

**As Passed by the House  
CORRECTED VERSION**

**129th General Assembly  
Regular Session  
2011-2012**

**Am. Sub. H. B. No. 479**

**Representatives Hagan, C., Blessing**

**Cosponsors: Speaker Batchelder Representatives Gardner, Grossman,  
Stebelton, Sears, Boose, Damschroder, Schuring, Wachtmann, Johnson,  
Beck, Gonzales, Terhar, Amstutz, Antonio, Blair, Brenner, Bubp, Buchy,  
Budish, Carney, Celebrezze, Combs, Conditt, Derickson, DeVitis, Dovilla,  
Duffey, Foley, Hackett, Hall, Hayes, Henne, Kozlowski, Letson, McClain,  
McGregor, Milkovich, Newbold, O'Brien, Phillips, Pillich, Ruhl, Smith,  
Sprague, Stautberg, Winburn**

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**A B I L L**

To amend sections 317.08, 317.32, 317.321, 1336.04,	1
1701.73, 1702.38, 1703.22, 2131.08, 2131.09,	2
2329.66, 2329.661, 5805.06, 5808.08, 5808.18,	3
5815.24, 5815.25, and 5815.36 and to enact	4
sections 1301.401, 5815.37, and 5816.01 to 5816.14	5
of the Revised Code to adopt the Ohio Legacy Trust	6
Act; to modify certain property rights in the Ohio	7
Trust Code; to require the recording of personal	8
property transfers with the county recorder upon	9
request; to regulate the temporary conveyance of	10
trust real property for financing purposes; and to	11
make certain changes in the exempt interests law,	12
the fraudulent transfers law, the secured	13
transactions recording law, and the rule against	14
perpetuities.	15

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

**Section 1.** That sections 317.08, 317.32, 317.321, 1336.04, 1701.73, 1702.38, 1703.22, 2131.08, 2131.09, 2329.66, 2329.661, 5805.06, 5808.08, 5808.18, 5815.24, 5815.25, and 5815.36 be amended and sections 1301.401, 5815.37, 5816.01, 5816.02, 5816.03, 5816.04, 5816.05, 5816.06, 5816.07, 5816.08, 5816.09, 5816.10, 5816.11, 5816.12, 5816.13, and 5816.14 of the Revised Code be enacted to read as follows:

**Sec. 317.08.** (A) Except as provided in divisions (C) ~~and~~ (D), and (E) of this section, the county recorder shall keep six separate sets of records as follows:

(1) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices as provided in sections 5301.47 to 5301.56 of the Revised Code; all judgments or decrees in actions brought under section 5303.01 of the Revised Code; all declarations and bylaws, and all amendments to declarations and bylaws, as provided in Chapter 5311. of the Revised Code; affidavits as provided in sections 5301.252 and 5301.56 of the Revised Code; all certificates as provided in section 5311.17 of the Revised Code; all articles dedicating archaeological preserves accepted by the director of the Ohio historical society under section 149.52 of the Revised Code; all articles dedicating nature preserves accepted by the director of natural resources under section 1517.05 of the Revised Code; all agreements for the registration of lands as archaeological or historic landmarks under section 149.51 or 149.55 of the Revised Code; all conveyances of conservation easements and agricultural easements under section 5301.68 of the Revised Code; all instruments

extinguishing agricultural easements under section 901.21 or 45  
5301.691 of the Revised Code or pursuant to terms of such an 46  
easement granted to a charitable organization under section 47  
5301.68 of the Revised Code; all instruments or orders described 48  
in division (B)(2)(b) of section 5301.56 of the Revised Code; all 49  
no further action letters issued under section 122.654 or 3746.11 50  
of the Revised Code; all covenants not to sue issued under section 51  
3746.12 of the Revised Code, including all covenants not to sue 52  
issued pursuant to section 122.654 of the Revised Code; any 53  
restrictions on the use of property contained in a no further 54  
action letter issued under section 122.654 of the Revised Code, 55  
any restrictions on the use of property identified pursuant to 56  
division (C)(3)(a) of section 3746.10 of the Revised Code, and any 57  
restrictions on the use of property contained in a deed or other 58  
instrument as provided in division (E) or (F) of section 3737.882 59  
of the Revised Code; any easement executed or granted under 60  
section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code; 61  
any environmental covenant entered into in accordance with 62  
sections 5301.80 to 5301.92 of the Revised Code; all memoranda of 63  
trust, as described in division (A) of section 5301.255 of the 64  
Revised Code, that describe specific real property; and all 65  
agreements entered into under division (A) of section 1506.44 of 66  
the Revised Code; 67

(2) A record of mortgages, in which shall be recorded all of 68  
the following: 69

(a) All mortgages, including amendments, supplements, 70  
modifications, and extensions of mortgages, or other instruments 71  
of writing by which lands, tenements, or hereditaments are or may 72  
be mortgaged or otherwise conditionally sold, conveyed, affected, 73  
or encumbered; 74

(b) All executory installment contracts for the sale of land 75  
executed after September 29, 1961, that by their terms are not 76

required to be fully performed by one or more of the parties to	77
them within one year of the date of the contracts;	78
(c) All options to purchase real estate, including	79
supplements, modifications, and amendments of the options, but no	80
option of that nature shall be recorded if it does not state a	81
specific day and year of expiration of its validity;	82
(d) Any tax certificate sold under section 5721.33 of the	83
Revised Code, or memorandum of it, that is presented for filing of	84
record.	85
(3) A record of powers of attorney, including all memoranda	86
of trust, as described in division (A) of section 5301.255 of the	87
Revised Code, that do not describe specific real property;	88
(4) A record of plats, in which shall be recorded all plats	89
and maps of town lots, of the subdivision of town lots, and of	90
other divisions or surveys of lands, any center line survey of a	91
highway located within the county, the plat of which shall be	92
furnished by the director of transportation or county engineer,	93
and all drawings and amendments to drawings, as provided in	94
Chapter 5311. of the Revised Code;	95
(5) A record of leases, in which shall be recorded all	96
leases, memoranda of leases, and supplements, modifications, and	97
amendments of leases and memoranda of leases;	98
(6) A record of declarations executed pursuant to section	99
2133.02 of the Revised Code and durable powers of attorney for	100
health care executed pursuant to section 1337.12 of the Revised	101
Code.	102
(B) All instruments or memoranda of instruments entitled to	103
record shall be recorded in the proper record in the order in	104
which they are presented for record. The recorder may index, keep,	105
and record in one volume unemployment compensation liens, internal	106
revenue tax liens and other liens in favor of the United States as	107

described in division (A) of section 317.09 of the Revised Code, 108  
personal tax liens, mechanic's liens, agricultural product liens, 109  
notices of liens, certificates of satisfaction or partial release 110  
of estate tax liens, discharges of recognizances, excise and 111  
franchise tax liens on corporations, broker's liens, and liens 112  
provided for in sections 1513.33, 1513.37, 3752.13, 5111.022, and 113  
5311.18 of the Revised Code. 114

The recording of an option to purchase real estate, including 115  
any supplement, modification, and amendment of the option, under 116  
this section shall serve as notice to any purchaser of an interest 117  
in the real estate covered by the option only during the period of 118  
the validity of the option as stated in the option. 119

(C) In lieu of keeping the six separate sets of records 120  
required in divisions (A)(1) to (6) of this section and the 121  
records required in ~~division~~ divisions (D) and (E) of this 122  
section, a county recorder may record all the instruments required 123  
to be recorded by this section in two separate sets of record 124  
books. One set shall be called the "official records" and shall 125  
contain the instruments listed in divisions (A)(1), (2), (3), (5), 126  
and (6) and (D) and (E) of this section. The second set of records 127  
shall contain the instruments listed in division (A)(4) of this 128  
section. 129

(D) Except as provided in division (C) of this section, the 130  
county recorder shall keep a separate set of records containing 131  
all corrupt activity lien notices filed with the recorder pursuant 132  
to section 2923.36 of the Revised Code and a separate set of 133  
records containing all medicaid fraud lien notices filed with the 134  
recorder pursuant to section 2933.75 of the Revised Code. 135

(E)(1) The county recorder shall keep a separate set of 136  
records containing all transfers, conveyances, or assignments of 137  
any type of tangible or intangible personal property or any rights 138  
or interests in that property if and to the extent that any person 139

wishes to record that personal property transaction and if the 140  
applicable instrument is acknowledged before a notary public. If 141  
the transferor is a natural person, the notice of personal 142  
property transfer shall be recorded in the county in this state in 143  
which the transferor maintains the transferor's principal 144  
residence. If the transferor is not a natural person, the notice 145  
of personal property transfer shall be recorded in the county in 146  
this state in which the transferor maintains its principal place 147  
of business. If the transferor does not maintain a principal 148  
residence or a principal place of business in this state and the 149  
transfer is to a trustee of a legacy trust formed pursuant to 150  
Chapter 5816. of the Revised Code, the notice of personal property 151  
transfer shall be recorded in the county in this state where that 152  
trustee maintains a principal residence or principal place of 153  
business. In all other instances, the notice of personal property 154  
transfer shall be recorded in the county in this state where the 155  
property described in the notice is located. 156

(2) The records described in division (E)(1) of this section 157  
shall be maintained in or as part of the "official records" under 158  
division (C) of this section. 159

**Sec. 317.32.** The county recorder shall charge and collect the 160  
following fees, to include, except as otherwise provided in 161  
division (A)(2) of this section, base fees for the recorder's 162  
services and housing trust fund fees, collected pursuant to 163  
section 317.36 of the Revised Code: 164

(A) ~~For~~ (1) Except as otherwise provided in division (A)(2) 165  
of this section, for recording and indexing an instrument when if 166  
the photocopy or any similar process is employed, a base fee of 167  
fourteen dollars for the first two pages and a housing trust fund 168  
fee of fourteen dollars, and a base fee of four dollars and a 169  
housing trust fund fee of four dollars for each subsequent page, 170

size eight and one-half inches by fourteen inches, or fraction of 171  
a page, including the caption page, of such instrument; 172

(2) For recording and indexing an instrument described in 173  
division (E)(1) of section 317.08 of the Revised Code if the 174  
photocopy or any similar process is employed, a fee of 175  
twenty-eight dollars for the first two pages to be deposited into 176  
the county treasury to the credit of the special fund designated 177  
as "general fund moneys to supplement the equipment needs of the 178  
county recorder" under section 317.321 of the Revised Code, and a 179  
fee of eight dollars to be deposited in the same manner for each 180  
subsequent page, size eight and one-half inches by fourteen 181  
inches, or fraction of a page, including the caption page, of that 182  
instrument; 183

(B) For certifying a photocopy from the record previously 184  
recorded, a base fee of one dollar and a housing trust fund fee of 185  
one dollar per page, size eight and one-half inches by fourteen 186  
inches, or fraction of a page; for each certification ~~where~~ if the 187  
recorder's seal is required, except as to instruments issued by 188  
the armed forces of the United States, a base fee of fifty cents 189  
and a housing trust fund fee of fifty cents; 190

(C) For manual or typewritten recording of assignment or 191  
satisfaction of mortgage or lease or any other marginal entry, a 192  
base fee of four dollars and a housing trust fund fee of four 193  
dollars; 194

(D) For entering any marginal reference by separate recorded 195  
instrument, a base fee of two dollars and a housing trust fund fee 196  
of two dollars for each marginal reference set out in that 197  
instrument, in addition to the fees set forth in division (A)(1) 198  
of this section; 199

(E) For indexing in the real estate mortgage records, 200  
pursuant to section 1309.519 of the Revised Code, financing 201

statements covering crops growing or to be grown, timber to be cut, minerals or the like, including oil and gas, accounts subject to section 1309.301 of the Revised Code, or fixture filings made pursuant to section 1309.334 of the Revised Code, a base fee of two dollars and a housing trust fund fee of two dollars for each name indexed;

(F) For recording manually any plat not exceeding six lines, a base fee of two dollars and a housing trust fund fee of two dollars, and for each additional line, a base fee of ten cents and a housing trust fund fee of ten cents;

(G) For filing zoning resolutions, including text and maps, in the office of the recorder as required under sections 303.11 and 519.11 of the Revised Code, a base fee of twenty-five dollars and a housing trust fund fee of twenty-five dollars, regardless of the size or length of the resolutions;

(H) For filing zoning amendments, including text and maps, in the office of the recorder as required under sections 303.12 and 519.12 of the Revised Code, a base fee of ten dollars and a housing trust fund fee of ten dollars regardless of the size or length of the amendments;

(I) For photocopying a document, other than at the time of recording and indexing as provided for in division (A) (1) or (2) of this section, a base fee of one dollar and a housing trust fund fee of one dollar per page, size eight and one-half inches by fourteen inches, or fraction thereof;

(J) For local facsimile transmission of a document, a base fee of one dollar and a housing trust fund fee of one dollar per page, size eight and one-half inches by fourteen inches, or fraction thereof; for long distance facsimile transmission of a document, a base fee of two dollars and a housing trust fund fee of two dollars per page, size eight and one-half inches by



fourteen inches, or fraction thereof; 233

(K) For recording a declaration executed pursuant to section 234  
2133.02 of the Revised Code or a durable power of attorney for 235  
health care executed pursuant to section 1337.12 of the Revised 236  
Code, or both a declaration and a durable power of attorney for 237  
health care, a base fee of at least fourteen dollars but not more 238  
than twenty dollars and a housing trust fund fee of at least 239  
fourteen dollars but not more than twenty dollars. 240

In any county in which the recorder employs the photostatic 241  
or any similar process for recording maps, plats, or prints the 242  
recorder shall determine, charge, and collect for the recording or 243  
rerecording of any map, plat, or print, a base fee of five cents 244  
and a housing trust fund fee of five cents per square inch, for 245  
each square inch of the map, plat, or print filed for that 246  
recording or rerecording, with a minimum base fee of twenty 247  
dollars and a minimum housing trust fund fee of twenty dollars; 248  
for certifying a copy from the record, a base fee of two cents and 249  
a housing trust fund fee of two cents per square inch of the 250  
record, with a minimum base fee of two dollars and a minimum 251  
housing trust fund fee of two dollars. 252

The fees provided in this section shall be paid upon the 253  
presentation of the instruments for record or upon the application 254  
for any certified copy of the record, except that the payment of 255  
fees associated with the filing and recording of, or the copying 256  
of, notices of internal revenue tax liens and notices of other 257  
liens in favor of the United States as described in division (A) 258  
of section 317.09 of the Revised Code and certificates of 259  
discharge or release of those liens, shall be governed by section 260  
317.09 of the Revised Code, and the payment of fees for providing 261  
copies of instruments conveying or extinguishing agricultural 262  
easements to the office of farmland preservation in the department 263  
of agriculture under division (H) of section 5301.691 of the 264

Revised Code shall be governed by that division. 265

**Sec. 317.321.** (A) Not later than the first day of October of 266  
any year, the county recorder may submit to the board of county 267  
commissioners a proposal for the acquisition or maintenance of 268  
micrographic or other equipment or for contract services or a 269  
proposal to reserve funds for the office's future equipment needs 270  
if the county recorder has no immediate plans for the acquisition 271  
of equipment or services. ~~The~~ Either proposal shall be in writing 272  
and shall include at least the following: 273

(1) A request that an amount not to exceed seven dollars of 274  
the fee collected for filing or recording a document for which a 275  
fee is charged as required by division (A)(1) of section 317.32 of 276  
the Revised Code or by section 1309.525 or 5310.15 of the Revised 277  
Code and the amount of the fees collected under division (A)(2) of 278  
section 317.32 of the Revised Code be placed in the county 279  
treasury and designated as "general fund moneys to supplement the 280  
equipment needs of the county recorder"; 281

(2) The number of years, not to exceed five, for which the 282  
county recorder requests that the amount requested under division 283  
(A)(1) of this section be given the designation specified in that 284  
division; 285

(3) An estimate of the total amount of fees that will be 286  
generated for filing or recording a document for which a fee is 287  
charged as required by division (A)(1) or (2) of section 317.32 of 288  
the Revised Code or by section 1309.525 or 5310.15 of the Revised 289  
Code; 290

(4) An estimate of the total amount of fees for filing or 291  
recording a document for which a fee is charged as required by 292  
division (A)(1) or (2) of section 317.32 of the Revised Code or by 293  
section 1309.525 or 5310.15 of the Revised Code that will be 294  
designated as "general fund moneys to supplement the equipment 295

needs of the county recorder" if the request submitted under 296  
division (A)(1) of this section is approved by the board of county 297  
commissioners. 298

