

AN ACT

To amend sections 317.08, 317.32, 317.321, 1336.04, 1701.73, 1702.38, 1703.22, 2101.24, 2131.08, 2131.09, 2329.66, 2329.661, 5805.06, 5808.08, 5808.18, 5815.24, 5815.25, and 5815.36 and to enact sections 1301.401, 1319.07, 1319.08, 1319.09, 5815.37, and 5816.01 to 5816.14 of the Revised Code to adopt the Ohio Legacy Trust Act; to modify certain property rights in the Ohio Trust Code; to require the recording of personal property transfers with the county recorder upon request; to regulate the temporary conveyance of trust real property for financing purposes; to grant probate courts concurrent jurisdiction with court of common pleas general divisions over certain actions involving the designation or removal of certain beneficiaries, title change involving joint and survivorship interests, alleged gifts, or the passing of assets upon death other than by will, intestate succession, or trust; to regulate the use and enforceability of certain loan covenants in nonrecourse commercial loan transactions; and to make certain changes in the exempt interests law, the fraudulent transfers law, the secured transactions recording law, and the rule against perpetuities.

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, 2101.24, 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, 1319.07, 1319.08, 1319.09, 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 5301.691 of the Revised Code or pursuant to terms of such an easement granted to a charitable organization under section 5301.68 of the Revised Code; all instruments or orders described in division (B)(2)(b) of section 5301.56 of the Revised Code; all no further action letters issued under section 122.654 or 3746.11 of the Revised Code; all covenants not to sue issued under section 3746.12 of the Revised Code, including all covenants not to sue issued pursuant to section 122.654 of the Revised Code; any restrictions on the use of property contained in a no further action letter issued under section 122.654 of the Revised Code, any restrictions on the use of property identified pursuant to division (C)(3)(a) of section 3746.10 of the Revised Code, and any restrictions on the use of property contained in a deed or other instrument as provided in division (E) or (F) of section 3737.882 of the Revised Code; any easement executed or granted under section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code; any environmental covenant entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code; all memoranda of trust, as described in division (A) of section 5301.255 of the

Revised Code, that describe specific real property; and all agreements entered into under division (A) of section 1506.44 of the Revised Code;

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

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

(b) All executory installment contracts for the sale of land executed after September 29, 1961, that by their terms are not required to be fully performed by one or more of the parties to them within one year of the date of the contracts;

(c) All options to purchase real estate, including supplements, modifications, and amendments of the options, but no option of that nature shall be recorded if it does not state a specific day and year of expiration of its validity;

(d) Any tax certificate sold under section 5721.33 of the Revised Code, or memorandum of it, that is presented for filing of record.

(3) A record of powers of attorney, including all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that do not describe specific real property;

(4) A record of plats, in which shall be recorded all plats and maps of town lots, of the subdivision of town lots, and of other divisions or surveys of lands, any center line survey of a highway located within the county, the plat of which shall be furnished by the director of transportation or county engineer, and all drawings and amendments to drawings, as provided in Chapter 5311. of the Revised Code;

(5) A record of leases, in which shall be recorded all leases, memoranda of leases, and supplements, modifications, and amendments of leases and memoranda of leases;

(6) A record of declarations executed pursuant to section 2133.02 of the Revised Code and durable powers of attorney for health care executed pursuant to section 1337.12 of the Revised Code.

(B) All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in one volume unemployment compensation liens, internal revenue tax liens and other liens in favor of the United States as described in division (A) of section 317.09 of the Revised Code, personal tax liens, mechanic's liens, agricultural product liens, notices of liens, certificates of satisfaction or partial release of

estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, broker's liens, and liens provided for in sections 1513.33, 1513.37, 3752.13, 5111.022, and 5311.18 of the Revised Code.

