first trust include any interest 2981  
subject to the minimum distribution rules of section 401(a)(9) of 2982  
the Internal Revenue Code and the treasury regulations issued 2983  
under that section, the governing instrument for the second trust 2984  
shall not include or omit any term that, if included in or omitted 2985  
from the trust instrument for the first trust, would have 2986  
shortened the maximum distribution period otherwise allowable 2987  
under section 401(a)(9) of the Internal Revenue Code and the 2988  
treasury regulations with respect to that interest under the first 2989  
trust. 2990

(7)(a) As used in division (C)(7) of this section, "tax 2991  
benefit" means any federal or state tax deduction, exemption, 2992  
exclusion, or other tax benefit not otherwise listed in division 2993

(C) of this section. 2994

(b) If the trust instrument for the first trust expressly indicates an intention to qualify for any tax benefit or if the terms of the trust instrument for the first trust are clearly designed to enable the first trust to qualify for a tax benefit, and if the first trust did qualify, or if not for the provisions of division (A) or (B) of this section would have qualified, for any tax benefit, the governing instrument for the second trust shall not include or omit any term that, if included in or omitted from the trust instrument for the first trust, would have prevented the first trust from qualifying for that tax benefit. 2995  
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(8) The distribution to the trustee of the second trust shall not result in any of the following: 3005  
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(a) An increase in, or a change in the method of determining, the compensation of the trustee unless the increase in, or change in the method of determining, that compensation has been consented to by all of the persons, other than the trustee of the second trust, who are current beneficiaries of the second trust or is approved by the court having jurisdiction over the trust. However, an increase in compensation of the trustee arising solely because the duration of the second trust is longer than the duration of the first trust is not considered an increase in, or a change in the method of determining, the compensation of the trustee. 3007  
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(b) A reduction in the standard of care applicable to the actions of the trustee of the first trust or the second trust or an exoneration of the trustee of the first trust or the second trust from liability for actions taken in bad faith or with willful disregard of the duties of either trustee, including by increasing the extent to which the trustee is entitled to indemnification from the trust, as provided in the terms of the first trust and under any law of this state. 3017  
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(D) The exercise of the power to distribute trust income or principal to the trustee of a second trust under division (A) or (B) of this section shall be by an instrument in writing, signed by the trustee of the first trust and filed with the records of the first trust.

(E) The power to distribute trust income or principal to the trustee of a second trust under division (A) or (B) of this section shall not be exercised in a manner contrary to any provision of section 2131.08 of the Revised Code to the extent applicable to the first trust, and after applying the provisions of division (B) of section 2131.09 of the Revised Code to the extent applicable to the first trust. Solely for purposes of applying under this division the provisions of section 2131.08 and division (B) of section 2131.09 of the Revised Code, the exercise of the power to distribute trust income or principal to the trustee of a second trust under division (A) or (B) of this section is considered the exercise of a power of appointment other than a general power of appointment within the meaning of division (B)(4) of section 2131.09 of the Revised Code.

(F) The trustee of the first trust shall notify all current beneficiaries of the first trust, in writing, of the intended distribution to the trustee of a second trust pursuant to division (A) or (B) of this section not later than thirty days prior to that distribution. The distribution may be made prior to the expiration of thirty days from the date on which that notice is given to all current beneficiaries of the first trust if all of those current beneficiaries waive the thirty-day period from receipt of the notice in which the distribution is to be made. The trustee's giving of notice of an intended distribution under this division or the waiver or expiration of that thirty-day period from receipt of the notice do not limit the right of any beneficiary to object to the exercise of the trustee's power to

distribute trust principal as provided in any other applicable 3057  
provision of the Ohio Trust Code. 3058

(G) Any person, other than the trustee, who has a power 3059  
exercisable in a fiduciary capacity to direct the trustee to make 3060  
any distribution of principal that, if held by the trustee, would 3061  
be a distribution as described in division (A) or (B) of this 3062  
section, may exercise that power by directing the trustee to make 3063  
a distribution under either division (A) or (B) of this section, 3064  
whichever would be applicable if that person were the trustee, 3065  
subject to all of the limitations described in this section that 3066  
apply to a trustee's exercise of that power. 3067