~~The A proposal for the acquisition or maintenance of 299  
micrographic or other equipment or for contract services may 300  
include a description or summary of the micrographic or other 301  
equipment, or maintenance ~~thereof~~ of the micrographic or other 302  
equipment, that the county recorder proposes to acquire, or the 303  
nature of contract services that the county recorder proposes to 304  
utilize. ~~If A proposal to reserve funds for the office's future~~ 305  
~~equipment needs if~~ the county recorder has no immediate plans for 306  
the acquisition of equipment or services, ~~the proposal~~ shall 307  
explain the general needs of the office for equipment ~~and shall~~ 308  
~~state that the intent of the proposal is to reserve funds for the~~ 309  
~~office's future equipment needs.~~ 310~~

(B) The board of county commissioners shall receive ~~the~~ 311  
either proposal and the clerk shall enter it on the journal. At 312  
the same time, the board shall establish a date, not sooner than 313  
fifteen ~~nor~~ or later than thirty days after the board's receipt of 314  
the proposal, on which to meet with the recorder to review the 315  
proposal. 316

(C)(1) Not later than the fifteenth day of December of any 317  
year in which a proposal for the acquisition or maintenance of 318  
micrographic or other equipment or for contract services is 319  
submitted under division (A) of this section, the board of county 320  
commissioners shall approve, reject, or modify the proposal and 321  
notify the county recorder of its action on the proposal. If the 322  
board rejects or modifies the proposal, it shall make a written 323  
finding that the request is for a purpose other than for 324  
acquiring, leasing, or otherwise obtaining micrographic or other 325  
equipment or contracts for use by the county recorder or that the 326  
amount requested for the acquisition or maintenance of 327

micrographic or other equipment or for contract services is 328  
excessive as determined by the board. If the board approves the 329  
proposal, it shall request the establishment of a special fund 330  
under section 5705.12 of the Revised Code for any fees designated 331  
as "general fund moneys to supplement the equipment needs of the 332  
county recorder." 333

(2) Not later than the fifteenth day of December of any year 334  
in which a proposal to reserve funds for the office's future 335  
equipment needs is submitted under division (A) of this section, 336  
the board of county commissioners shall approve the proposal, 337  
notify the county recorder of its action on the proposal, and 338  
request the establishment of a special fund under section 5705.12 339  
of the Revised Code for any fees designated as "general fund 340  
moneys to supplement the equipment needs of the county recorder." 341

(D) The acquisition or maintenance of micrographic or other 342  
equipment and the acquisition of contract services shall be 343  
specifically governed by sections 307.80 to 307.806, 307.84 to 344  
307.846, 307.86 to 307.92, and 5705.38, and by division (D) of 345  
section 5705.41 of the Revised Code. 346

**Sec. 1301.401.** (A) For purposes of this section, "public 347  
record" means either of the following: 348

(1) Any document described or referred to in section 317.08 349  
of the Revised Code; 350

(2) Any document the filing or recording of which is required 351  
or allowed under any provision of Chapter 1309. of the Revised 352  
Code. 353

(B) The recording with any county recorder of any document 354  
described in division (A)(1) of this section or the filing or 355  
recording with the secretary of state of any document described in 356  
division (A)(2) of this section shall be constructive notice to 357

the whole world of the existence and contents of either document 358  
as a public record and of any transaction referred to in that 359  
public record, including, but not limited to, any transfer, 360  
conveyance, or assignment reflected in that record. 361

(C) Any person contesting the validity or effectiveness of 362  
any transaction referred to in a public record is considered to 363  
have discovered that public record and any transaction referred to 364  
in the record as of the time that the record was first filed with 365  
the secretary of state or tendered to a county recorder for 366  
recording. 367

**Sec. 1336.04.** (A) A transfer made or an obligation incurred 368  
by a debtor is fraudulent as to a creditor, whether the claim of 369  
the creditor arose before, or within a reasonable time not to 370  
exceed four years after, the transfer was made or the obligation 371  
was incurred, if the debtor made the transfer or incurred the 372  
obligation in either of the following ways: 373

(1) With actual intent to hinder, delay, or defraud any 374  
creditor of the debtor; 375

(2) Without receiving a reasonably equivalent value in 376  
exchange for the transfer or obligation, and if either of the 377  
following applies: 378

(a) The debtor was engaged or was about to engage in a 379  
business or a transaction for which the remaining assets of the 380  
debtor were unreasonably small in relation to the business or 381  
transaction; 382

(b) The debtor intended to incur, or believed or reasonably 383  
should have believed that ~~he~~ the debtor would incur, debts beyond 384  
~~his~~ the debtor's ability to pay as they became due. 385

(B) In determining actual intent under division (A)(1) of 386  
this section, consideration may be given to all relevant factors, 387

including, but not limited to, the following:	388
(1) Whether the transfer or obligation was to an insider;	389
(2) Whether the debtor retained possession or control of the property transferred after the transfer;	390 391
(3) Whether the transfer or obligation was disclosed or concealed;	392 393
(4) Whether before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;	394 395
(5) Whether the transfer was of substantially all of the assets of the debtor;	396 397
(6) Whether the debtor absconded;	398
(7) Whether the debtor removed or concealed assets;	399
(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;	400 401 402
(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;	403 404 405
(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred;	406 407
(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.	408 409 410
<b>Sec. 1701.73.</b> (A)(1) Upon the adoption of any amendment or amended articles, a certificate containing a copy of the resolution adopting the amendment or amended articles, a statement of the manner of its adoption, and, in the case of adoption of the resolution by the incorporators or directors, a statement of the basis for such adoption, shall be filed with the secretary of	411 412 413 414 415 416

state, and thereupon the articles shall be amended accordingly, 417  
any change of shares provided for in the amendment or amended 418  
articles shall become effective, and the amended articles shall 419  
supersede the existing articles. 420

(2) Except as provided in division (A)(3) of this section, 421  
when an amendment or amended articles are adopted by the directors 422  
pursuant to section 1701.70 of the Revised Code, the corporation 423  
shall send notice of the amendment or amended articles, and a copy 424  
or summary ~~thereof~~ of the amendment or amended articles, by mail, 425  
overnight delivery service, or any other means of communication 426  
authorized by the shareholder to whom the notice and copy or 427  
summary are sent, to each shareholder of the corporation of record 428  
as of the date on which the directors approved the amendment or 429  
amended articles. The notice shall be sent to the shareholders 430  
within twenty days after the filing of the certificate required by 431  
division (A)(1) of this section. 432

(3) Any corporation that files periodic reports with the 433  
United States securities and exchange commission pursuant to 434  
section 13 of the "Securities Exchange Act of 1934," 48 Stat. 881, 435  
15 U.S.C. 78m, as amended, or section 15(d) of the "Securities 436  
Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78o(d), as amended, 437  
may satisfy the notice to shareholders of record requirement of 438  
division (A)(2) of this section by including a copy or summary of 439  
the amendment or amended articles in a report filed in accordance 440  
with those provisions within twenty days after the filing of the 441  
certificate required by division (A)(1) of this section. 442

(B) When an amendment or amended articles are adopted by the 443  
incorporators, the certificate described in division (A)(1) of 444  
this section shall be signed by each of them. 445

(C) When an amendment or amended articles are adopted by the 446  
directors or by the shareholders, the certificate described in 447  
division (A)(1) of this section shall be signed by any authorized 448

officer. 449

(D) A copy of an amendment or amended articles changing the 450  
name of a corporation or its principal office in this state, 451  
certified by the secretary of state, may be filed for record in 452  
the office of the county recorder of any county in this state, and 453  
for such recording, the county recorder shall charge and collect 454  
the same fee as provided for in division (A)(1) of section 317.32 455  
of the Revised Code. The copy shall be recorded in the records of 456  
deeds. 457

**Sec. 1702.38.** (A) The articles may be amended from time to 458  
time in any respect if the articles as amended set forth all the 459  
provisions that are required in, and only those provisions that 460  
may properly be in, original articles filed at the time of 461  
adopting the amendment, other than with respect to the initial 462  
directors, except that a public benefit corporation shall not 463  
amend its articles in such manner that it will cease to be a 464  
public benefit corporation. 465

(B) Without limiting the generality of the authority 466  
described in division (A) of this section, the articles may be 467  
amended to: 468

(1) Change the name of the corporation; 469

(2) Change the place in this state where its principal office 470  
is to be located; 471

(3) Change, enlarge, or diminish its purpose or purposes; 472

(4) Change any provision of the articles or add any provision 473  
that may properly be included in the articles. 474

(C)(1) The voting members present in person, by use of 475  
authorized communications equipment, by mail, or, if permitted, by 476  
proxy at a meeting held for that purpose, may adopt an amendment 477  
by the affirmative vote of a majority of the voting members 478



present if a quorum is present or, if the articles or the 479  
regulations provide or permit, by the affirmative vote of a 480  
greater or lesser proportion or number of the voting members, and 481  
by the affirmative vote of the voting members of any particular 482  
class that is required by the articles or the regulations. 483

(2) For purposes of division (C)(1) of this section, 484  
participation by a voting member at a meeting through the use of 485  
any of the means of communication described in that division 486  
constitutes presence in person of that voting member at the 487  
meeting for purposes of determining a quorum. 488

(D) In addition to or in lieu of adopting an amendment to the 489  
articles, the voting members may adopt amended articles by the 490  
same action or vote as that required to adopt the amendment. 491

(E) The directors may adopt amended articles to consolidate 492  
the original articles and all previously adopted amendments to the 493  
articles that are in force at the time, or the voting members at a 494  
meeting held for that purpose may adopt the amended articles by 495  
the same vote as that required to adopt an amendment. 496

(F) Amended articles shall set forth all the provisions that 497  
are required in, and only the provisions that may properly be in, 498  
original articles filed at the time of adopting the amended 499  
articles, other than with respect to the initial directors, and 500  
shall contain a statement that they supersede the existing 501  
articles. 502

(G) Upon the adoption of any amendment or amended articles, a 503  
certificate containing a copy of the resolution adopting the 504  
amendment or amended articles, a statement of the manner of its 505  
adoption, and, in the case of adoption of the resolution by the 506  
directors, a statement of the basis for such adoption, shall be 507  
filed with the secretary of state, and upon that filing the 508  
articles shall be amended accordingly, and the amended articles 509

shall supersede the existing articles. The certificate shall be 510  
signed by any authorized officer of the corporation. 511

(H) A copy of an amendment or amended articles changing the 512  
name of a corporation or its principal office in this state, 513  
certified by the secretary of state, may be filed for record in 514  
the office of the county recorder of any county in this state, and 515  
for that recording the county recorder shall charge and collect 516  
the same fee as provided for in division (A)(1) of section 317.32 517  
of the Revised Code. That copy shall be recorded in the records of 518  
deeds. 519

**Sec. 1703.22.** An amendment changing the name of a foreign 520  
corporation may be filed for record with the county recorder of 521  
any county when accompanied by a certificate from the secretary of 522  
state of this state certifying that an amendment evidencing a 523  
change in the corporate name has been filed in the secretary of 524  
state's office. For such recording the recorder shall charge and 525  
collect the same fee as provided for in division (A)(1) of section 526  
317.32 of the Revised Code. 527

**Sec. 2131.08.** (A) Subject to sections 1746.14, 1747.09, and 528  
2131.09 of the Revised Code, no interest in real or personal 529  
property shall be good unless it must vest, if at all, not later 530  
than twenty-one years after a life or lives in being at the 531  
creation of the interest. All estates given in tail, by deed or 532  
will, in real property lying within this state shall be and remain 533  
an absolute estate in fee simple to the issue of the first donee 534  
in tail. It is the intention by the adoption of this section to 535  
make effective in this state what is generally known as the common 536  
law rule against perpetuities, except as set forth in divisions 537  
(B) and (C) of this section. 538

(B) For the purposes of this section and subject to sections 539

1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the 540  
creation of an interest in real or personal property subject to a 541  
power reserved by the grantor to revoke or terminate the interest 542  
shall be the time at which the reserved power expires by reason of 543  
the death of the grantor, by release of the power, or otherwise. 544

(C) Any interest in real or personal property that would 545  
violate the rule against perpetuities, under division (A) of this 546  
section, shall be reformed, within the limits of the rule, to 547  
approximate most closely the intention of the creator of the 548  
interest. In determining whether an interest would violate the 549  
rule and in reforming an interest, the period of perpetuities 550  
shall be measured by actual rather than possible events. 551

(D) For purposes of this section and subject to sections 552  
1746.14, 1747.09, and 2131.09 of the Revised Code, the following 553  
apply: 554

(1) The time of the creation of an interest in real or 555  
personal property resulting from the exercise of a general power 556  
of appointment exercisable in a nonfiduciary capacity by deed, 557  
whether or not also exercisable by will, shall be the time at 558  
which that power of appointment is exercised. 559

(2) The time of the creation of an interest in real or 560  
personal property resulting from the termination, without 561  
exercise, of a general power of appointment exercisable in a 562  
nonfiduciary capacity by deed, whether or not also exercisable by 563  
will, shall be the time at which that power of appointment 564  
terminates by reason of the death of the power holder, by release 565  
of the power, or otherwise. 566

(E) Divisions (B) and (C) of this section shall be effective 567  
with respect to interests in real or personal property created by 568  
wills of decedents dying after December 31, 1967, with respect to 569  
interests in real or personal property created by inter vivos 570

instruments executed after December 31, 1967, and with respect to 571  
interests in real or personal property created by inter vivos 572  
instruments executed on or before December 31, 1967, that by 573  
reason of division (B) of this section will be treated as 574  
interests created after December 31, 1967. Divisions (B) and (C) 575  
of this section shall be effective with respect to interests in 576  
real or personal property created by the exercise of a power of 577  
appointment if divisions (B) and (C) of this section apply to the 578  
instrument that exercises the power, whether or not divisions (B) 579  
and (C) of this section apply to the instrument that creates the 580  
power. 581

(F) Divisions (D) and (G) of this section are intended to be 582  
a statement of the common law of this state and shall be effective 583  
with respect to interests in real or personal property whenever 584  
created. 585

(G) For purposes of this section: 586

(1) "General power of appointment" has the same meaning as in 587  
section 2131.09 of the Revised Code. 588

(2) "Exercisable by deed" in reference to a power of 589  
appointment means a power that can be exercised during the power 590  
holder's lifetime by an instrument that takes effect immediately. 591

**Sec. 2131.09.** (A) A trust of real or personal property 592  
created by an employer as part of a stock bonus plan, pension 593  
plan, disability or death benefit plan, or profit-sharing plan, 594  
for the benefit of some or all of the employees, to which 595  
contributions are made by the employer or employees, or both, for 596  
the purpose of distributing to the employees or their 597  
beneficiaries the earnings or the principal, or both earnings and 598  
principal, of the fund so held in trust is not invalid as 599  
violating the rule against perpetuities, any other existing law 600  
against perpetuities, or any law restricting or limiting the 601

duration of trusts; but the trust may continue for the time that 602  
is necessary to accomplish the purposes for which it was created. 603

The income arising from any trust within the classifications 604  
mentioned in this division may be accumulated in accordance with 605  
the terms of the trust for as long a time as is necessary to 606  
accomplish the purposes for which the trust was created, 607  
notwithstanding any law limiting the period during which trust 608  
income may be accumulated. 609

No rule of law against perpetuities or the suspension of the 610  
power of alienation of the title to property invalidates any trust 611  
within the classifications mentioned in this division unless the 612  
trust is terminated by decree of a court in a suit instituted 613  
within two years after June 25, 1951. 614

(B)(1) No rule of law against perpetuities or suspension of 615  
the power of alienation of the title to property, any other 616  
existing law against perpetuities, or any law restricting or 617  
limiting the duration of trusts shall apply with respect to any 618  
interest in real or personal property held in trust if ~~the both of~~ 619  
the following apply: 620

(a) The instrument creating the trust specifically states 621  
that the rule against perpetuities or the provisions of division 622  
~~(B)(A)~~ of section 2131.08 of the Revised Code shall not apply to 623  
the trust ~~and if either the.~~ 624

(b) The trustee ~~of the trust~~ has unlimited power ~~to sell all~~ 625  
~~trust assets,~~ or if one or more persons, ~~one of whom may be the~~ 626  
~~trustee, has~~ have the unlimited power to direct the trustee or to 627  
approve the trustee's decision, either to sell all trust assets or 628  
to terminate the entire trust. 629

(2) Division (B)(1) of this section shall apply to the 630  
interpretation of a testamentary or inter vivos trust instrument 631  
that creates an interest in real or personal property in relation 632

to which one or more of the following conditions ~~applies~~ apply: 633

(a) The instrument creating the testamentary or inter vivos 634  
trust is executed in this state. 635

(b) The sole trustee or one of the trustees is domiciled in 636  
this state. 637