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

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

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

(E)(1) The county recorder shall keep a separate set of records containing all transfers, conveyances, or assignments of any type of tangible or intangible personal property or any rights or interests in that property if and to the extent that any person wishes to record that personal property transaction and if the applicable instrument is acknowledged before a notary public. If the transferor is a natural person, the notice of personal property transfer shall be recorded in the county in this state in which the transferor maintains the transferor's principal residence. If the transferor is not a natural person, the notice of personal property transfer shall be recorded in the county in this state in which the transferor maintains its principal place of business. If the transferor does not maintain a principal residence or a principal place of business in this state and the transfer is to a trustee of a legacy trust formed pursuant to Chapter 5816. of the Revised Code, the notice of personal property transfer shall be recorded in the county in this state where that trustee maintains a principal residence or principal place of business. In all other instances, the notice of personal property transfer shall be recorded in the county in this state where the property described in the notice is located.

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

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

(A) ~~For (1)~~ Except as otherwise provided in division (A)(2) of this section, for recording and indexing an instrument ~~when~~ if the photocopy or any similar process is employed, a base fee of fourteen dollars for the first two pages and a housing trust fund fee of fourteen dollars, and a base fee of four dollars and a housing trust fund fee of four dollars for each subsequent page, size eight and one-half inches by fourteen inches, or fraction of a page, including the caption page, of such instrument;

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

(B) For certifying a photocopy from the record previously recorded, 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 of a page; for each certification ~~where~~ if the recorder's seal is required, except as to instruments issued by the armed forces of the United States, a base fee of fifty cents and a housing trust fund fee of fifty cents;

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

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

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

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

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

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

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

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

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

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

(4) An estimate of the total amount of fees for filing or recording a document for which a fee is charged as required by division (A)(1) or (2) of section 317.32 of the Revised Code or by section 1309.525 or 5310.15 of the Revised Code that will be designated as "general fund moneys to supplement the equipment needs of the county recorder" if the request submitted under division (A)(1) of this section is approved by the board of county commissioners.

~~The~~ A proposal for the acquisition or maintenance of micrographic or

other equipment or for contract services may include a description or summary of the micrographic or other equipment, or maintenance ~~thereof of the micrographic or other equipment~~, that the county recorder proposes to acquire, or the nature of contract services that the county recorder proposes to utilize. ~~If A proposal to reserve funds for the office's future equipment needs if~~ the county recorder has no immediate plans for the acquisition of equipment or services, ~~the proposal shall explain the general needs of the office for equipment and shall state that the intent of the proposal is to reserve funds for the office's future equipment needs.~~

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

(C)~~(1)~~ Not later than the fifteenth day of December of any year in which a proposal for the acquisition or maintenance of micrographic or other equipment or for contract services is submitted under division (A) of this section, the board of county commissioners shall approve, reject, or modify the proposal and notify the county recorder of its action on the proposal. If the board rejects or modifies the proposal, it shall make a written finding that the request is for a purpose other than for acquiring, leasing, or otherwise obtaining micrographic or other equipment or contracts for use by the county recorder or that the amount requested for the acquisition or maintenance of micrographic or other equipment or for contract services is excessive as determined by the board. If the board approves the proposal, it shall request the establishment of a special fund under section 5705.12 of the Revised Code for any fees designated as "general fund moneys to supplement the equipment needs of the county recorder."

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

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

Sec. 1301.401. (A) For purposes of this section, "public record" means

either of the following:

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

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

(B) The recording with any county recorder of any document described in division (A)(1) of this section or the filing or recording with the secretary of state of any document described in division (A)(2) of this section shall be constructive notice to the whole world of the existence and contents of either document as a public record and of any transaction referred to in that public record, including, but not limited to, any transfer, conveyance, or assignment reflected in that record.

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

Sec. 1319.07. As used in sections 1319.07 to 1319.09 of the Revised Code:

(A) "Nonrecourse carveout" means a specific exemption, if any, to the nonrecourse provisions set forth in the loan documents for a nonrecourse loan that has the effect of creating, if specified events occur, personal liability of the borrower or guarantor or other surety of the loan for all or some amounts owed to the lender.