(H) The exercise of the power to distribute trust income or 3068  
principal to the trustee of a second trust under division (A) or 3069  
(B) of this section is not prohibited by a spendthrift clause or a 3070  
provision in the trust instrument that prohibits the amendment or 3071  
revocation of the trust. 3072

(I) For purposes of division (A) of section 5808.14 of the 3073  
Revised Code, a trustee who acts reasonably and in good faith in 3074  
exercising the power to distribute trust income or principal to 3075  
the trustee of a second trust in accordance with division (A) or 3076  
(B) of this section, is presumed to have acted in accordance with 3077  
the terms and purposes of the trust and the interests of the 3078  
beneficiaries. 3079

(J) Nothing in this section is intended to create or imply a 3080  
duty to exercise a power to distribute income or principal of a 3081  
trust, and no inference of impropriety shall arise as a result of 3082  
a trustee not exercising the power to make any distribution to the 3083  
trustee of a second trust under division (A) or (B) of this 3084  
section. 3085

(K) If the first trust is a testamentary trust established 3086  
under the will of a testator who was domiciled in this state at 3087



the time of the testator's death, the power to distribute trust 3088  
income or principal to the trustee of a second trust under 3089  
division (A) or (B) of this section may be exercised only if 3090  
approved by the court, if any, that has jurisdiction over the 3091  
testamentary trust. 3092

(L) Divisions (A) and (B) of this section do not apply to 3093  
either of the following: 3094

(1) Any trust during any period that the trust may be revoked 3095  
or amended by its settlor; 3096

(2) Any trustee with respect to any portion of the first 3097  
trust as to which that trustee is also the settlor. 3098

(M) If, and to the extent that, a trustee makes any 3099  
distribution pursuant to division (A) or (B) of this section to 3100  
the trustee of a second trust, then for purposes of division (W) 3101  
of section 5801.01 of the Revised Code, the governing instrument 3102  
for the second trust is considered to be an amendment of the trust 3103  
instrument signed by the settlor of the first trust, even if that 3104  
governing instrument is signed by a person other than that 3105  
settlor. 3106

(N) Nothing in this section shall be construed to limit the 3107  
power of any trustee to distribute trust property in further 3108  
trust, whether that power arises under the terms of the trust 3109  
instrument, under any other section of Title LVIII of the Revised 3110  
Code, under any other statute, or under the common law. The terms 3111  
of a trust instrument may do any of the following: 3112

(1) Confer upon the trustee the power to make any 3113  
distribution, or confer upon any other person acting in a 3114  
fiduciary capacity the power to direct the trustee to make any 3115  
distribution, in further trust that are broader or more limited 3116  
than, or that conflict with, the provisions of this section; 3117

(2) Provide for different requirements for notice to 3118

beneficiaries of the trust of the trustee's exercise of the power 3119  
conferred under the terms of the trust instrument or described in 3120  
division (A) or (B) of this section; 3121

(3) Waive any requirement of notice to the beneficiaries of 3122  
the trust of the trustee's exercise of the power conferred under 3123  
the terms of the trust instrument or described in division (A) or 3124  
(B) of this section; 3125

(4) Otherwise include any terms and conditions governing the 3126  
distribution in further trust that the settlor of the trust 3127  
determines. 3128

(O)(1) Division (A) of this section is intended to be a 3129  
codification of the common law of this state in effect prior to 3130  
the enactment of this section and applies to distributions, 3131  
whenever made, from any trust that is governed by the law of this 3132  
state or that has its principal place of administration in this 3133  
state, whether that trust was created before, on, or after the 3134  
effective date of this section. 3135

(2) Division (B) of this section applies to distributions 3136  
made on or after the effective date of this section from any trust 3137  
that is governed by the law of this state or that has its 3138  
principal place of administration in this state, whether that 3139  
trust was created before, on, or after the effective date of this 3140  
section. 3141

**Sec. 5808.19.** (A) As used in this section, unless otherwise 3142  
provided in any other provision in this section: 3143

(1) "Beneficiary" means the beneficiary of a future interest 3144  
and includes a class member if the future interest is in the form 3145  
of a class gift. 3146