(c) The testamentary or inter vivos trust is administered in 638  
this state or the situs of a substantial portion of the assets 639  
subject to the testamentary portion of the testamentary or inter 640  
vivos trust is in this state, even though some part or all of 641  
those assets are physically deposited for safekeeping in a state 642  
other than this state. 643

(d) The instrument creating the testamentary or inter vivos 644  
trust states that the law of this state is to apply. 645

(3) ~~Division~~ Subject to division (C) of this section, 646  
division (B) of this section shall be effective with respect to 647  
all of the following: 648

(a) An interest in real or personal property in trust created 649  
~~by wills of decedents~~ under the terms of a will of a decedent 650  
dying on or after ~~the effective date of this amendment~~ March 22, 651  
1999; 652

(b) An interest in real or personal property created ~~by~~ under 653  
the terms of an inter vivos or testamentary trust instrument 654  
executed on or after ~~the effective date of this amendment~~ March 655  
22, 1999; 656

(c) An interest in real or personal property in trust created 657  
by the exercise of a general power of appointment on or after ~~the~~ 658  
~~effective date of this amendment~~ March 22, 1999; 659

(d) An interest in real or personal property in trust created 660  
by the exercise of a nongeneral power of appointment over any 661  
portion of a trust that meets the requirements of division (B) of 662

this section, but only if the date of creation of that nongeneral 663  
power of appointment is on or after the effective date of this 664  
section. 665

~~(4) Division (B) of this section shall not apply to the~~ 666  
~~exercise of a power of appointment other than a general power of~~ 667  
~~appointment.~~ 668

(C) The exercise of a nongeneral power of appointment granted 669  
over any portion of a trust to which the rule against perpetuities 670  
does not apply because the terms of the trust meet the 671  
requirements of division (B) of this section shall nevertheless be 672  
subject to section 2131.08 of the Revised Code, except that 673  
interests created pursuant to the exercise of a nongeneral power 674  
of appointment that has a date of creation on or after the 675  
effective date of this section shall be required to vest not later 676  
than one thousand years after the date of creation of that power. 677

(D) For purposes of this section, the instrument creating a 678  
trust subject to a power reserved by the grantor to amend, revoke, 679  
or terminate the trust shall include the original instrument 680  
establishing the trust and all amendments to the instrument made 681  
prior to the time at which the reserved power expires by reason of 682  
the death of the grantor, by release of the power, or otherwise. 683

(E) The amendment of division (B)(1) of this section and 684  
divisions (D) and (F) of this section are intended to clarify the 685  
provisions of this section as originally enacted and apply to 686  
trust instruments that are in existence prior to, on, or after the 687  
effective date of this section. 688

(F) For purposes of this section, ~~"general:~~ 689

(1) "General power of appointment" means a power that is 690  
exercisable in favor of the individual possessing the power, the 691  
person's individual's estate, the person's individual's creditors, 692  
or the creditors of the person's individual's estate other than 693

either of the following: 694

(a) A power that is limited by an ascertainable standard as defined in section 5801.01 of the Revised Code; 695  
696

(b) A power of withdrawal held by an individual, but only to the extent that it does not exceed the amount specified in section 2041(b)(2) or 2514(e) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended. 697  
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(2) "Nongeneral power of appointment" means any power of appointment that is not a general power of appointment. 701  
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(3) The "date of creation" of a nongeneral power of appointment created by the exercise of one or more powers of appointment, except by the exercise of a general power of appointment exercisable by deed, shall be the date of creation of the first of those powers of appointment to be exercised. 703  
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(4) "Exercisable by deed" has the same meaning as in section 2131.08 of the Revised Code. 708  
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**Sec. 2329.66.** (A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows: 710  
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712

(1)(a) In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. Division (A)(1)(a) of this section does not preclude, affect, or invalidate the creation under this chapter of a judgment lien upon the exempted property but only delays the enforcement of the lien until the property is sold or otherwise transferred by the owner or in accordance with other applicable laws to a person or entity other than the surviving spouse or surviving minor children of the judgment 713  
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debtor. Every person who is domiciled in this state may hold 724  
exempt from a judgment lien created pursuant to division (A)(1)(a) 725  
of this section the person's interest, not to exceed ~~twenty~~ three 726  
hundred fifty thousand ~~two hundred~~ dollars, in the exempted 727  
property. 728

(b) In the case of all other judgments and orders, the 729  
person's interest, not to exceed ~~twenty~~ three hundred fifty 730  
thousand ~~two hundred~~ dollars, in one parcel or item of real or 731  
personal property that the person or a dependent of the person 732  
uses as a residence. 733

(c) For purposes of divisions (A)(1)(a) and (b) of this 734  
section, "parcel" means a tract of real property as identified on 735  
the records of the auditor of the county in which the real 736  
property is located. 737

(2) The person's interest, not to exceed three thousand two 738  
hundred twenty-five dollars, in one motor vehicle; 739

(3) The person's interest, not to exceed four hundred 740  
dollars, in cash on hand, money due and payable, money to become 741  
due within ninety days, tax refunds, and money on deposit with a 742  
bank, savings and loan association, credit union, public utility, 743  
landlord, or other person, other than personal earnings. 744

(4)(a) The person's interest, not to exceed five hundred 745  
twenty-five dollars in any particular item or ten thousand seven 746  
hundred seventy-five dollars in aggregate value, in household 747  
furnishings, household goods, wearing apparel, appliances, books, 748  
animals, crops, musical instruments, firearms, and hunting and 749  
fishing equipment that are held primarily for the personal, 750  
family, or household use of the person; 751

(b) The person's aggregate interest in one or more items of 752  
jewelry, not to exceed one thousand three hundred fifty dollars, 753  
held primarily for the personal, family, or household use of the 754

person or any of the person's dependents.	755
(5) The person's interest, not to exceed an aggregate of two thousand twenty-five dollars, in all implements, professional books, or tools of the person's profession, trade, or business, including agriculture;	756 757 758 759
(6)(a) The person's interest in a beneficiary fund set apart, appropriated, or paid by a benevolent association or society, as exempted by section 2329.63 of the Revised Code;	760 761 762
(b) The person's interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code;	763 764 765
(c) The person's interest in a policy of group insurance or the proceeds of a policy of group insurance, as exempted by section 3917.05 of the Revised Code;	766 767 768
(d) The person's interest in money, benefits, charity, relief, or aid to be paid, provided, or rendered by a fraternal benefit society, as exempted by section 3921.18 of the Revised Code;	769 770 771 772
(e) The person's interest in the portion of benefits under policies of sickness and accident insurance and in lump sum payments for dismemberment and other losses insured under those policies, as exempted by section 3923.19 of the Revised Code.	773 774 775 776
(7) The person's professionally prescribed or medically necessary health aids;	777 778
(8) The person's interest in a burial lot, including, but not limited to, exemptions under section 517.09 or 1721.07 of the Revised Code;	779 780 781
(9) The person's interest in the following:	782
(a) Moneys paid or payable for living maintenance or rights, as exempted by section 3304.19 of the Revised Code;	783 784

(b) Workers' compensation, as exempted by section 4123.67 of the Revised Code; 785  
786

(c) Unemployment compensation benefits, as exempted by section 4141.32 of the Revised Code; 787  
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(d) Cash assistance payments under the Ohio works first program, as exempted by section 5107.75 of the Revised Code; 789  
790

(e) Benefits and services under the prevention, retention, and contingency program, as exempted by section 5108.08 of the Revised Code; 791  
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(f) Disability financial assistance payments, as exempted by section 5115.06 of the Revised Code; 794  
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(g) Payments under section 24 or 32 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 796  
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(10)(a) Except in cases in which the person was convicted of or pleaded guilty to a violation of section 2921.41 of the Revised Code and in which an order for the withholding of restitution from payments was issued under division (C)(2)(b) of that section, in cases in which an order for withholding was issued under section 2907.15 of the Revised Code, in cases in which an order for forfeiture was issued under division (A) or (B) of section 2929.192 of the Revised Code, and in cases in which an order was issued under section 2929.193 of the Revised Code, and only to the extent provided in the order, and except as provided in sections 3105.171, 3105.63, 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, the person's ~~right~~ rights to or interests in a pension, benefit, annuity, retirement allowance, or accumulated contributions, the person's ~~right~~ rights to or interests in a participant account in any deferred compensation program offered by the Ohio public employees deferred compensation board, a government unit, or a municipal corporation, or the person's other accrued or accruing rights or interests, as exempted by section 798  
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145.56, 146.13, 148.09, 742.47, 3307.41, 3309.66, or 5505.22 of 816  
the Revised Code, and the person's ~~right~~ rights to or interests in 817  
benefits from the Ohio public safety officers death benefit fund; 818

(b) Except as provided in sections 3119.80, 3119.81, 3121.02, 819  
3121.03, and 3123.06 of the Revised Code, the person's ~~right~~ 820  
rights to receive or interests in receiving a payment or other 821  
benefits under any pension, annuity, or similar plan or contract, 822  
not including a payment or benefit from a stock bonus or 823  
profit-sharing plan or a payment included in division (A)(6)(b) or 824  
(10)(a) of this section, on account of illness, disability, death, 825  
age, or length of service, to the extent reasonably necessary for 826  
the support of the person and any of the person's dependents, 827  
except if all the following apply: 828

(i) The plan or contract was established by or under the 829  
auspices of an insider that employed the person at the time the 830  
person's rights or interests under the plan or contract arose. 831

(ii) The payment is on account of age or length of service. 832

(iii) The plan or contract is not qualified under the 833  
"Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as 834  
amended. 835

(c) Except for any portion of the assets that were deposited 836  
for the purpose of evading the payment of any debt and except as 837  
provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 838  
3123.06 of the Revised Code, the person's ~~right~~ rights or 839  
interests in the assets held in, or to directly or indirectly 840  
receive any payment or benefit under, any individual retirement 841  
account, individual retirement annuity, "Roth IRA," "529 plan," or 842  
education individual retirement account that provides payments or 843  
benefits by reason of illness, disability, death, retirement, or 844  
age or provides payments or benefits for purposes of education, to 845  
the extent that the assets, payments, or benefits described in 846

division (A)(10)(c) of this section are attributable to or derived 847  
from any of the following or from any earnings, dividends, 848  
interest, appreciation, or gains on any of the following: 849

(i) Contributions of the person that were less than or equal 850  
to the applicable limits on deductible contributions to an 851  
individual retirement account or individual retirement annuity in 852  
the year that the contributions were made, whether or not the 853  
person was eligible to deduct the contributions on the person's 854  
federal tax return for the year in which the contributions were 855  
made; 856

(ii) Contributions of the person that were less than or equal 857  
to the applicable limits on contributions to a Roth IRA or 858  
education individual retirement account in the year that the 859  
contributions were made; 860

(iii) Contributions of the person that are within the 861  
applicable limits on rollover contributions under subsections 219, 862  
402(c), 403(a)(4), 403(b)(8), 408(b), 408(d)(3), 408A(c)(3)(B), 863  
408A(d)(3), and 530(d)(5) of the "Internal Revenue Code of 1986," 864  
100 Stat. 2085, 26 U.S.C.A. 1, as amended; 865

(iv) Contributions by any person into any plan, fund, or 866  
account that is formed, created, or administered pursuant to, or 867  
is otherwise subject to, section 529 of the "Internal Revenue Code 868  
of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 869

(d) Except for any portion of the assets that were deposited 870  
for the purpose of evading the payment of any debt and except as 871  
provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 872  
3123.06 of the Revised Code, the person's ~~right~~ rights or 873  
interests in the assets held in, or to receive any payment under, 874  
any Keogh or "H.R. 10" plan that provides benefits by reason of 875  
illness, disability, death, retirement, or age, to the extent 876  
reasonably necessary for the support of the person and any of the 877

person's dependents. 878

(e) The person's rights to or interests in any assets held 879  
in, or to directly or indirectly receive any payment or benefit 880  
under, any individual retirement account, individual retirement 881  
annuity, "Roth IRA," "529 plan," or education individual 882  
retirement account that a decedent, upon or by reason of the 883  
decedent's death, directly or indirectly left to or for the 884  
benefit of the person, either outright or in trust or otherwise, 885  
including, but not limited to, any of those rights or interests in 886  
assets or to receive payments or benefits that were transferred, 887  
conveyed, or otherwise transmitted by the decedent by means of a 888  
will, trust, exercise of a power of appointment, beneficiary 889  
designation, transfer or payment on death designation, or any 890  
other method or procedure. 891

(f) The exemptions under divisions (A)(10)(a) to (e) of this 892  
section also shall apply or otherwise be available to an alternate 893  
payee under a qualified domestic relations order (QDRO) or other 894  
similar court order. 895

(g) A person's interest in any plan, program, instrument, or 896  
device described in divisions (A)(10)(a) to (e) of this section 897  
shall be considered an exempt interest even if the plan, program, 898  
instrument, or device in question, due to an error made in good 899  
faith, failed to satisfy any criteria applicable to that plan, 900  
program, instrument, or device under the "Internal Revenue Code of 901  
1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. 902

(11) The person's right to receive spousal support, child 903  
support, an allowance, or other maintenance to the extent 904  
reasonably necessary for the support of the person and any of the 905  
person's dependents; 906

(12) The person's right to receive, or moneys received during 907  
the preceding twelve calendar months from, any of the following: 908

(a) An award of reparations under sections 2743.51 to 2743.72 909  
of the Revised Code, to the extent exempted by division (D) of 910  
section 2743.66 of the Revised Code; 911

(b) A payment on account of the wrongful death of an 912  
individual of whom the person was a dependent on the date of the 913  
individual's death, to the extent reasonably necessary for the 914  
support of the person and any of the person's dependents; 915

(c) Except in cases in which the person who receives the 916  
payment is an inmate, as defined in section 2969.21 of the Revised 917  
Code, and in which the payment resulted from a civil action or 918  
appeal against a government entity or employee, as defined in 919  
section 2969.21 of the Revised Code, a payment, not to exceed 920  
twenty thousand two hundred dollars, on account of personal bodily 921  
injury, not including pain and suffering or compensation for 922  
actual pecuniary loss, of the person or an individual for whom the 923  
person is a dependent; 924

(d) A payment in compensation for loss of future earnings of 925  
the person or an individual of whom the person is or was a 926  
dependent, to the extent reasonably necessary for the support of 927  
the debtor and any of the debtor's dependents. 928

(13) Except as provided in sections 3119.80, 3119.81, 929  
3121.02, 3121.03, and 3123.06 of the Revised Code, personal 930  
earnings of the person owed to the person for services in an 931  
amount equal to the greater of the following amounts: 932

(a) If paid weekly, thirty times the current federal minimum 933  
hourly wage; if paid biweekly, sixty times the current federal 934  
minimum hourly wage; if paid semimonthly, sixty-five times the 935  
current federal minimum hourly wage; or if paid monthly, one 936  
hundred thirty times the current federal minimum hourly wage that 937  
is in effect at the time the earnings are payable, as prescribed 938  
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 939

U.S.C. 206(a)(1), as amended;	940
(b) Seventy-five per cent of the disposable earnings owed to the person.	941 942
(14) The person's right in specific partnership property, as exempted by division (B)(3) of section 1775.24 of the Revised Code or the person's rights in a partnership pursuant to section 1776.50 of the Revised Code, except as otherwise set forth in section 1776.50 of the Revised Code;	943 944 945 946 947
(15) A seal and official register of a notary public, as exempted by section 147.04 of the Revised Code;	948 949
(16) The person's interest in a tuition unit or a payment under section 3334.09 of the Revised Code pursuant to a tuition payment contract, as exempted by section 3334.15 of the Revised Code;	950 951 952 953
(17) Any other property that is specifically exempted from execution, attachment, garnishment, or sale by federal statutes other than the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 101, as amended;	954 955 956 957
(18) The person's aggregate interest in any property, not to exceed one thousand seventy-five dollars, except that division (A)(18) of this section applies only in bankruptcy proceedings.	958 959 960
(B) On April 1, 2010, and on the first day of April in each third calendar year after 2010, the Ohio judicial conference shall adjust each dollar amount set forth in this section to reflect <del>the</del> <del>change</del> <u>any increase</u> in the consumer price index for all urban consumers, as published by the United States department of labor, or, if that index is no longer published, a generally available comparable index, for the three-year period ending on the thirty-first day of December of the preceding year. Any adjustments required by this division shall be rounded to the nearest twenty-five dollars.	961 962 963 964 965 966 967 968 969 970



The Ohio judicial conference shall prepare a memorandum 971  
specifying the adjusted dollar amounts. The judicial conference 972  
shall transmit the memorandum to the director of the legislative 973  
service commission, and the director shall publish the memorandum 974  
in the register of Ohio. (Publication of the memorandum in the 975  
register of Ohio shall continue until the next memorandum 976  
specifying an adjustment is so published.) The judicial conference 977  
also may publish the memorandum in any other manner it concludes 978  
will be reasonably likely to inform persons who are affected by 979  
its adjustment of the dollar amounts. 980