(2) "Class member" means an individual who fails to survive 3147  
the distribution date by at least one hundred twenty hours but who 3148

would have taken under a future interest in the form of a class gift had the individual survived the distribution date by at least one hundred twenty hours. 3149  
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(3) "Descendant of a grandparent of the transferor" means an individual who would qualify as a descendant of a grandparent of the transferor under the rules of construction that would apply to a class gift under the transferor's will to the descendants of the transferor's grandparent. 3152  
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(4) "Distribution date," with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but may occur at a time during the course of a day. 3157  
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(5) "Future interest" means an alternative future interest or a future interest in the form of a class gift. 3162  
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(6) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or a transfer to an existing trust, or by an exercise of a power of appointment to an existing trust, that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust. 3164  
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(7) "Per stirpes" means that the shares of the descendants of a beneficiary who does not survive the distribution date by at least one hundred twenty hours are determined in the same way they would have been determined under division (A) of section 2105.06 of the Revised Code if the beneficiary had died intestate and unmarried on the distribution date. 3170  
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(8) "Revocable trust" means a trust that was revocable immediately before the settlor's death by the settlor alone or by the settlor with the consent of any person other than a person holding an adverse interest. A trust's characterization as 3176  
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revocable is not affected by the settlor's lack of capacity to 3180  
exercise the power of revocation, regardless of whether an agent 3181  
of the settlor under a power of attorney, or a guardian of the 3182  
person or estate of the settlor, was serving. 3183

(9) "Stepchild" means a child of the surviving, deceased, or 3184  
former spouse of the transferor and not of the transferor. 3185

(10) "Transferor" means any of the following: 3186

(a) The donor and donee of a power of appointment, if the 3187  
future interest was in property as a result of the exercise of a 3188  
power of appointment; 3189

(b) The testator, if the future interest was devised by will; 3190

(c) The settlor, if the future interest was conveyed by inter 3191  
vivos trust. 3192

(B)(1)(a) As used in "surviving descendants" in divisions 3193  
(B)(2)(b)(i) and (ii) of this section, "descendants" means the 3194  
descendants of a deceased beneficiary or class member who would 3195  
take under a class gift created in the trust. 3196

(b) As used in divisions (B)(2)(b)(i) and (ii) of this 3197  
section, "surviving beneficiaries" or "surviving descendants" 3198  
means beneficiaries or descendants, whichever is applicable, who 3199  
survive the distribution date by at least one hundred twenty 3200  
hours. 3201

(2) Unless a contrary intent appears in the instrument 3202  
creating a future interest under the terms of a trust, each of the 3203  
following applies: 3204

(a) A future interest under the terms of a trust is 3205  
contingent on the beneficiary's surviving the distribution date by 3206  
at least one hundred twenty hours. 3207

(b) If a beneficiary of a future interest under the terms of 3208  
a trust does not survive the distribution date by at least one 3209

hundred twenty hours and if the beneficiary is a grandparent of 3210  
the transferor, a descendant of a grandparent of the transferor, 3211  
or a stepchild of the transferor, either of the following applies: 3212

(i) If the future interest is not in the form of a class gift 3213  
and the deceased beneficiary leaves surviving descendants, a 3214  
substitute gift is created in the beneficiary's surviving 3215  
descendants. The surviving descendants take, per stirpes, the 3216  
property to which the beneficiary would have been entitled had the 3217  
beneficiary survived the distribution date by at least one hundred 3218  
twenty hours. 3219

(ii) If the future interest is in the form of a class gift, 3220  
other than a future interest to "issue," "descendants," "heirs of 3221  
the body," "heirs," "next of kin," "relatives," or "family," or a 3222  
class described by language of similar import, a substitute gift 3223  
is created in the surviving descendants of the deceased 3224  
beneficiary or beneficiaries. The property to which the 3225  
beneficiaries would have been entitled had all of them survived 3226  
the distribution date by at least one hundred twenty hours passes 3227  
to the surviving beneficiaries and the surviving descendants of 3228  
the deceased beneficiaries. Each surviving beneficiary takes the 3229  
share to which the surviving beneficiary would have been entitled 3230  
had the deceased beneficiaries survived the distribution date by 3231  
at least one hundred twenty hours. Each deceased beneficiary's 3232  
surviving descendants who are substituted for the deceased 3233  
beneficiary take, per stirpes, the share to which the deceased 3234  
beneficiary would have been entitled had the deceased beneficiary 3235  
survived the distribution date by at least one hundred twenty 3236  
hours. For purposes of division (B)(2)(b)(ii) of this section, 3237  
"deceased beneficiary" means a class member who failed to survive 3238  
the distribution date by at least one hundred twenty hours and 3239  
left one or more surviving descendants. 3240

(C) For purposes of this section, each of the following 3241

applies: 3242

(1) Describing a class of beneficiaries as "surviving" or 3243  
"living," without specifying when the beneficiaries must be 3244  
surviving or living, such as a gift "for my spouse for life, then 3245  
to my surviving (or living) children," is not, in the absence of 3246  
other language in the trust instrument or other evidence to the 3247  
contrary, a sufficient indication of an intent to negate the 3248  
application of division (B)(2)(b) of this section. 3249

(2) Subject to division (C)(1) of this section, attaching 3250  
words of survivorship to a future interest under the terms of a 3251  
trust, such as "for my spouse for life, then to my children who 3252  
survive my spouse" or "for my spouse for life, then to my 3253  
then-living children" is, in the absence of other language in the 3254  
trust instrument or other evidence to the contrary, a sufficient 3255  
indication of an intent to negate the application of division 3256  
(B)(2)(b) of this section. Words of survivorship under division 3257  
(C)(2) of this section include words of survivorship that relate 3258  
to the distribution date or to an earlier or an unspecified time, 3259  
whether those words of survivorship are expressed as 3260  
condition-precedent, condition-subsequent, or in any other form. 3261

(3) A residuary clause in a will is not a sufficient 3262  
indication of an intent that is contrary to the application of 3263  
this section, whether or not the will specifically provides that 3264  
lapsed or failed devises are to pass under the residuary clause. A 3265  
residuary clause in a revocable trust instrument is not a 3266  
sufficient indication of an intent that is contrary to the 3267  
application of this section unless the distribution date is the 3268  
date of the settlor's death and the revocable trust instrument 3269  
specifically provides that upon lapse or failure the nonresiduary 3270  
devise, or nonresiduary devises in general, pass under the 3271  
residuary clause. 3272

(D) If, after the application of divisions (B) and (C) of 3273

this section there is no surviving taker of the property, and a 3274  
contrary intent does not appear in the instrument creating the 3275  
future interest, the property passes in the following order: 3276

(1) If the future interest was created by the exercise of a 3277  
power of appointment, the property passes under the donor's 3278  
gift-in-default clause, if any, which clause is treated as 3279  
creating a future interest under the terms of a trust. 3280

(2) If no taker is produced under division (D)(1) of this 3281  
section and the trust was created in a nonresiduary devise in the 3282  
transferor's will or in a codicil to the transferor's will, the 3283  
property passes under the residuary clause in the transferor's 3284  
will. For purposes of division (D)(2) of this section, the 3285  
residuary clause is treated as creating a future interest under 3286  
the terms of a trust. 3287

(3) If no taker is produced under divisions (D)(1) and (2) of 3288  
this section, the transferor is deceased, and the trust was 3289  
created in a nonresiduary gift under the terms of a revocable 3290  
trust of the transferor, the property passes under the residuary 3291  
clause in the transferor's revocable trust instrument. For 3292  
purposes of division (D)(3) of this section, the residuary clause 3293  
in the transferor's revocable trust instrument is treated as 3294  
creating a future interest under the terms of a trust. 3295

(4) If no taker is produced under divisions (D)(1), (2), and 3296  
(3) of this section, the property passes to those persons who 3297  
would succeed to the transferor's intestate estate and in the 3298  
shares as provided in the intestate succession law of the 3299  
transferor's domicile if the transferor died on the distribution 3300  
date. Notwithstanding division (A)(10) of this section, for 3301  
purposes of division (D)(4) of this section, if the future 3302  
interest was created by the exercise of a power of appointment, 3303  
"transferor" means the donor if the power is a nongeneral power, 3304  
or the donee if the power is a general power. 3305