(C) As used in this section: 981

(1) "Disposable earnings" means net earnings after the 982  
garnishee has made deductions required by law, excluding the 983  
deductions ordered pursuant to section 3119.80, 3119.81, 3121.02, 984  
3121.03, or 3123.06 of the Revised Code. 985

(2) "Insider" means: 986

(a) If the person who claims an exemption is an individual, a 987  
relative of the individual, a relative of a general partner of the 988  
individual, a partnership in which the individual is a general 989  
partner, a general partner of the individual, or a corporation of 990  
which the individual is a director, officer, or in control; 991

(b) If the person who claims an exemption is a corporation, a 992  
director or officer of the corporation; a person in control of the 993  
corporation; a partnership in which the corporation is a general 994  
partner; a general partner of the corporation; or a relative of a 995  
general partner, director, officer, or person in control of the 996  
corporation; 997

(c) If the person who claims an exemption is a partnership, a 998  
general partner in the partnership; a general partner of the 999  
partnership; a person in control of the partnership; a partnership 1000  
in which the partnership is a general partner; or a relative in, a 1001

general partner of, or a person in control of the partnership; 1002

(d) An entity or person to which or whom any of the following 1003  
applies: 1004

(i) The entity directly or indirectly owns, controls, or 1005  
holds with power to vote, twenty per cent or more of the 1006  
outstanding voting securities of the person who claims an 1007  
exemption, unless the entity holds the securities in a fiduciary 1008  
or agency capacity without sole discretionary power to vote the 1009  
securities or holds the securities solely to secure to debt and 1010  
the entity has not in fact exercised the power to vote. 1011

(ii) The entity is a corporation, twenty per cent or more of 1012  
whose outstanding voting securities are directly or indirectly 1013  
owned, controlled, or held with power to vote, by the person who 1014  
claims an exemption or by an entity to which division (C)(2)(d)(i) 1015  
of this section applies. 1016

(iii) A person whose business is operated under a lease or 1017  
operating agreement by the person who claims an exemption, or a 1018  
person substantially all of whose business is operated under an 1019  
operating agreement with the person who claims an exemption. 1020

(iv) The entity operates the business or all or substantially 1021  
all of the property of the person who claims an exemption under a 1022  
lease or operating agreement. 1023

(e) An insider, as otherwise defined in this section, of a 1024  
person or entity to which division (C)(2)(d)(i), (ii), (iii), or 1025  
(iv) of this section applies, as if the person or entity were a 1026  
person who claims an exemption; 1027

(f) A managing agent of the person who claims an exemption. 1028

(3) "Participant account" has the same meaning as in section 1029  
148.01 of the Revised Code. 1030

(4) "Government unit" has the same meaning as in section 1031

148.06 of the Revised Code.	1032
(D) For purposes of this section, "interest" shall be determined as follows:	1033 1034
(1) In bankruptcy proceedings, as of the date a petition is filed with the bankruptcy court commencing a case under Title 11 of the United States Code;	1035 1036 1037
(2) In all cases other than bankruptcy proceedings, as of the date of an appraisal, if necessary under section 2329.68 of the Revised Code, or the issuance of a writ of execution.	1038 1039 1040
An interest, as determined under division (D)(1) or (2) of this section, shall not include the amount of any lien otherwise valid pursuant to section 2329.661 of the Revised Code.	1041 1042 1043
<b>Sec. 2329.661.</b> (A) Division (A)(1) of section 2329.66 of the Revised Code does not:	1044 1045
(1) Extend to a judgment rendered on a mortgage executed, or security interest given on real or personal property by a debtor or to a claim for less than four hundred dollars for manual work or labor;	1046 1047 1048 1049
(2) Impair the lien, by mortgage or otherwise, of the vendor for the purchase money of real or personal property that the debtor or a dependent of the debtor uses as a residence, <u>or</u> the lien of a mechanic or other person, under a statute of this state, for materials furnished or labor performed in the erection of a dwelling house on real property, <del>or a lien for the payment of taxes due on real property;</del>	1050 1051 1052 1053 1054 1055 1056
(3) Affect or invalidate any mortgage on any real property, or any lien created by such a mortgage;	1057 1058
<u>(4) Impair a lien for the payment of taxes, debts, or other obligations owed to this state or any agency or political subdivision of this state;</u>	1059 1060 1061

(5) Extend to a judgment rendered against a debtor for tortious operation of a motor vehicle by the debtor that results in injury, death, or loss to person or property if that injury, death, or loss was caused at a time when the debtor failed to maintain proof of financial responsibility as defined in section 4509.01 of the Revised Code.

(B) No promise, agreement, or contract shall be made or entered into that would waive the exemption laws of this state, and every promise, agreement, or contract insofar as it seeks to waive the exemption laws of this state is void.

(C) Section 2329.66 of the Revised Code does not affect or invalidate any sale, contract of sale, conditional sale, security interest, or pledge of any personal property, or any lien created thereby.

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

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

(2) ~~With~~ Except to the extent that a trust is established pursuant to, or otherwise is wholly or partially governed by or subject to Chapter 5816. of the Revised Code, with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a an irrevocable trust has more than one settlor, the amount distributable to or for a settlor's benefit that the creditor or assignee of a particular settlor may reach may not exceed ~~the~~ that settlor's interest in the portion of the trust attributable to that settlor's contribution. The right of a creditor or assignee to reach a settlor's interest in an irrevocable trust shall be subject to Chapter 5816. of the Revised Code to the extent that that chapter applies to that trust.

(3) With respect to a trust described in 42 U.S.C. section 1093  
1396p(d)(4)(A) or (C), the court may limit the award of a 1094  
settlor's creditor under division (A)(1) or (2) of this section to 1095  
the relief that is appropriate under the circumstances, 1096  
considering among any other factors determined appropriate by the 1097  
court, the supplemental needs of the beneficiary. 1098

(B) For purposes of this section, all of the following apply: 1099

(1) The holder of a power of withdrawal is treated in the 1100  
same manner as the settlor of a revocable trust to the extent of 1101  
the property subject to the power during the period the power may 1102  
be exercised. 1103

(2) Upon the lapse, release, or waiver of the power of 1104  
withdrawal, the holder is treated as the settlor of the trust only 1105  
to the extent the value of the property affected by the lapse, 1106  
release, or waiver exceeds the greatest of the following amounts: 1107

(a) The amount specified in section 2041(b)(2) or 2514(e) of 1108  
the Internal Revenue Code; 1109

(b) If the donor of the property subject to the holder's 1110  
power of withdrawal is not married at the time of the transfer of 1111  
the property to the trust, the amount specified in section 2503(b) 1112  
of the Internal Revenue Code; 1113

(c) If the donor of the property subject to the holder's 1114  
power of withdrawal is married at the time of the transfer of the 1115  
property to the trust, twice the amount specified in section 1116  
2503(b) of the Internal Revenue Code. 1117

(3) None of the following shall be considered an amount that 1118  
can be distributed to or for the benefit of the settlor: 1119

(a) Trust property that could be, but has not yet been, 1120  
distributed to or for the benefit of the settlor only as a result 1121  
of the exercise of a power of appointment held in a nonfiduciary 1122

capacity by any person other than the settlor; 1123

(b) Trust property that could be, but has not yet been, 1124  
distributed to or for the benefit of the settlor of a trust 1125  
pursuant to the power of the trustee to make distributions or 1126  
pursuant to the power of another in a fiduciary capacity to direct 1127  
distributions, if and to the extent that the distributions could 1128  
be made from trust property the value of which was included in the 1129  
gross estate of the settlor's spouse for federal estate tax 1130  
purposes under section 2041 or 2044 of the Internal Revenue Code 1131  
or that was treated as a transfer by the settlor's spouse under 1132  
section 2514 or 2519 of the Internal Revenue Code; 1133

(c) Trust property that, pursuant to the exercise of a 1134  
discretionary power by a person other than the settlor, could be 1135  
paid to a taxing authority or to reimburse the settlor for any 1136  
income tax on trust income or principal that is payable by the 1137  
settlor under the law imposing the tax. 1138

**Sec. 5808.08.** (A) While a trust is revocable, the trustee may 1139  
follow a direction of the settlor that is contrary to the terms of 1140  
the trust. 1141

(B) As provided in section 5815.25 of the Revised Code, a 1142  
trustee is not liable for losses resulting from certain actions or 1143  
failures to act when other persons are granted certain powers with 1144  
respect to the administration of the trust. 1145

(C) The terms of a trust may confer upon a trustee or other 1146  
person a power to direct the modification or termination of the 1147  
trust. 1148

(D) A Except to the extent otherwise provided by the terms of 1149  
a trust, a person other than a beneficiary who holds a power to 1150  
direct, including, but not limited to, a power to direct the 1151  
modification or termination of a trust, is presumptively a 1152

fiduciary who, as a fiduciary, is required to act in good faith 1153  
with regard to the purposes of the trust and the interests of the 1154  
beneficiaries. The holder of a power to direct is liable for any 1155  
loss that results from breach of a fiduciary duty. 1156

**Sec. 5808.18.** (A) Unless the trust instrument expressly 1157  
provides otherwise and subject to the limitations set forth in 1158  
this section, all of the following apply: 1159

(1) If a trustee of a trust, referred to in this section as 1160  
the "first trust," has absolute power under the terms of the first 1161  
trust to make distributions of principal to one or more current 1162  
beneficiaries, that trustee may exercise that power by 1163  
distributing all or any part of the principal subject to the 1164  
power, and all or any part of any income that is not otherwise 1165  
currently required to be distributed, to the trustee of another 1166  
trust, referred to in this section as the "second trust," that is 1167  
for the benefit of one or more current beneficiaries of the first 1168  
trust. The second trust may be a trust under the trust instrument 1169  
for the first trust or under a different governing instrument, 1170  
including a governing instrument created by the trustee of the 1171  
first trust. A trustee of a first trust who is authorized to make 1172  
distributions to the trustee of a second trust pursuant to 1173  
division (A) of this section may do so at any time, whether or not 1174  
the trustee of the first trust would otherwise have made a 1175  
distribution at that time to, or for the benefit of, any 1176  
beneficiary pursuant to the terms of the first trust. 1177

(2) In determining whether a trustee has absolute power to 1178  
make distributions of principal to any current beneficiary and the 1179  
identity of the current beneficiaries, all of the following apply: 1180

(a) An absolute power to distribute principal includes any 1181  
power to make distributions of principal that is not limited by 1182  
reasonably definite standards or ascertainable standards, whether 1183

or not the word "absolute" is used in the trust instrument. 1184

(b) A power to make distributions of principal for purposes 1185  
that include best interests, welfare, comfort or happiness, or 1186  
words of similar import, if not otherwise limited by reasonably 1187  
definite standards or ascertainable standards, constitutes an 1188  
absolute power not limited by reasonably definite standards or 1189  
ascertainable standards, regardless of any requirement to take 1190  
into account other resources of the current beneficiary or 1191  
beneficiaries to whom those distributions may be made. 1192

(c) If the current beneficiaries of the first trust are 1193  
defined, in whole or in part, as a class of persons, that class 1194  
includes any person who falls within that class of persons after 1195  
the distribution to the second trust. 1196

(d) A power to make distributions for the benefit of a 1197  
beneficiary is considered a power to make distributions to that 1198  
beneficiary. 1199

(3) If property is distributed pursuant to the authority 1200  
described in division (A) of this section, the governing 1201  
instrument for the second trust may do either or both of the 1202  
following: 1203

(a) Grant a power of appointment to one or more of the 1204  
beneficiaries for whose benefit the property was so distributed, 1205  
including a power to appoint trust property to the power holder, 1206  
the power holder's creditors, the power holder's estate, the 1207  
creditors of the power holder's estate, or any other person, 1208  
whether or not that person is a beneficiary of the first trust or 1209  
the second trust; 1210

(b) Provide that, at a time or upon an event specified in 1211  
that governing instrument, the remaining trust property shall 1212  
thereafter be held for the benefit of the beneficiaries of the 1213  
first trust upon terms and conditions that are substantially 1214



identical to the terms and conditions of the trust instrument for 1215  
the first trust, except that any current beneficiary or 1216  
beneficiaries for whose benefit the property could have been, but 1217  
was not, so distributed may be excluded from having any beneficial 1218  
interest in the second trust. 1219

(4) For purposes of division (A)(3) of this section, "terms 1220  
and conditions" refer only to those terms and conditions that 1221  
govern the interests of the beneficiaries. 1222

(5) For purposes of division (A) of this section, charitable 1223  
organizations that are not expressly designated in the terms of 1224  
the first trust to receive distributions but to which the trustee 1225  
of the first trust, in the discretion of the trustee, or in the 1226  
discretion of any other person directing the trustee and acting in 1227  
a fiduciary capacity, may at any time make a distribution, are 1228  
considered beneficiaries of the first trust. 1229

(B) Unless the trust instrument expressly provides otherwise 1230  
and subject to the limitations set forth in this section, a 1231  
trustee of a first trust who has power, other than absolute power 1232  
as described in division (A) of this section, under the terms of 1233  
the first trust to make distributions of principal to one or more 1234  
current beneficiaries may exercise that power by distributing all 1235  
or any part of the principal subject to the power, and all or any 1236  
part of any income that is not otherwise currently required to be 1237  
distributed, to the trustee of a second trust. The second trust 1238  
may be a trust under the trust instrument for the first trust or 1239  
under a different governing instrument, including a governing 1240  
instrument created by the trustee of the first trust. The power 1241  
described in this division may be exercised whether or not there 1242  
is a current need to distribute trust principal under any standard 1243  
contained in the first trust. The exercise of a trustee's power 1244  
under this division is valid only if the governing instrument for 1245  
the second trust does not materially change the interests of the 1246

beneficiaries of the first trust. For purposes of this division, a power to make distributions for the benefit of a beneficiary shall be considered a power to make distributions to that beneficiary.

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

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

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

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

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

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

(2) If any transfer to the first trust qualified, or if not for the provisions of division (A) or (B) of this section would have qualified, for a marital or charitable deduction for purposes of any federal income, gift, or estate tax under the Internal Revenue Code, or for purposes of any state income, gift, estate, or inheritance tax, 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 deduction, or

would have reduced the amount of the deduction, under the same 1278  
provisions of the Internal Revenue Code or under the same 1279  
provisions of the applicable state law under which the transfer to 1280  
the first trust so qualified. 1281

(3) If any transfer to the first trust has been treated, or 1282  
if not for the provisions of division (A) or (B) of this section 1283  
would have been treated, as a gift qualifying for the exclusion 1284  
from the gift tax described in section 2503(b) of the Internal 1285  
Revenue Code, the governing instrument for the second trust shall 1286  
not include or omit any term that, if included in or omitted from 1287  
the trust instrument for the first trust, would have prevented any 1288  
gift to the first trust from so qualifying under the same 1289  
provisions of section 2503 of the Internal Revenue Code under 1290  
which the transfer to the first trust so qualified. 1291

(4) If the assets of the first trust include any shares of 1292  
stock in an S corporation, as defined in section 1361 of the 1293  
Internal Revenue Code, and the first trust is, or if not for the 1294  
provisions of division (A) or (B) of this section would be, a 1295  
permitted shareholder under any provision of section 1361 of the 1296  
Internal Revenue Code, the governing instrument for the second 1297  
trust shall not include or omit any term that, if included in or 1298  
omitted from the trust instrument for the first trust, would have 1299  
prevented the first trust from qualifying as a permitted 1300  
shareholder of shares of stock in an S corporation under the same 1301  
provisions of section 1361 of the Internal Revenue Code under 1302  
which the first trust so qualified. 1303

(5) If any transfer to the first trust has been treated, or 1304  
if not for the provisions of division (A) or (B) of this section 1305  
would have been treated, as a gift qualifying for a zero inclusion 1306  
ratio for purposes of the federal generation-skipping transfer tax 1307  
under section 2642(c) of the Internal Revenue Code, the governing 1308  
instrument for the second trust shall not include or omit any term 1309

that, if included in or omitted from the trust instrument for the 1310  
first trust, would have prevented the transfer to the first trust 1311  
from so qualifying. 1312

(6) If the assets of the first trust include any interest 1313  
subject to the minimum distribution rules of section 401(a)(9) of 1314  
the Internal Revenue Code and the treasury regulations issued 1315  
under that section, the governing instrument for the second trust 1316  
shall not include or omit any term that, if included in or omitted 1317  
from the trust instrument for the first trust, would have 1318  
shortened the maximum distribution period otherwise allowable 1319  
under section 401(a)(9) of the Internal Revenue Code and the 1320  
treasury regulations with respect to that interest under the first 1321  
trust. 1322