(E) This section applies to all trusts that become 3306  
irrevocable on or after the effective date of this section. This 3307  
section does not apply to any trust that was irrevocable before 3308  
the effective date of this section even if property was added to 3309  
the trust on or after that effective date. 3310

**Sec. 5809.031.** (A) Notwithstanding any other provision of the 3311  
Ohio Uniform Prudent Investor Act, unless otherwise provided by 3312  
the terms of the trust, the duties of a trustee with respect to 3313  
the acquisition, retention, or ownership of a life insurance 3314  
policy as a trust asset do not include any of the following 3315  
duties: 3316

(1) To determine whether the policy is or remains a proper 3317  
investment; 3318

(2) To diversify the investment in the policy relative to any 3319  
other life insurance policies or to any other trust assets; 3320

(3) To exercise or not to exercise any option, right, or 3321  
privilege available under the policy, including the payment of 3322  
premiums, unless there is sufficient cash or there are other 3323  
readily marketable trust assets from which to pay the premiums or 3324  
there are other trust assets that were designated by the settlor 3325  
or any other person transferring those assets to the trust to be 3326  
used for that purpose, regardless of whether that exercise or 3327  
nonexercise results in the lapse or termination of the policy; 3328

(4) To investigate the financial strength or changes in the 3329  
financial strength of the life insurance company maintaining the 3330  
policy; 3331

(5) To inquire about changes in the health or financial 3332  
condition of the insured or insureds under the policy. 3333

(B) The trustee, the attorney who drafted a trust, or any 3334  
person who was consulted with regard to the creation of a trust, 3335



in the absence of fraud, is not liable to the beneficiaries of the trust or to any other person for any loss arising from the absence of the duties specified in divisions (A)(1) to (5) of this section. 3336  
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(C) Unless otherwise provided by the terms of the trust, this section applies to a trust established before, on, or after the effective date of this section and to a life insurance policy acquired, retained, or owned by a trustee before, on, or after the effective date of this section. 3340  
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**Sec. 5810.13.** (A) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing all of the following information: 3345  
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(1) A statement that the trust exists and the date the trust instrument was executed; 3349  
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(2) The identity of the settlor; 3351

(3) The identity and address of the currently acting trustee; 3352

(4) The powers of the trustee; 3353

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust; 3354  
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(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee. 3356  
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(B) Any trustee may sign or otherwise authenticate a certification of trust. 3359  
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(C) A certification of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect. 3361  
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(D) A certification of trust is not required to contain the  
dispositive terms of a trust.

(E) A certification of trust may establish the identity of  
the trustee and any succession of trustees under division (B) or  
(C) of section 5810.14 of the Revised Code.

(F) A recipient of a certification of trust may require the  
trustee to furnish copies of those excerpts from the original  
trust instrument and later amendments that designate the trustee  
and confer upon the trustee the power to act in the pending  
transaction.

~~(F)~~(G) A person who acts in reliance upon a certification of  
trust without knowledge that the representations contained in the  
certification are incorrect is not liable to any person for so  
acting and may assume without inquiry the existence of the facts  
contained in the certification. Knowledge of the terms of the  
trust may not be inferred solely from the fact that a copy of all  
or part of the trust instrument is held by the person relying upon  
the certification.

~~(G)~~(H) A person who in good faith enters into a transaction  
in reliance upon a certification of trust may enforce the  
transaction against the trust property as if the representations  
contained in the certification were correct.

~~(H)~~(I) This section does not affect the use or validity of a  
memorandum of trust under section 5301.255 of the Revised Code.

~~(I)~~(J) This section does not limit the right of a person to  
obtain a copy of the trust instrument in a judicial proceeding  
concerning the trust.

**Sec. 5810.14.** (A) Personal property may be transferred to a  
trustee as authorized by section 5804.01 of the Revised Code by  
executing the necessary written instrument that identifies the

personal property transferred and identifies the trustee by name 3395  
followed by the designation "trustee." 3396

(B) The future transfer of personal property to a trustee as 3397  
a designated beneficiary, including, but not limited to, a 3398  
transfer on death designation or payable on death designation, 3399  
participation in a joint ownership arrangement, or any other 3400  
contractual transfer arrangement, that is made by executing the 3401  
necessary written instrument identifying the trustee by name 3402  
followed by the designation "trustee" shall be considered a 3403  
transfer of the personal property to the trustee serving at the 3404  
time of the future transfer. A certification of trust under 3405  
section 5810.13 of the Revised Code may establish the identity of 3406  
the trustee and any succession of trustees under this division. 3407

(C) A written instrument transferring personal property to a 3408  
trust or a written instrument providing for the future transfer of 3409  
personal property to a trust, by identifying the trust without 3410  
identifying the trustee, shall be considered a transfer of the 3411  
personal property to the trustee serving at the time of transfer. 3412  
A certification of trust under section 5810.13 of the Revised Code 3413  
may establish the identity of the trustee and any succession of 3414  
trustees under this division. 3415

(D) An instrument of transfer under this section may, but is 3416  
not required to, contain any additional identifying information, 3417  
including the trust name, the name of the settlor, the date of 3418  
trust creation, and the date of applicable trust amendments. 3419

(E) Nothing in this section is intended to affect the 3420  
operation of section 5301.03 of the Revised Code. 3421

(F) Nothing in this section is intended to affect or be in 3422  
conflict with division (E) of section 5301.071 of the Revised Code 3423  
that addresses transfers of real property to or from trusts and 3424  
trustees. 3425

Sec. 5815.49. (A) As used in this section: 3426

(1) "Federal estate tax term" as applied to a will, a trust instrument, or a clause in a will or trust instrument means a reference in that will, trust instrument, or clause to "unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "marital deduction," "maximum marital deduction," "unlimited marital deduction," "charitable deduction," "adjusted gross estate," or another term that was defined in Chapter 11 of the Internal Revenue Code in effect on December 31, 2009. 3427  
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(2) "Division of estate or trust property based on federal estate tax imposition" means a division that measures a share or amount of an estate or trust based on certain federal estate tax results or an allocation of a share or amount to or for the benefit of a charitable organization based on deductibility for federal estate tax purposes. 3436  
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(3) "Federal generation-skipping transfer tax term" as applied to a will, a trust instrument, or a clause in a will or trust instrument means a reference in that will, trust instrument, or clause to "generation-skipping transfer tax exemption," "GST exemption," "inclusion ratio," "applicable fraction," or another term that was defined in Chapter 13 of the Internal Revenue Code in effect on December 31, 2009. 3442  
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(4) "Division of estate or trust property based on federal generation-skipping transfer tax imposition" means a division that measures a share or amount of the estate or trust based on certain federal generation-skipping transfer tax results, including, but not limited to, an allocation of estate or trust property in the maximum amount to which a certain inclusion ratio or GST exemption could be allocated. 3449  
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(B)(1) If a will or the terms of a trust provide for a 3456

division of estate or trust property based on federal estate tax 3457  
imposition, or a division of estate or trust property based on 3458  
federal generation-skipping transfer tax imposition, at the death 3459  
of the testator, settlor, or beneficiary, and there is no federal 3460  
estate tax or no federal generation-skipping transfer tax, as the 3461  
case may be, that applies as of the death of the testator, 3462  
settlor, or beneficiary by reason of the repeal of the applicable 3463  
tax, that division of estate or trust property shall be made as 3464  
though the testator, settlor, or beneficiary had died on December 3465  
31, 2009, unless any of the following applies: 3466

(a) The will or trust instrument specifically provides for a 3467  
particular division of estate or trust property conditioned on 3468  
there being no federal estate tax or federal generation-skipping 3469  
transfer tax that applies at the death of the testator, settlor, 3470  
or beneficiary. 3471

(b) In the case of a trust, an agreement is made under 3472  
division (C)(7) of section 5801.10 of the Revised Code that 3473  
provides for a different division of estate or trust property. 3474