(7)(a) As used in division (C)(7) of this section, "tax 1323  
benefit" means any federal or state tax deduction, exemption, 1324  
exclusion, or other tax benefit not otherwise listed in division 1325  
(C) of this section. 1326

(b) If the trust instrument for the first trust expressly 1327  
indicates an intention to qualify for any tax benefit or if the 1328  
terms of the trust instrument for the first trust are clearly 1329  
designed to enable the first trust to qualify for a tax benefit, 1330  
and if the first trust did qualify, or if not for the provisions 1331  
of division (A) or (B) of this section would have qualified, for 1332  
any tax benefit, the governing instrument for the second trust 1333  
shall not include or omit any term that, if included in or omitted 1334  
from the trust instrument for the first trust, would have 1335  
prevented the first trust from qualifying for that tax benefit. 1336

(8) The distribution to the trustee of the second trust shall 1337  
not result in either of the following: 1338

(a) An increase in, or a change in the method of determining, 1339  
the compensation of the trustee unless the increase in, or change 1340

in the method of determining, that compensation has been consented 1341  
to by all of the persons, other than the trustee of the second 1342  
trust, who are current beneficiaries of the second trust or is 1343  
approved by the court having jurisdiction over the trust. However, 1344  
an increase in compensation of the trustee arising solely because 1345  
the duration of the second trust is longer than the duration of 1346  
the first trust is not considered an increase in, or a change in 1347  
the method of determining, the compensation of the trustee. 1348

(b) A reduction in the standard of care applicable to the 1349  
actions of the trustee of the first trust or the second trust or 1350  
an exoneration of the trustee of the first trust or the second 1351  
trust from liability for actions taken in bad faith or with 1352  
willful disregard of the duties of either trustee, including by 1353  
increasing the extent to which the trustee is entitled to 1354  
indemnification from the trust, as provided in the terms of the 1355  
first trust and under any law of this state. 1356

(D) The exercise of the power to distribute trust income or 1357  
principal to the trustee of a second trust under division (A) or 1358  
(B) of this section shall be by an instrument in writing, signed 1359  
by the trustee of the first trust and filed with the records of 1360  
the first trust. 1361

(E) The power to distribute trust income or principal to the 1362  
trustee of a second trust under division (A) or (B) of this 1363  
section shall not be exercised in a manner contrary to any 1364  
provision of section 2131.08 of the Revised Code to the extent 1365  
applicable to the first trust, and after applying the provisions 1366  
of ~~division (B) of~~ section 2131.09 of the Revised Code to the 1367  
extent applicable to the first trust. Solely for purposes of 1368  
applying under this division the provisions of ~~section~~ sections 1369  
2131.08 and ~~division (B) of section~~ 2131.09 of the Revised Code, 1370  
the exercise of the power to distribute trust income or principal 1371  
to the trustee of a second trust under division (A) or (B) of this 1372

section is considered the exercise of a nongeneral power of 1373  
appointment ~~other than a general power of appointment within the~~ 1374  
~~meaning of~~ as defined in division ~~(B)(4)(F)~~ of section 2131.09 of 1375  
the Revised Code. 1376

(F) The trustee of the first trust shall notify all current 1377  
beneficiaries of the first trust, in writing, of the intended 1378  
distribution to the trustee of a second trust pursuant to division 1379  
(A) or (B) of this section not later than thirty days prior to 1380  
that distribution. The distribution may be made prior to the 1381  
expiration of thirty days from the date on which that notice is 1382  
given to all current beneficiaries of the first trust if all of 1383  
those current beneficiaries waive the thirty-day period from 1384  
receipt of that notice. The trustee's giving of notice of an 1385  
intended distribution under this division or the waiver or 1386  
expiration of that thirty-day period from receipt of the notice do 1387  
not limit the right of any beneficiary to object to the exercise 1388  
of the trustee's power to distribute trust principal as provided 1389  
in any other applicable provision of the Ohio Trust Code. 1390

(G) Any person, other than the trustee, who has a power 1391  
exercisable in a fiduciary capacity to direct the trustee to make 1392  
any distribution of principal that, if held by the trustee, would 1393  
be a power to make a distribution as described in division (A) or 1394  
(B) of this section, may exercise that power by directing the 1395  
trustee to make a distribution under either division (A) or (B) of 1396  
this section, whichever would be applicable if that person were 1397  
the trustee, subject to all of the limitations described in this 1398  
section that apply to a trustee's exercise of that power. 1399

(H) The exercise of the power to distribute trust income or 1400  
principal to the trustee of a second trust under division (A) or 1401  
(B) of this section is not prohibited by a spendthrift clause or a 1402  
provision in the trust instrument that prohibits the amendment or 1403  
revocation of the trust. 1404

(I) For purposes of division (A) of section 5808.14 of the Revised Code, 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 this section, is presumed to have acted in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

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

(K) If the first trust is a testamentary trust established under the will of a testator who was domiciled in this state at the time of the testator's death, the power to distribute trust income or principal to the trustee of a second trust under division (A) or (B) of this section may be exercised only if approved by the court, if any, that has jurisdiction over the testamentary trust.

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

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

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

(M) If, and to the extent that, a trustee makes any distribution pursuant to division (A) or (B) of this section to the trustee of a second trust, then for purposes of division (W) of section 5801.01 of the Revised Code, the governing instrument for the second trust is considered to be an amendment of the trust

instrument signed by the settlor of the first trust, even if that 1436  
governing instrument is signed by a person other than that 1437  
settlor. 1438

(N) Nothing in this section shall be construed to limit the 1439  
power of any trustee to distribute trust property in further 1440  
trust, whether that power arises under the terms of the trust 1441  
instrument, under any other section of Title LVIII of the Revised 1442  
Code, under any other statute, or under the common law. The terms 1443  
of a trust instrument may do any of the following: 1444

(1) Confer upon the trustee the power to make any 1445  
distribution, or confer upon any other person acting in a 1446  
fiduciary capacity the power to direct the trustee to make any 1447  
distribution, in further trust that is broader or more limited 1448  
than, or that conflict with, the provisions of this section; 1449

(2) Provide for different requirements for notice to 1450  
beneficiaries of the trust of the trustee's exercise of the power 1451  
conferred under the terms of the trust instrument or described in 1452  
division (A) or (B) of this section; 1453

(3) Waive any requirement of notice to the beneficiaries of 1454  
the trust of the trustee's exercise of the power conferred under 1455  
the terms of the trust instrument or described in division (A) or 1456  
(B) of this section; 1457

(4) Otherwise include any terms and conditions governing the 1458  
distribution in further trust that the settlor of the trust 1459  
determines. 1460

(O)(1) Division (A) of this section is intended to be a 1461  
codification of the common law of this state in effect prior to 1462  
~~the enactment of this section~~ March 22, 2012, and applies to 1463  
distributions, whenever made, from any trust that is governed by 1464  
the law of this state or that has its principal place of 1465  
administration in this state, whether that trust was created 1466



before, on, or after ~~the effective date of this section~~ March 22, 1467  
2012. 1468

(2) Division (B) of this section applies to distributions 1469  
made on or after ~~the effective date of this section~~ March 22, 1470  
2012, from any trust that is governed by the law of this state or 1471  
that has its principal place of administration in this state, 1472  
whether that trust was created before, on, or after ~~the effective~~ 1473  
~~date of this section~~ March 22, 2012. 1474

**Sec. 5815.24.** (A) As used in this section, "fiduciary" means 1475  
a trustee under any expressed, implied, resulting, or constructive 1476  
trust; an executor, administrator, public administrator, 1477  
committee, guardian, conservator, curator, receiver, trustee in 1478  
bankruptcy, or assignee for the benefit of creditors; a partner, 1479  
agent, officer of a public or private corporation, or public 1480  
officer; or any other person acting in a fiduciary capacity for 1481  
any person, trust, or estate. 1482

(B) A fiduciary, or a custodian, who is a transferee of real 1483  
or personal property that is held by a fiduciary other than the 1484  
person or entity serving as the transferee, is not required to 1485  
inquire into any act, or audit any account, of the transferor 1486  
fiduciary, unless the transferee is specifically directed to do so 1487  
in the instrument governing the transferee or unless the 1488  
transferee has actual knowledge of conduct of the transferor that 1489  
would constitute a breach of the transferor's fiduciary 1490  
responsibilities. 1491

(C) If a trustee is authorized or directed in a trust 1492  
instrument to pay or advance all or any part of the trust property 1493  
to the personal representative of a decedent's estate for the 1494  
payment of the decedent's legal obligations, death taxes, 1495  
bequests, or expenses of administration, the trustee is not liable 1496  
for the application of the trust property paid or advanced to the 1497

personal representative and is not liable for any act or omission 1498  
of the personal representative with respect to the trust property, 1499  
unless the trustee has actual knowledge, prior to the payment or 1500  
advancement of the trust property, that the personal 1501  
representative does not intend to use the trust property for such 1502  
purposes. 1503

(D) Regardless of whether a beneficiary is subject to the 1504  
claims of any creditor, a trustee may pay any expense incurred by 1505  
a beneficiary to the extent that payment is permitted by the 1506  
instrument governing the trust, and the trustee may make those 1507  
payments even if the payments exhaust the income and principal of 1508  
the trust. A trustee is not liable to any creditor of a 1509  
beneficiary for paying the expenses of a beneficiary as allowed by 1510  
this division. 1511

**Sec. 5815.25.** (A) As used in this section, "fiduciary" means 1512  
a trustee under any testamentary, inter vivos, or other trust, an 1513  
executor or administrator, or any other person who is acting in a 1514  
fiduciary capacity for any person, trust, or estate. 1515

(B) ~~When~~ If an instrument or other applicable written 1516  
agreement describes, appoints, or directs a fiduciary to handle 1517  
only the administrative duties and responsibilities of a trust, 1518  
that administrative fiduciary shall not have any duties, 1519  
responsibilities, or liabilities to the trust beneficiaries or to 1520  
other persons interested in a trust except for those 1521  
administrative duties and responsibilities specifically described 1522  
in the instrument or written agreement. The administrative duties 1523  
and responsibilities of a trust under this division may include 1524  
any of the following: 1525

(1) Opening and maintaining bank, brokerage, financial, or 1526  
other custodial accounts to receive trust income or contributions 1527  
and from which trust expenditures, bills, and distributions may be 1528

<u>disbursed;</u>	1529
<u>(2) Maintaining and handling trust records, reports,</u>	1530
<u>correspondence, or communications;</u>	1531
<u>(3) Maintaining an office for trust business;</u>	1532
<u>(4) Filing any trust tax returns;</u>	1533
<u>(5) Employing agents in connection with the fiduciary's</u>	1534
<u>administrative duties;</u>	1535
<u>(6) Taking custody of or storing trust property;</u>	1536
<u>(7) Any other similar administrative duties for the trust.</u>	1537
<u>(C) If</u> an instrument under which a fiduciary acts reserves to	1538
the grantor, or vests in an advisory or investment committee or in	1539
one or more other persons, including one or more fiduciaries, to	1540
the exclusion of the fiduciary or of one or more of several	1541
fiduciaries, any power, including, but not limited to, the	1542
authority to direct the acquisition, disposition, or retention of	1543
any investment or the power to authorize any act that an excluded	1544
fiduciary may propose, any excluded fiduciary is not liable,	1545
either individually or as a fiduciary, for either of the	1546
following:	1547
(1) Any loss that results from compliance with an authorized	1548
direction of the grantor, committee, person, or persons;	1549
(2) Any loss that results from a failure to take any action	1550
proposed by an excluded fiduciary that requires a prior	1551
authorization of the grantor, committee, person, or persons if	1552
that excluded fiduciary timely sought but failed to obtain that	1553
authorization.	1554
<del>(C)</del> <u>(D) Any administrative fiduciary as described in division</u>	1555
<u>(B) of this section or any excluded fiduciary as described in</u>	1556
<u>division <del>(B)</del>(C) of this section is relieved from any obligation to</u>	1557
perform investment reviews and make recommendations with respect	1558

to any investments to the extent the grantor, an advisory or 1559  
investment committee, or one or more other persons have authority 1560  
to direct the acquisition, disposition, or retention of any 1561  
investment. 1562

~~(D)~~(E) This section does not apply to the extent that the 1563  
instrument under which an administrative fiduciary as described in 1564  
division (B) of this section or an excluded fiduciary as described 1565  
in division ~~(B)~~(C) of this section ~~acts~~ contains provisions that 1566  
are inconsistent with this section. 1567

**Sec. 5815.36.** (A) As used in this section: 1568

(1) "Disclaimant" means any person, any guardian or personal 1569  
representative of a person or estate of a person, or any 1570  
attorney-in-fact or agent of a person having a general or specific 1571  
authority to act granted in a written instrument, who is any of 1572  
the following: 1573

(a) With respect to testamentary instruments and intestate 1574  
succession, an heir, next of kin, devisee, legatee, donee, person 1575  
succeeding to a disclaimed interest, surviving joint tenant, 1576  
surviving tenant by the entirety, surviving tenant of a tenancy 1577  
with a right of survivorship, beneficiary under a testamentary 1578  
instrument, or person designated to take pursuant to a power of 1579  
appointment exercised by a testamentary instrument; 1580

(b) With respect to nontestamentary instruments, a grantee, 1581  
donee, person succeeding to a disclaimed interest, surviving joint 1582  
tenant, surviving tenant by the entirety, surviving tenant of a 1583  
tenancy with a right of survivorship, beneficiary under a 1584  
nontestamentary instrument, or person designated to take pursuant 1585  
to a power of appointment exercised by a nontestamentary 1586  
instrument; 1587

(c) With respect to fiduciary rights, privileges, powers, and 1588

immunities, a fiduciary under a testamentary or nontestamentary 1589  
instrument. Division (A)(1)(c) of this section does not authorize 1590  
a fiduciary who disclaims fiduciary rights, privileges, powers, 1591  
and immunities to cause the rights of any beneficiary to be 1592  
disclaimed unless the instrument creating the fiduciary 1593  
relationship authorizes the fiduciary to make such a disclaimer. 1594

(d) Any person entitled to take an interest in property upon 1595  
the death of a person or upon the occurrence of any other event. 1596

(2) "Personal representative" includes any fiduciary as 1597  
defined in section 2109.01 of the Revised Code and any executor, 1598  
trustee, guardian, or other person or entity having a fiduciary 1599  
relationship with regard to any interest in property passing to 1600  
the fiduciary, executor, trustee, guardian, or other person or 1601  
entity by reason of a disclaimant's death. 1602

(3) "Property" means all forms of property, real and 1603  
personal, tangible and intangible. 1604

(B)(1) A disclaimant, other than a fiduciary under an 1605  
instrument who is not authorized by the instrument to disclaim the 1606  
interest of a beneficiary, may disclaim, in whole or in part, the 1607  
succession to any property by executing and by delivering, filing, 1608  
or recording a written disclaimer instrument in the manner 1609  
provided in this section. 1610

(2) A disclaimant who is a fiduciary under an instrument may 1611  
disclaim, in whole or in part, any right, power, privilege, or 1612  
immunity, by executing and by delivering, filing, or recording a 1613  
written disclaimer instrument in the manner provided in this 1614  
section. 1615

(3) The written instrument of disclaimer shall be signed and 1616  
acknowledged by the disclaimant and shall contain all of the 1617  
following: 1618

(a) A reference to the donative instrument; 1619

(b) A description of the property, part of property, or 1620  
interest disclaimed, and of any fiduciary right, power, privilege, 1621  
or immunity disclaimed; 1622

(c) A declaration of the disclaimer and its extent. 1623

(4) The guardian of the estate of a minor or an incompetent, 1624  
or the personal representative of a deceased person, whether or 1625  
not authorized by the instrument to disclaim, with the consent of 1626  
the probate division of the court of common pleas may disclaim, in 1627  
whole or in part, the succession to any property, or interest in 1628  
property, that the ward, if an adult and competent, or the 1629  
deceased, if living, might have disclaimed. The guardian or 1630  
personal representative, or any interested person may file an 1631  
application with the probate division of the court of common pleas 1632  
that has jurisdiction of the estate, asking that the court order 1633  
the guardian or personal representative to execute and deliver, 1634  
file, or record the disclaimer on behalf of the ward, estate, or 1635  
deceased person. The court shall order the guardian or personal 1636  
representative to execute and deliver, file, or record the 1637  
disclaimer if the court finds, upon hearing after notice to 1638  
interested parties and such other persons as the court shall 1639  
direct, that: 1640

(a) It is in the best interests of those interested in the 1641  
estate of the person and of those who will take the disclaimed 1642  
interest; 1643

(b) It would not materially, adversely affect the minor or 1644  
incompetent, or the beneficiaries of the estate of the decedent, 1645  
taking into consideration other available resources and the age, 1646  
probable life expectancy, physical and mental condition, and 1647  
present and reasonably anticipated future needs of the minor or 1648  
incompetent or the beneficiaries of the estate of the decedent. 1649

A written instrument of disclaimer ordered by the court under 1650

this division shall be executed and be delivered, filed, or 1651  
recorded within the time and in the manner in which the person 1652  
could have disclaimed if the person were living, an adult, and 1653  
competent. 1654

(C) A partial disclaimer of property that is subject to a 1655  
burdensome interest created by the donative instrument is not 1656  
effective unless the disclaimed property constitutes a gift that 1657  
is separate and distinct from undisclaimed gifts. 1658

(D) The disclaimant shall deliver, file, or record the 1659  
disclaimer, or cause the same to be done, prior to accepting any 1660  
benefits of the disclaimed interest and at any time after the 1661  
latest of the following dates: 1662

(1) The effective date of the donative instrument if both the 1663  
taker and the taker's interest in the property are finally 1664  
ascertained on that date; 1665

(2) The date of the occurrence of the event upon which both 1666  
the taker and the taker's interest in the property become finally 1667  
ascertainable; 1668

(3) The date on which the disclaimant attains eighteen years 1669  
of age or is no longer an incompetent, without tendering or 1670  
repaying any benefit received while the disclaimant was under 1671  
eighteen years of age or an incompetent, and even if a guardian of 1672  
a minor or incompetent had filed an application pursuant to 1673  
division (B)(4) of this section and the probate division of the 1674  
court of common pleas involved did not consent to the guardian 1675  
executing a disclaimer. 1676

(E) No disclaimer instrument is effective under this section 1677  
if either of the following applies under the terms of the 1678  
disclaimer instrument: 1679

(1) The disclaimant has power to revoke the disclaimer. 1680

(2) The disclaimant may transfer, or direct to be transferred, to self the entire legal and equitable ownership of the property subject to the disclaimer instrument.