(c) A court orders a different division of estate or trust 3475  
property. 3476

(2) An action of the congress of the United States following 3477  
the death of a testator, settlor, or beneficiary that purports to 3478  
enact federal estate tax or federal generation-skipping transfer 3479  
tax retroactively so that it would purport to apply as of the 3480  
death of the testator, settlor, or beneficiary will not alter the 3481  
operation of division (B) of this section. 3482

**Section 2.** That existing sections 1337.092, 1337.12, 2101.24, 3483  
2109.21, 2111.02, 2111.12, 2111.121, 5301.071, 5747.02, 5801.10, 3484  
5804.12, 5808.14, 5808.17, and 5810.13 and sections 1337.09, 3485  
1337.091, 1337.093, 1337.18, 1337.19, 1337.20, and 2107.52 of the 3486  
Revised Code are hereby repealed. 3487

**Section 3.** (A) Sections 1337.092, 1337.12, 2109.21, 2111.02, 3488  
2111.12, and 2111.121, as amended by this act; sections 1337.21, 3489  
1337.22, 1337.23, 1337.24, 1337.25, 1337.26, 1337.27, 1337.28, 3490  
1337.29, 1337.30, 1337.31, 1337.32, 1337.33, 1337.34, 1337.35, 3491  
1337.36, 1337.37, 1337.38, 1337.39, 1337.40, 1337.41, 1337.42, 3492  
1337.43, 1337.44, 1337.45, 1337.46, 1337.47, 1337.48, 1337.49, 3493  
1337.50, 1337.51, 1337.52, 1337.53, 1337.54, 1337.55, 1337.56, 3494  
1337.57, 1337.58, 1337.59, 1337.60, 1337.61, 1337.62, 1337.63, and 3495  
1337.64, as enacted by this act; and the repeal of sections 3496  
1337.09, 1337.091, 1337.093, 1337.18, 1337.19, and 1337.20 of the 3497  
Revised Code by this act, shall take effect October 1, 2010. 3498

(B) Sections 2101.24, 5301.071, 5747.02, 5808.14, 5808.17, 3499  
and 5810.13, as amended by this act; division (I) of section 3500  
5801.10, as amended by this act; new section 2107.52 and sections 3501  
3793.31, 3793.32, 3793.33, 3793.34, 3793.35, 3793.36, 3793.37, 3502  
3793.38, 3793.39, 5808.18, 5808.19, 5809.031, and 5810.14, as 3503  
enacted by this act; and the repeal of section 2107.52 of the 3504  
Revised Code by this act, shall go into effect ninety days after 3505  
the act is filed by the Governor with the Secretary of State. 3506

(C) Section 5804.12, as amended by this act, all provisions 3507  
of section 5801.10 other than division (I) of that section, as 3508  
amended by this act, and section 5815.49 of the Revised Code, as 3509  
enacted by this act, shall go into immediate effect. 3510

**Section 4.** Section 2101.24 of the Revised Code is presented 3511  
in this act as a composite of the section as amended by both Sub. 3512  
H.B. 416 and Sub. H.B. 426 of the 126th General Assembly. The 3513  
General Assembly, applying the principle stated in division (B) of 3514  
section 1.52 of the Revised Code that amendments are to be 3515  
harmonized if reasonably capable of simultaneous operation, finds 3516  
that the composite is the resulting version of the section in 3517  
effect prior to the effective date of the section as presented in 3518

this act. 3519

**Section 5.** The General Assembly hereby declares its intent 3520  
that the amendment of section 5804.12 and divisions (B), (C), and 3521  
(M) of section 5801.10, and the enactment of section 5815.49 of 3522  
the Revised Code by this act are to clarify the procedure for the 3523  
resolution of issues created by the repeal of the federal estate 3524  
tax and federal generation-skipping transfer tax. 3525

**Section 6.** This act is hereby declared to be an emergency 3526  
measure necessary for the immediate preservation of the public 3527  
peace, health, and safety. The reason for such necessity is that 3528  
the federal estate tax and federal generation-skipping transfer 3529  
tax have been repealed, adversely affecting wills and trust 3530  
instruments that did not deal with such repeal. Therefore, this 3531  
act shall go into immediate effect. 3532