(F)(1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, including, but not limited to, a transfer on death designation affidavit pursuant to section 5302.22 of the Revised Code, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed. If the interest disclaimed is created by a transfer on death designation affidavit pursuant to section 5302.22 of the Revised Code, the disclaimer instrument shall be filed with the county recorder of the county in which the real property that is the subject of that affidavit is located.

(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidences ownership of the motor vehicle, watercraft, or outboard motor that is transferable on death pursuant to section 2131.13 of the Revised Code, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.

(3) If no proceedings for the administration of the decedent's estate have been commenced, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate might be commenced according to law. The disclaimer instrument shall be filed and indexed, and fees



charged, in the same manner as provided by law for an application 1713  
to be appointed as personal representative to administer the 1714  
decedent's estate. The disclaimer is effective whether or not 1715  
proceedings thereafter are commenced to administer the decedent's 1716  
estate. If proceedings thereafter are commenced for the 1717  
administration of the decedent's estate, they shall be filed 1718  
under, or consolidated with, the case number assigned to the 1719  
disclaimer instrument. 1720

(4) If an interest in real estate is disclaimed, an executed 1721  
copy of the disclaimer instrument also shall be recorded in the 1722  
office of the recorder of the county in which the real estate is 1723  
located. The disclaimer instrument shall include a description of 1724  
the real estate with sufficient certainty to identify it, and 1725  
shall contain a reference to the record of the instrument that 1726  
created the interest disclaimed. If title to the real estate is 1727  
registered under Chapters 5309. and 5310. of the Revised Code, the 1728  
disclaimer interest shall be entered as a memorial on the last 1729  
certificate of title. A spouse of a disclaimant has no dower or 1730  
other interest in the real estate disclaimed. 1731

(G) If a donative instrument expressly provides for the 1732  
distribution of property, part of property, or interest in 1733  
property if there is a disclaimer, the property, part of property, 1734  
or interest disclaimed shall be distributed or disposed of, and 1735  
accelerated or not accelerated, in accordance with the donative 1736  
instrument. In the absence of express provisions to the contrary 1737  
in the donative instrument, the property, part of property, or 1738  
interest in property disclaimed, and any future interest that is 1739  
to take effect in possession or enjoyment at or after the 1740  
termination of the interest disclaimed, shall descend, be 1741  
distributed, or otherwise be disposed of, and shall be 1742  
accelerated, in the following manner: 1743

(1) If intestate or testate succession is disclaimed, as if 1744

the disclaimant had predeceased the decedent; 1745

(2) If the disclaimant is one designated to take pursuant to 1746  
a power of appointment exercised by a testamentary instrument, as 1747  
if the disclaimant had predeceased the donee of the power; 1748

(3) If the donative instrument is a nontestamentary 1749  
instrument, as if the disclaimant had died before the effective 1750  
date of the nontestamentary instrument; 1751

(4) If the disclaimer is of a fiduciary right, power, 1752  
privilege, or immunity, as if the right, power, privilege, or 1753  
immunity was never in the donative instrument. 1754

(H) A disclaimer pursuant to this section is effective as of, 1755  
and relates back for all purposes to, the date upon which the 1756  
taker and the taker's interest have been finally ascertained. 1757

(I) A disclaimant who has a present and future interest in 1758  
property, and disclaims the disclaimant's present interest in 1759  
whole or in part, is considered to have disclaimed the 1760  
disclaimant's future interest to the same extent, unless a 1761  
contrary intention appears in the disclaimer instrument or the 1762  
donative instrument. A disclaimant is not precluded from 1763  
receiving, as an alternative taker, a beneficial interest in the 1764  
property disclaimed, unless a contrary intention appears in the 1765  
disclaimer instrument or in the donative instrument. 1766

(J) The disclaimant's right to disclaim under this section is 1767  
barred if the disclaimant does any of the following: 1768

(1) Assigns, conveys, encumbers, pledges, or transfers, or 1769  
contracts to assign, convey, encumber, pledge, or transfer, the 1770  
property or any interest in it; 1771

(2) Waives in writing the disclaimant's right to disclaim and 1772  
executes and delivers, files, or records the waiver in the manner 1773  
provided in this section for a disclaimer instrument; 1774

(3) Accepts the property or an interest in it;	1775
(4) Permits or suffers a sale or other disposition of the property pursuant to judicial action against the disclaimant.	1776 1777
(K) Neither a fiduciary's application for appointment or assumption of duties as a fiduciary nor a beneficiary's application for appointment as a personal representative or fiduciary waives or bars the disclaimant's right to disclaim a right, power, privilege, or immunity as a personal representative or fiduciary or the beneficiary's right to disclaim property.	1778 1779 1780 1781 1782 1783
(L) The right to disclaim under this section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.	1784 1785 1786
(M) A disclaimer instrument or written waiver of the right to disclaim that has been executed and delivered, filed, or recorded as required by this section is final and binding upon all persons.	1787 1788 1789
(N)(1) The right to disclaim and the procedures for disclaimer established by this section are in addition to, and do not exclude or abridge, any other rights or procedures that exist or formerly existed under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property.	1790 1791 1792 1793 1794 1795
<u>(2) A disclaimer is not considered a transfer or conveyance by the disclaimant, and no creditor of a disclaimant may avoid a disclaimer.</u>	1796 1797 1798
<u>(3) This section shall take precedence over any other section of the Revised Code that conflicts with this section.</u>	1799 1800
(O)(1) No person is liable for distributing or disposing of property in a manner inconsistent with the terms of a valid disclaimer if the distribution or disposition is otherwise proper and the person has no actual knowledge of the disclaimer.	1801 1802 1803 1804

(2) No person is liable for distributing or disposing of property in reliance upon the terms of a disclaimer that is invalid because the right of disclaimer has been waived or barred if the distribution or disposition is otherwise proper and the person has no actual knowledge of the facts that constitute a waiver or bar to the right to disclaim.

(P)(1) A disclaimant may disclaim pursuant to this section any interest in property that is in existence on September 27, 1976, if either the interest in the property or the taker of the interest in the property is not finally ascertained on that date.

(2) No disclaimer executed pursuant to this section destroys or diminishes an interest in property that exists on September 27, 1976, in any person other than the disclaimant.

(Q) This section may be applied separately to different interests or powers created in the disclaimant by the same testamentary or nontestamentary instrument.

**Sec. 5815.37.** (A) If any interest in real property held by any trustee of an express trust that is wholly or partially governed by a law of this state or any interest in real property located in this state that is held by the trustee of a trust wholly governed by the law of one or more jurisdictions other than this state is temporarily conveyed to any beneficiary of that trust and reconveyed back to any trustee of that trust, the interest in the real property shall be subject to divisions (B) and (C) of this section if all of the following apply:

(1) That temporary conveyance is for the principal purpose of enabling some or all of that interest in the real property to be used as collateral in a loan transaction.

(2) The loan proceeds will be delivered to the trustee of the trust or will otherwise be principally used for the benefit of one

or more beneficiaries of the trust. 1835

(3) The interest in the real property is reconveyed back to 1836  
one or more trustees of the trust within a reasonable time after 1837  
the reconveying beneficiary acquired actual notice that the lender 1838  
has perfected the lender's collateral rights in and to the 1839  
interest in the real property. 1840

(4) The lender in question is any of the following: 1841

(a) A bank, thrift, savings bank, savings and loan 1842  
association, credit union, or any other similar financial 1843  
institution if the activities of the other similar financial 1844  
institution are subject to supervision by the Ohio superintendent 1845  
of financial institutions, the federal deposit insurance 1846  
corporation, the comptroller of the currency, the office of thrift 1847  
supervision, any other comparable state or federal regulatory 1848  
agency or entity, or a successor of any of them; 1849

(b) An insurance company subject to supervision by the Ohio 1850  
department of insurance or any comparable agency established by 1851  
the law of any other jurisdiction; 1852

(c) Any other corporation, limited liability company, 1853  
partnership, or other similar or comparable entity the routine and 1854  
regular business activities of which commonly include the making 1855  
of commercial or residential loans that are wholly or partially 1856  
secured by real property. 1857

(B) If a temporary conveyance and reconveyance of an interest 1858  
in real property is made for the principal purpose of allowing a 1859  
lender to acquire, perfect, foreclose on, or exercise collateral 1860  
rights in and to the real property interest in question, the 1861  
temporary conveyance to a beneficiary shall be disregarded for all 1862  
other purposes, and the reconveyance back to a trustee shall 1863  
relate back to the date immediately preceding that reconveyance on 1864  
which the interest in the real property was transferred to any 1865

trustee of the trust in a transaction other than a loan 1866  
transaction described in division (A)(1) of this section. 1867

(C) In connection with any temporary conveyance and 1868  
reconveyance of an interest in real property pursuant to division 1869  
(A) of this section, the following shall survive unimpaired after 1870  
any reconveyance back to a trustee made pursuant to division 1871  
(A)(3) of this section: 1872

(1) The rights, duties, and obligations of a lender under the 1873  
documents governing the loan transaction, including, but not 1874  
limited to, any of the following to the extent they are provided 1875  
for in those documents: 1876

(a) A lender's collateral rights in and to any interest in 1877  
real property that is reconveyed to a trustee; 1878

(b) The lender's rights under any mortgage, deed of trust, 1879  
lien, encumbrance, or any other similar or comparable instrument 1880  
or arrangement used to give the lender collateral rights in and to 1881  
the interest being reconveyed, including, but not limited to, a 1882  
lender's right to foreclose on that interest in real property; 1883

(c) The lender's obligations to make loans or advances or to 1884  
provide any person with any notice called for by the documents 1885  
governing the loan transaction. 1886

(2) The rights, duties, and obligations of any debtor under 1887  
any documents governing the loan transaction, including, but not 1888  
limited to, the following to the extent they are provided for in 1889  
those documents: 1890

(a) The duty to repay the lender or any other person who is 1891  
entitled to receive payments under the documents governing the 1892  
loan transaction; 1893

(b) The duty to honor any agreements or covenants made by the 1894  
debtor in the documents governing the loan transaction; 1895

(c) The right to receive any advances, loans, notices, or other benefits called for by the documents governing the loan transaction. 1896  
1897  
1898

(D) The following apply for purposes of division (A)(1) of this section: 1899  
1900

(1) A court shall liberally construe the temporary conveyance to a beneficiary of the trust in question in determining whether the principal purpose of the temporary conveyance is to enable some or all of the interest in the real property to be used as collateral in a loan transaction. 1901  
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(2) An interest in real property shall be considered to be used as collateral if, as part of a lending transaction, that interest is wholly or partially made subject to a mortgage, deed of trust, lien, encumbrance, or any other similar or comparable instrument or arrangement used to give the lender collateral rights in and to that interest. 1906  
1907  
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(E) A court shall liberally construe division (A)(2) of this section in determining whether the loan proceeds referred to in that division will be principally used for the benefit of one or more beneficiaries of the trust in question. 1912  
1913  
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(F) For purposes of division (A)(3) of this section, any reconveyance to a trustee shall be considered to have occurred within a reasonable time if it is made within one hundred twenty days of the date on which the reconveying beneficiary acquired actual notice that the lender has perfected the lender's collateral rights in and to the interest in the real property. In all other cases, a court shall consider all relevant facts and circumstances in determining whether a beneficiary has reconveyed the interest in the real property back to a trustee within a reasonable time after the reconveying beneficiary acquired that actual notice. 1916  
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(G)(1) A court shall liberally construe division (A)(4) of this section in determining whether a corporation, limited liability company, partnership, or other similar or comparable entity qualifies as a lender within the meaning of that division. 1927  
1928  
1929  
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(2) Subject to the rule of liberal interpretation set forth in division (G)(1) of this section, the Ohio superintendent of financial institutions may from time to time issue regulations setting forth a nonexhaustive list of entities that qualify as a lender within the meaning of division (A)(4) of this section and also may from time to time issue regulations setting forth specific entities or classes of entities that do not qualify as a lender within the meaning of that division. 1931  
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(H) An interest in real property may be subject to or involved in more than one loan transaction undertaken pursuant to this section. 1939  
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1941

Sec. 5816.01. This chapter may be cited as the Ohio legacy trust act. 1942  
1943

Sec. 5816.02. As used in this chapter, unless the context otherwise requires: 1944  
1945

(A)(1) "Advisor" means a person to whom both of the following apply: 1946  
1947

(a) The person satisfies the eligibility criteria specified in division (A) of section 5816.11 of the Revised Code. 1948  
1949

(b) The person is given the authority by the terms of a legacy trust to remove or appoint one or more trustees of the trust or to direct, consent to, or disapprove a trustee's actual or proposed investment, distribution, or other decisions. 1950  
1951  
1952  
1953

(2) Any person to whom division (A)(1) of this section applies is considered an advisor even if that person is 1954  
1955



<u>denominated by another title, such as protector.</u>	1956
<u>(B) "Asset" means property of a transferor but does not</u>	1957
<u>include any of the following:</u>	1958
<u>(1) Property to the extent it is encumbered by a valid lien;</u>	1959
<u>(2) Property to the extent it is exempt at the time of a</u>	1960
<u>qualified disposition under any applicable nonbankruptcy law,</u>	1961
<u>including, but not limited to, section 2329.66 of the Revised</u>	1962
<u>Code;</u>	1963
<u>(3) Property held in the form of a tenancy by the entireties</u>	1964
<u>to the extent that, under the law governing the entireties estate</u>	1965
<u>at the time of a qualified disposition, it is not subject to</u>	1966
<u>process by a creditor holding a claim against only one tenant;</u>	1967
<u>(4) Any property transferred from a nonlegacy trust to a</u>	1968
<u>legacy trust to the extent that the property would not be subject</u>	1969
<u>to attachment under the applicable nonbankruptcy law governing</u>	1970
<u>that nonlegacy trust.</u>	1971
<u>(C) "Bankruptcy Code" means the United States Bankruptcy</u>	1972
<u>Code, 11 U.S.C. Chapter 11, as amended.</u>	1973
<u>(D) "Beneficiary" has the same meaning as in section 5801.01</u>	1974
<u>of the Revised Code.</u>	1975
<u>(E) "Claim" means a right to payment, whether or not the</u>	1976
<u>right is reduced to judgment or is liquidated, unliquidated,</u>	1977
<u>fixed, contingent, matured, unmatured, disputed, undisputed,</u>	1978
<u>legal, equitable, secured, or unsecured.</u>	1979
<u>(F) "Creditor" means a person who has a claim against a</u>	1980
<u>transferor and any transferee or assignee of, or successor to,</u>	1981
<u>that claim.</u>	1982
<u>(G) "Debt" means a liability on a claim.</u>	1983
<u>(H) "Disposition" means a transfer, conveyance, or assignment</u>	1984
<u>of property, including, but not limited to, a partial, contingent,</u>	1985

<u>undivided, or co-ownership interest in property. "Disposition"</u>	1986
<u>includes the exercise of a general power so as to cause a transfer</u>	1987
<u>of property to a trustee or trustees but does not include any of</u>	1988
<u>the following:</u>	1989
<u>(1) The release or relinquishment of an interest in property</u>	1990
<u>that, until the release or relinquishment, was the subject of a</u>	1991
<u>qualified disposition;</u>	1992
<u>(2) The exercise of a limited power so as to cause a transfer</u>	1993
<u>of property to a trustee or trustees;</u>	1994
<u>(3) A disclaimer of an interest in a trust, bequest, devise,</u>	1995
<u>or inheritance.</u>	1996
<u>(I) "Internal Revenue Code" means the "Internal Revenue Code</u>	1997
<u>of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.</u>	1998
<u>(J) "Investment decision" means any participation in any</u>	1999
<u>decision regarding the retention, purchase, sale, exchange,</u>	2000
<u>tender, or other transaction affecting the ownership of or rights</u>	2001
<u>in investments.</u>	2002
<u>(K)(1) "Legacy trust" means a trust evidenced by a written</u>	2003
<u>trust instrument to which all of the following apply:</u>	2004
<u>(a) The trust has, names, or appoints at least one qualified</u>	2005
<u>trustee for or in connection with the property that is the subject</u>	2006
<u>of a qualified disposition.</u>	2007
<u>(b) The trust expressly incorporates the laws of this state</u>	2008
<u>to wholly or partially govern its validity, construction, and</u>	2009
<u>administration.</u>	2010
<u>(c) The trust expressly states that it is irrevocable.</u>	2011
<u>(d) The trust has a spendthrift provision applicable to the</u>	2012
<u>interests of any beneficiary in the trust property, including any</u>	2013
<u>interests of a transferor in the trust property.</u>	2014
<u>(2) A trust that satisfies the criteria specified in division</u>	2015

(K)(1) of this section is considered a legacy trust even if the trust instrument also allows for one or more nonqualified trustees and regardless of the language used to satisfy those criteria. 2016  
2017  
2018

(L) "Lien" has the same meaning as in section 1336.01 of the Revised Code. 2019  
2020

(M) "Nonlegacy trust" means any trust other than a legacy trust. 2021  
2022

(N) "Nonqualified trustee" means any trustee other than a qualified trustee. 2023  
2024

(O) "Person" has the same meaning as in section 5801.01 of the Revised Code. 2025  
2026

(P) "Property" has the same meaning as in section 5801.01 of the Revised Code. 2027  
2028

(Q) "Qualified affidavit" means an affidavit that meets the requirements of section 5816.06 of the Revised Code. 2029  
2030

(R) "Qualified disposition" means a disposition by or from a transferor to any trustee of a trust that is, was, or becomes a legacy trust. 2031  
2032  
2033

(S) "Qualified trustee" means a person who is not a transferor and to whom both of the following apply: 2034  
2035

(1)(a) The person, if a natural person, is a resident of this state. 2036  
2037

(b) The person, if not a natural person, is authorized by the law of this state or by a court of competent jurisdiction of this state to act as a trustee and whose activities are subject to supervision by the Ohio superintendent of banks, the federal deposit insurance corporation, the comptroller of the currency, or the office of thrift supervision or a successor of any of them. 2038  
2039  
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(2) The person maintains or arranges for custody in this state of some or all of the property that is the subject of the 2044  
2045

qualified disposition, maintains records for the legacy trust on 2046  
an exclusive or nonexclusive basis, prepares or arranges for the 2047  
preparation of required income tax returns for the legacy trust, 2048  
or otherwise materially participates in the administration of the 2049  
legacy trust. 2050

(T) "Spendthrift provision" has the same meaning as in 2051  
section 5801.01 of the Revised Code. 2052

(U) "Spouse" and "former spouse" means only the person to 2053  
whom a transferor was married on or before a qualified disposition 2054  
is made. 2055

(V) "Transferor" means a person who directly or indirectly 2056  
makes a disposition. 2057

(W) "Valid lien" has the same meaning as in section 1336.01 2058  
of the Revised Code. 2059

**Sec. 5816.03.** (A) In addition to any other method allowed by 2060  
law, the spendthrift provision of a legacy trust may be stated as 2061  
provided in division (B) of section 5805.01 of the Revised Code. 2062

(B) Except as otherwise provided in this section, the 2063  
spendthrift provisions of a legacy trust shall restrain both 2064  
voluntary and involuntary transfer of a transferor's interest in 2065  
that trust. Any spendthrift provision in a legacy trust is 2066  
enforceable under any applicable nonbankruptcy law within the 2067  
meaning of section 541(c)(2) of the Bankruptcy Code regardless of 2068  
whether or not the relevant legacy trust instrument makes any 2069  
reference to that enforceability. In addition to the restraints 2070  
required by this division, a legacy trust and its spendthrift 2071  
provisions may provide for any other restraints on alienation that 2072  
are permitted by any law of this state. 2073

(C) Notwithstanding division (B) of this section or the terms 2074  
of any spendthrift provision, but subject to divisions (D), (E), 2075

and (F) of this section, a transferor's interest in property that 2076  
is the subject of a qualified disposition may be attached or 2077  
otherwise involuntarily alienated in connection with any debt that 2078  
the transferor owes pursuant to an agreement or court order for 2079  
either of the following: 2080

(1) The payment of child or spousal support or alimony to or 2081  
for the transferor's spouse, former spouse, child, or children, or 2082  
to any governmental agency that is designated by statute, rule, or 2083  
regulation to be the payee of that child or spousal support or 2084  
alimony; 2085

(2) The division or distribution of property in favor of the 2086  
transferor's spouse or former spouse. 2087

(D) A transferor's interest in property that is transferred 2088  
pursuant to a qualified disposition and the transferor's 2089  
beneficial interest in a legacy trust shall not be subject to any 2090  
claim for forced heirship or legitime. 2091

(E) A transferor's interest in property that is transferred 2092  
pursuant to a qualified disposition and the transferor's 2093  
beneficial interest in a legacy trust shall not be subject to a 2094  
distributive award under section 3105.171 of the Revised Code or 2095  
to any similar award under the law of another jurisdiction, to any 2096  
person other than the transferor's spouse or former spouse. A 2097  
court shall liberally construe and apply this provision in finding 2098  
that such similarity exists. 2099

(F) Nothing in this section shall deprive any beneficiary of 2100  
any exemption rights that the beneficiary may have under any 2101  
applicable law after the trust property is received by that 2102  
beneficiary. 2103

**Sec. 5816.04.** To the extent conferred by the governing legacy 2104  
trust instrument, a transferor to a legacy trust may have any or 2105

all of the rights, powers, and interests described in section 2106  
5816.05 of the Revised Code. A transferor shall have no rights, 2107  
powers, or interests in, over, to, or regarding the corpus or 2108  
income of a legacy trust unless those rights, powers, or interests 2109  
are granted, permitted, or recognized by both section 5816.05 of 2110  
the Revised Code and the governing legacy trust instrument. Any 2111  
written, verbal, tacit, express, or implied agreement or 2112  
understanding or any other agreement or understanding purporting 2113  
to grant, permit, or recognize any greater rights, powers, or 2114  
interests than are provided in this section or the governing 2115  
legacy trust instrument is void. Any portion of a legacy trust 2116  
instrument that is not voided under this section shall remain 2117  
valid and effective. 2118

Sec. 5816.05. A legacy trust may allow or provide for any or 2119  
all of the following rights, powers, interests, or provisions, 2120  
none of which grants, or is considered to be, either alone or in 2121  
any combination, a right or power to revoke a trust or to 2122  
voluntarily or involuntarily transfer an interest in that trust: 2123

(A) A provision that, upon the happening of a defined event, 2124  
results in the termination of a transferor's right to mandatory 2125  
income or principal; 2126

(B) The power of a transferor to veto a distribution from the 2127  
trust; 2128

(C) A power of appointment, other than a power to appoint to 2129  
a transferor, a creditor of the transferor, the estate of the 2130  
transferor, or a creditor of the transferor's estate, that is 2131  
exercisable by will or by other written instrument of a transferor 2132  
effective upon the death of the transferor or during the lifetime 2133  
of the transferor; 2134

(D) The right of a transferor to receive trust income as set 2135

<u>forth in the trust instrument.</u>	2136
<u>(E) Both of the following:</u>	2137
<u>(1) A transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in section 664 of the Internal Revenue Code;</u>	2138 2139 2140 2141
<u>(2) The transferor's right, at any time and from time to time by written instrument delivered to the trustee, to release the transferor's retained interest in that unitrust or annuity trust, in whole or in part, in favor of one or more charitable organizations that have a succeeding beneficial interest in that unitrust or annuity trust;</u>	2142 2143 2144 2145 2146 2147
<u>(F) The power of a transferor to consume, invade, or appropriate property of the trust, but only if limited in each calendar year to five per cent of the value of the trust principal at the time of the exercise of the power;</u>	2148 2149 2150 2151
<u>(G) A transferor's potential or actual receipt or use of principal or income of the trust if the potential or actual receipt or use is or would be the result of any of the following that applies with respect to one or more of the qualified trustees:</u>	2152 2153 2154 2155 2156
<u>(1) A qualified trustee's acting in the trustee's discretion. For purposes of division (G)(1) of this section, a qualified trustee shall have discretion with respect to the distribution or use of principal or income unless the discretion is expressly denied to the trustee by the terms of the trust instrument.</u>	2157 2158 2159 2160 2161
<u>(2) A qualified trustee's acting pursuant to a standard in the trust instrument that governs the distribution or use of principal or income;</u>	2162 2163 2164
<u>(3) A qualified trustee's acting at the direction of an</u>	2165

advisor who is acting in the advisor's discretion or pursuant to a 2166  
standard in the trust instrument that governs the distribution or 2167  
use of principal or income. If an advisor is authorized to direct 2168  
that distribution or use, the advisor's authority shall be 2169  
discretionary unless otherwise expressly stated in the trust 2170  
instrument. 2171

(H) The right of a transferor to remove any advisor and 2172  
appoint a new advisor who satisfies the eligibility criteria set 2173  
forth in division (A) of section 5816.11 of the Revised Code; 2174

(I) The right of a transferor to remove any trustee and 2175  
appoint a new trustee; 2176

(J) A transferor's potential or actual use of real property 2177  
or tangible personal property, including, but not limited to, 2178  
property held under a qualified personal residence trust as 2179  
described in section 2702(c) of the Internal Revenue Code and 2180  
regulations promulgated under that section, or a transferor's 2181  
possession and enjoyment of a qualified interest as defined in 2182  
section 2702(b) of the Internal Revenue Code; 2183

(K) Any provision requiring or permitting the potential or 2184  
actual use of trust income or principal to pay, in whole or in 2185  
part, income taxes due on the income of the trust, including, but 2186  
not limited to, any provision permitting that use in the 2187  
discretion of any one or more of the qualified trustees acting in 2188  
the qualified trustee's discretion or at the direction of an 2189  
advisor who is acting in the advisor's discretion; 2190

(L) The ability of a qualified trustee, whether pursuant to 2191  
the qualified trustee's discretion or the terms of the legacy 2192  
trust instrument or at the direction of an advisor, to pay after 2193  
the death of a transferor all or any part of the debts of the 2194  
transferor outstanding on or before the transferor's death, the 2195  
expenses of administering the transferor's estate, or any estate, 2196



<u>gift, generation skipping transfer, or inheritance tax;</u>	2197
<u>(M) Any provision that pours back after the death of a transferor all or part of the trust property to the transferor's estate or any trust;</u>	2198
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<u>(N) Any other rights, powers, interests, or provisions permitted or allowed by any other section of this chapter.</u>	2201
	2202
<b>Sec. 5816.06.</b> <u>(A) Except as otherwise provided in this section, a transferor shall sign a qualified affidavit before or substantially contemporaneously with making a qualified disposition.</u>	2203
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<u>(B) A qualified affidavit shall be notarized and shall contain all of the following statements under oath:</u>	2207
	2208
<u>(1) The property being transferred to the trust was not derived from unlawful activities.</u>	2209
	2210
<u>(2) The transferor has full right, title, and authority to transfer the property to the legacy trust.</u>	2211
	2212
<u>(3) The transferor will not be rendered insolvent immediately after the transfer of the property to the legacy trust.</u>	2213
	2214
<u>(4) The transferor does not intend to defraud any creditor by transferring the property to the legacy trust.</u>	2215
	2216
<u>(5) There are no pending or threatened court actions against the transferor, except for any court action identified by the affidavit or an attachment to the affidavit.</u>	2217
	2218
	2219
<u>(6) The transferor is not involved in any administrative proceeding, except for any proceeding identified by the affidavit or an attachment to the affidavit.</u>	2220
	2221
	2222
<u>(7) The transferor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code.</u>	2223
	2224
<u>(C) A qualified affidavit is considered defective if it</u>	2225

materially fails to meet the requirements set forth in division 2226  
(B) of this section, but a qualified affidavit is not considered 2227  
defective due to any one or more of the following: 2228

(1) Any nonsubstantive variances from the language set forth 2229  
in division (B) of this section; 2230

(2) Any statements or representations in addition to those 2231  
set forth in division (B) of this section if the statements or 2232  
representations do not materially contradict the statements or 2233  
representations required by that division; 2234

(3) Any technical errors in the form, substance, or method of 2235  
administering an oath if those errors were not the fault of the 2236  
affiant, and the affiant reasonably relied upon another person to 2237  
prepare or administer the oath. 2238

(D)(1) A qualified affidavit is not required from a 2239  
transferor who is not a beneficiary of the legacy trust that 2240  
receives the disposition. 2241

(2) A subsequent qualified affidavit is not required in 2242  
connection with any qualified disposition made after the execution 2243  
of an earlier qualified affidavit if that disposition is a part 2244  
of, is required by, or is the direct result of, a prior qualified 2245  
disposition that was made in connection with that earlier 2246  
qualified affidavit. 2247

(E) If a qualified affidavit is required by this section and 2248  
a transferor fails to timely sign a qualified affidavit or signs a 2249  
defective qualified affidavit, subject to the normal rules of 2250  
evidence, that failure or defect may be considered as evidence in 2251  
any proceeding commenced pursuant to section 5816.07 of the 2252  
Revised Code, but the legacy trust or the validity of any 2253  
attempted qualified disposition shall not be affected in any other 2254  
way due to that failure or defect. 2255

Sec. 5816.07. (A) Notwithstanding any provision of law to the 2256  
contrary but subject to division (G) of section 5816.10 of the 2257  
Revised Code, no creditor may bring an action of any kind, 2258  
including, but not limited to, an action to enforce a judgment 2259  
entered by a court or other body having adjudicative authority, an 2260  
action at law or in equity, or an action for an attachment or 2261  
other final or provisional remedy, against any person who made or 2262  
received a qualified disposition, against or involving any 2263  
property that is the subject of a qualified disposition or is 2264  
otherwise held by or for any trustee as part of a legacy trust, or 2265  
against any trustee of a legacy trust, except that a creditor, 2266  
subject to this section and section 5816.08 of the Revised Code, 2267  
may bring an action to avoid any qualified disposition of an asset 2268  
on the ground that a transferor made the qualified disposition 2269  
with the specific intent to defraud the specific creditor bringing 2270  
the action. 2271

(B) A creditor's cause of action or claim for relief under 2272  
division (A) of this section to avoid any qualified disposition of 2273  
an asset is extinguished unless that action is brought by a 2274  
creditor of a transferor who meets one of the following 2275  
requirements: 2276

(1) The creditor is a creditor of the transferor before the 2277  
relevant qualified disposition, and the action is brought within 2278  
the later of the following periods: 2279

(a) Eighteen months after the qualified disposition; 2280

(b) Six months after the qualified disposition is or 2281  
reasonably could have been discovered by the creditor if the 2282  
creditor files a suit against the transferor, other than an action 2283  
under division (A) of this section to avoid the qualified 2284  
disposition, or makes a written demand for payment on the 2285  
transferor that in either case asserts a claim based on an act or 2286

omission of the transferor that occurred before the qualified disposition, and that suit is filed, or the written demand is delivered to the transferor, within three years after the qualified disposition. 2287  
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(2) The creditor becomes a creditor after the qualified disposition, and the action under division (A) of this section to avoid the qualified disposition is brought within eighteen months after the qualified disposition. 2291  
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(C) In any action to avoid the qualified disposition under this section, the burden is upon the creditor to prove the matter by a preponderance of the evidence. This division is construed as providing a substantive rather than a procedural rule or right under the law of this state. 2295  
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(D) Notwithstanding any provision of law to the contrary but subject to division (G) of section 5816.10 of the Revised Code, a creditor or any other person shall have only the rights and remedies with respect to a qualified disposition that are provided in this section and section 5816.08 of the Revised Code, and the creditor or other person shall have no claim or cause of action against any trustee or advisor of a legacy trust or against any person involved in the counseling in connection with, or the drafting, preparation, execution, administration, or funding of, a legacy trust. 2300  
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(E) Notwithstanding any provision of law to the contrary but subject to division (G) of section 5816.10 of the Revised Code, and in addition to any other limitations, restrictions, or bars imposed by this section, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a legacy trust or against any person involved in the counseling in connection with, or the drafting, preparation, execution, administration, or 2310  
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funding of, a legacy trust if and to the extent that, in 2319  
connection with the qualified disposition that forms the basis of 2320  
that action, the time in which a creditor could sue to avoid that 2321  
qualified disposition would have expired under this section. 2322

(F) If more than one qualified disposition is made in 2323  
connection with the same legacy trust, all of the following apply: 2324

(1) Each qualified disposition will be separately evaluated, 2325  
without regard to any subsequent qualified disposition, to 2326  
determine whether a creditor's claim regarding that particular 2327  
qualified disposition is extinguished as provided in division (B) 2328  
of this section. 2329

(2) The following apply when determining the order in which 2330  
property is paid, applied, or distributed from a legacy trust: 2331

(a) Any payment, application, or distribution of money is 2332  
considered to have been made from or with the money most recently 2333  
received or acquired by any trustee of a legacy trust except to 2334  
the extent that it is proven otherwise beyond a reasonable doubt. 2335  
As used in division (F)(2)(a) of this section: 2336

(i) "Money" means cash or cash equivalents. 2337

(ii) "Cash" means the coins or currency of the United States 2338  
or any other nation. 2339

(iii) "Cash equivalent" includes certified or uncertified 2340  
checks; money orders; bank drafts; any electronic transfer of 2341  
funds; negotiable instruments; instruments indorsed in blank or in 2342  
bearer form; securities issued or guaranteed by the United States, 2343  
any state of the United States, or any state or federal agency; 2344  
funds on deposit in any savings or checking account or any similar 2345  
account; funds on deposit in any money market account or similar 2346  
account; any demand deposit account, time deposit account, or 2347  
savings deposit account at any bank, savings and loan association, 2348  
brokerage house, or similar institution; or any other monetary 2349

instrument or device that is commonly or routinely accepted as a 2350  
cash equivalent. Division (F)(2)(a)(iii) of this section shall be 2351  
liberally construed and applied. 2352

(b) Any payment, application, or distribution of fungible 2353  
assets other than money is considered to have been made from or 2354  
with the fungible assets most recently received or acquired by any 2355  
trustee of a legacy trust except to the extent that it is proven 2356  
otherwise by clear and convincing evidence. For purposes of 2357  
division (F)(2)(b) of this section: 2358

(i) Any asset that can be classified as either money or a 2359  
fungible asset shall be classified as money. 2360

(ii) "Fungible assets" means any assets, other than money, 2361  
that are interchangeable for commercial purposes and the 2362  
properties of which are essentially identical. Division 2363  
(F)(2)(b)(ii) of this section shall be liberally construed and 2364  
applied. 2365

(c) Division (F)(2) of this section is construed as providing 2366  
a substantive rather than a procedural rule or right under the law 2367  
of this state. 2368

(G) For purposes of this section, the counseling in 2369  
connection with, or the drafting, preparation, execution, 2370  
administration, or funding of, a legacy trust includes the 2371  
counseling in connection with, or the drafting, preparation, 2372  
execution, administration, or funding of, any limited partnership, 2373  
limited liability company, corporation, or similar or comparable 2374  
entity if the limited partnership interests, limited liability 2375  
company interests, stock, or other similar or comparable ownership 2376  
interests in the relevant entity are subsequently transferred to 2377  
any trustee of any trust that is, was, or becomes a legacy trust. 2378

Sec. 5816.08. All of the following apply in connection with 2379

any action brought pursuant to this section or division (A) of 2380  
section 5816.07 of the Revised Code: 2381

(A) If a qualified disposition is wholly or partially 2382  
avoided, all of the following apply: 2383

(1) That specific qualified disposition shall be avoided only 2384  
to the extent necessary to satisfy a transferor's debt to the 2385  
creditor who brought the action pursuant to division (A) of 2386  
section 5816.07 of the Revised Code, and any part of the qualified 2387  
disposition that is not used to satisfy that debt shall remain 2388  
subject to the legacy trust in question. 2389

(2) All other qualified dispositions to any trustee of the 2390  
legacy trust in question, including, but not limited to, any 2391  
qualified disposition of a partial, co-ownership, or undivided 2392  
interest in property by a transferor other than the transferor 2393  
whose qualified disposition is avoided, together with the legacy 2394  
trust itself, shall remain valid and effective. 2395

(3) If the court is satisfied that a trustee has not acted in 2396  
bad faith in accepting or administering the property that is the 2397  
subject of the avoided qualified disposition, all of the following 2398  
apply: 2399

(a) The trustee shall have a first and paramount lien against 2400  
the property that is the subject of the qualified disposition in 2401  
an amount equal to the entire cost, including attorney's fees, 2402  
properly incurred by the trustee in the defense of the action or 2403  
proceedings to avoid the qualified disposition. 2404

(b) The qualified disposition shall be avoided subject to the 2405  
proper fees, costs, and pre-existing rights, claims, and interests 2406  
of the trustee and of any predecessor trustee that has not acted 2407  
in bad faith. 2408

(c) For purposes of division (A)(3) of this section, no 2409

trustee shall be considered to have acted in bad faith merely 2410  
because the trustee accepted the property that is the subject of 2411  
the qualified disposition. 2412

(4) If the court is satisfied that a beneficiary of a legacy 2413  
trust has not acted in bad faith in receiving a distribution from 2414  
that trust, the avoidance of the qualified disposition shall be 2415  
subject to the right of the beneficiary to retain that 2416  
distribution if the distribution was made upon the exercise of a 2417  
trust power or discretion vested in a trustee or advisor and that 2418  
power or discretion was exercised prior to the creditor's 2419  
commencement of the action to avoid the qualified disposition. For 2420  
purposes of division (A)(4) of this section, no beneficiary, 2421  
including a beneficiary who is also a transferor of the trust, 2422  
shall be considered to have acted in bad faith merely because the 2423  
beneficiary accepted a distribution made in accordance with the 2424  
terms of the trust instrument. 2425

(5) A creditor has the burden of proving by clear and 2426  
convincing evidence that a trustee or a beneficiary acted in bad 2427  
faith under division (A)(3) or (4) of this section. Division 2428  
(A)(5) of this section is construed as providing a substantive 2429  
rather than a procedural rule or right under the law of this 2430  
state. 2431

(B) The court shall award reasonable attorney's fees and 2432  
costs to any prevailing party in any final judgment rendered in 2433  
any action wholly or partially brought under this section or 2434  
division (A) of section 5816.07 of the Revised Code. 2435

**Sec. 5816.09.** Any successor or replacement trustees of a 2436  
legacy trust shall be determined or selected in the following 2437  
manners: 2438

(A)(1) Division (A)(2) of this section applies if in any 2439  
action involving a legacy trust or any trustee of the legacy trust 2440



a court takes an action in which the court declines to apply the 2441  
law of this state in determining any of the following matters: 2442

(a) The validity, construction, or administration of the 2443  
trust; 2444

(b) The effect of any term or condition of the trust, 2445  
including, but not limited to, a spendthrift provision; 2446

(c) The rights and remedies of any creditor or other suitor 2447  
in connection with a qualified disposition. 2448

(2) Immediately upon the court's action under division (A)(1) 2449  
of this section and without the need for any order of any court, 2450  
any qualified trustee who is a party to that action shall cease in 2451  
all respects to be a trustee of the legacy trust, and the position 2452  
of trustee shall be occupied in accordance with the terms of the 2453  
trust instrument that governed the legacy trust immediately before 2454  
that cessation, or, if the terms of the trust instrument do not 2455  
provide for another trustee and the trust would otherwise be 2456  
without a trustee, any court of this state, upon the application 2457  
of any beneficiary of the legacy trust, shall appoint a successor 2458  
qualified trustee upon the terms and conditions that it determines 2459  
to be consistent with the purposes of the trust and this chapter. 2460  
Upon a qualified trustee ceasing to be a trustee pursuant to 2461  
division (A)(2) of this section, that qualified trustee shall have 2462  
no power or authority other than to convey trust property to any 2463  
other trustee that is appointed, installed, or serving in 2464  
accordance with that division. 2465

(3) For purposes of division (A) of this section, "court" 2466  
includes a judicial tribunal, an administrative tribunal, or other 2467  
adjudicative body or panel. 2468

(B) In all cases other than the situation described in 2469  
division (A) of this section, both of the following apply: 2470

(1) If a legacy trust ceases to have at least one qualified 2471

trustee, the vacancy in the qualified trusteeship shall be filled 2472  
pursuant to section 5807.04 of the Revised Code except to the 2473  
extent that the legacy trust expressly provides otherwise. 2474

(2) If a legacy trust ceases to have at least one trustee, 2475  
the vacancy in the trusteeship shall be filled pursuant to section 2476  
5807.04 of the Revised Code, and the successor trustee shall be a 2477  
qualified trustee unless the legacy trust instrument expressly 2478  
provides otherwise. 2479

**Sec. 5816.10.** (A) In the event of any conflict between any 2480  
provision of this chapter and any provision of Chapter 1336. of 2481  
the Revised Code or any other provision of law similar to any 2482  
provision of Chapter 1336. of the Revised Code, the provision of 2483  
this chapter shall control and prevail. 2484

(B) A statement in a trust instrument stating that it "shall 2485  
be governed by the laws of Ohio" or other statement to similar 2486  
effect or of similar import is considered to expressly incorporate 2487  
the laws of this state to govern the validity, construction, and 2488  
administration of that trust instrument and to satisfy division 2489  
(K)(1)(b) of section 5816.02 of the Revised Code. 2490

(C) A disposition by a nonqualified trustee to a qualified 2491  
trustee shall not be treated as other than a qualified disposition 2492  
solely because the nonqualified trustee is a trustee of a 2493  
nonlegacy trust. 2494

(D) A disposition to any nonqualified trustee of a legacy 2495  
trust shall be treated as a qualified disposition if at the time 2496  
of the disposition any of the following applies: 2497

(1) There is at least one qualified trustee serving pursuant 2498  
to the terms of that legacy trust. 2499

(2) There is no qualified trustee serving but the 2500  
circumstances require the appointment or installation of a 2501

qualified trustee pursuant to division (A)(2) of section 5816.09 2502  
of the Revised Code. 2503

(3) There is no qualified trustee serving but within one 2504  
hundred eighty days after the date of disposition a qualified 2505  
trustee fills the vacancy in the qualified trusteeship or an 2506  
application to appoint a qualified trustee is filed pursuant to 2507  
division (B) of section 5816.09 of the Revised Code. 2508

(E) If a disposition is made by a trustee of a nonlegacy 2509  
trust to a trustee of a legacy trust, both of the following apply: 2510

(1) Except to the extent expressly stated otherwise by the 2511  
terms of that disposition, the disposition shall be considered a 2512  
qualified disposition for the benefit of all of the persons who 2513  
are the beneficiaries of both the nonlegacy trust and the legacy 2514  
trust. 2515

(2) The date of the disposition to the legacy trust shall be 2516  
considered to be the date on which the property that was part of 2517  
the nonlegacy trust was first continuously subject to any law of a 2518  
jurisdiction other than this state that is similar to this 2519  
chapter. A court shall liberally construe and apply division 2520  
(E)(2) of this section in finding that such continuity and 2521  
similarity exist. 2522

(F) A legacy trust may contain any terms or conditions that 2523  
provide for changes in or to the place of administration, situs, 2524  
governing law, trustees or advisors, or the terms or conditions of 2525  
the legacy trust or for other changes permitted by law. 2526

(G) Any valid lien attaching to property before a disposition 2527  
of that property to a trustee of a legacy trust shall survive the 2528  
disposition, and the trustee shall take title to the property 2529  
subject to the valid lien and subject to any agreements that 2530  
created or perfected the valid lien. Nothing in this chapter shall 2531  
be construed to authorize any disposition that is prohibited by 2532

the terms of any agreements, notes, guaranties, mortgages, 2533  
indentures, instruments, undertakings, or other documents. In the 2534  
event of any conflict between this division and any other 2535  
provision of this chapter, this division shall control. 2536

(H) To the maximum extent permitted by the Ohio Constitution 2537  
and the United States Constitution, the courts of this state shall 2538  
exercise jurisdiction over any legacy trust or any qualified 2539  
disposition and shall adjudicate any case or controversy brought 2540  
before them regarding, arising out of, or related to, any legacy 2541  
trust or any qualified disposition if that case or controversy is 2542  
otherwise within the subject matter jurisdiction of the court. 2543  
Subject to the Ohio Constitution and the United States 2544  
Constitution, no court of this state shall dismiss or otherwise 2545  
decline to adjudicate any case or controversy described in this 2546  
division on the ground that a court of another jurisdiction has 2547  
acquired or may acquire proper jurisdiction over, or may provide 2548  
proper venue for, that case or controversy or the parties to the 2549  
case or controversy. Nothing in this division shall be construed 2550  
to do either of the following: 2551

(1) Prohibit a transfer or other reassignment of any case or 2552  
controversy from one court of this state to another court of this 2553  
state; 2554

(2) Expand or limit the subject matter jurisdiction of any 2555  
court of this state. 2556

**Sec. 5816.11.** (A) Any person may serve as an advisor of a 2557  
legacy trust except that a transferor may act as an advisor only 2558  
in connection with investment decisions. 2559

(B) An advisor shall be considered a fiduciary unless the 2560  
terms of a legacy trust instrument expressly provide otherwise. 2561

**Sec. 5816.12.** Except to the extent expressly provided 2562

otherwise by the terms of a legacy trust instrument, each trustee 2563  
and each advisor of a legacy trust shall have the greatest 2564  
discretion permitted by law in connection with all matters of 2565  
trust administration, all trust distributions, and all other 2566  
trustee or advisor decisions. 2567

Sec. 5816.13. No beneficiary or other person shall be 2568  
considered to have a property interest in any property of a legacy 2569  
trust to the extent that the distribution of that property is 2570  
subject to the discretion of one or more qualified trustees or 2571  
advisors, either acting alone or in conjunction with any other 2572  
person, including any person authorized to veto any distributions 2573  
from the legacy trust. 2574

Sec. 5816.14. This chapter applies to qualified dispositions 2575  
made on or after the effective date of this section. 2576

**Section 2.** That existing sections 317.08, 317.32, 317.321, 2577  
1336.04, 1701.73, 1702.38, 1703.22, 2131.08, 2131.09, 2329.66, 2578  
2329.661, 5805.06, 5808.08, 5808.18, 5815.24, 5815.25, and 5815.36 2579  
of the Revised Code are hereby repealed. 2580

**Section 3.** The amendments made by this act to section 1336.04 2581  
of the Revised Code shall apply to transfers made on or after the 2582  
effective date of this act. The amendments made by this act to 2583  
sections 2329.66 and 2329.661 of the Revised Code shall apply to 2584  
claims accruing on or after the effective date of this act. The 2585  
amendments made by this act to section 5815.36 of the Revised Code 2586  
shall apply to disclaimers made on or after the effective date of 2587  
this act. Section 5815.37 of the Revised Code as enacted by this 2588  
act shall apply to conveyances made on or after the effective date 2589  
of this act. The application of the amendments made by this act to 2590  
section 2131.08 of the Revised Code is provided in division (F) of 2591

section 2131.08 of the Revised Code as amended by this act. The 2592  
application of the amendments made by this act to section 2131.09 2593  
of the Revised Code is provided for in divisions (C) and (E) of 2594  
section 2131.09 of the Revised Code as amended by this act. The 2595  
application of the sections of Chapter 5816. of the Revised Code 2596  
as enacted by this act is provided for in section 5816.14 of the 2597  
Revised Code as enacted by this act. This act is not intended to 2598  
impair any secured or unsecured creditors' claims that accrue 2599  
prior to the effective date of this act. 2600

**Section 4.** The amendments made by this act to sections 2601  
5805.06, 5808.08, 5815.24, and 5815.25 of the Revised Code, other 2602  
than the references to Chapter 5815. of the Revised Code in 2603  
division (A)(2) of section 5805.06 of the Revised Code as amended 2604  
by this act, are intended to be a statement of the common law of 2605  
this state. 2606