(B) "Nonrecourse loan" means a commercial loan secured by a mortgage on real property located in this state and evidenced by loan documents that meet any of the following:

(1) Provide that the lender will not enforce the liability or obligation of the borrower by an action or proceeding in which a money judgment is sought against the borrower;

(2) Provide that any judgment in any action or proceeding on the loan is enforceable against the borrower only to the extent of the borrower's interest in the mortgaged property and other collateral security given for the loan;

(3) Provide that the lender will not seek a deficiency judgment against the borrower;

(4) Provide that there is no recourse against the borrower personally for the loan;

(5) Include any combination of divisions (B)(1) to (4) of this section or any other provisions to the effect that the loan is without personal liability to the borrower beyond the borrower's interest in the mortgaged property and

other collateral security given for the loan.

(C) "Nonrecourse provisions" means one or more of the provisions described in divisions (B)(1) to (5) of this section, whether or not the loan is subject to a nonrecourse carveout or carveouts.

(D) "Postclosing solvency covenant" means any provision of the loan documents for a nonrecourse loan, whether expressed as a covenant, representation, warranty, or default, that relates solely to the solvency of the borrower, including, without limitation, a provision requiring that the borrower maintain adequate capital or have the ability to pay the borrower's debts, with respect to any period of time after the date the loan is initially funded. "Postclosing solvency covenant" does not include a covenant not to file a voluntary bankruptcy or other voluntary insolvency proceeding or not to collude in an involuntary proceeding.

Sec. 1319.08. (A) A postclosing solvency covenant shall not be used, directly or indirectly, as a nonrecourse carveout or as the basis for any claim or action against a borrower or any guarantor or other surety on a nonrecourse loan.

(B) A provision in the documents for a nonrecourse loan that does not comply with division (A) of this section is invalid and unenforceable.

Sec. 1319.09. Section 1319.08 of the Revised Code does not prohibit a loan that is secured by a mortgage on real property located in this state from being fully recourse to the borrower or guarantor, including, but not limited to, as a result of a postclosing solvency covenant, if the loan documents for that loan do not contain nonrecourse loan provisions.

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

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

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

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

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

(B) In determining actual intent under division (A)(1) of this section,

consideration may be given to all relevant factors, including, but not limited to, the following:

- (1) Whether the transfer or obligation was to an insider;
- (2) Whether the debtor retained possession or control of the property transferred after the transfer;
- (3) Whether the transfer or obligation was disclosed or concealed;
- (4) Whether before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;
- (5) Whether the transfer was of substantially all of the assets of the debtor;
- (6) Whether the debtor absconded;
- (7) Whether the debtor removed or concealed assets;
- (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;
- (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred;
- (11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

Sec. 1701.73. (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 state, and thereupon the articles shall be amended accordingly, any change of shares provided for in the amendment or amended articles shall become effective, and the amended articles shall supersede the existing articles.

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

section.

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

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

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

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

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

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

- (1) Change the name of the corporation;
- (2) Change the place in this state where its principal office is to be located;
- (3) Change, enlarge, or diminish its purpose or purposes;
- (4) Change any provision of the articles or add any provision that may properly be included in the articles.

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

articles or the regulations provide or permit, by the affirmative vote of a greater or lesser proportion or number of the voting members, and by the affirmative vote of the voting members of any particular class that is required by the articles or the regulations.

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

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

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

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

(G) 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 directors, a statement of the basis for such adoption, shall be filed with the secretary of state, and upon that filing the articles shall be amended accordingly, and the amended articles shall supersede the existing articles. The certificate shall be signed by any authorized officer of the corporation.

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

Sec. 1703.22. An amendment changing the name of a foreign corporation may be filed for record with the county recorder of any county when accompanied by a certificate from the secretary of state of this state certifying that an amendment evidencing a change in the corporate name has been filed in the secretary of state's office. For such recording the recorder

shall charge and collect the same fee as provided for in division (A)(1) of section 317.32 of the Revised Code.

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

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

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

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

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

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

(f) To grant marriage licenses;

(g) To make inquests respecting persons who are so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that they are unable to manage their property and affairs effectively, subject to guardianship;

(h) To qualify assignees, appoint and qualify trustees and commissioners of insolvents, control their conduct, and settle their accounts;

(i) To authorize the sale of lands, equitable estates, or interests in lands or equitable estates, and the assignments of inchoate dower in such cases of sale, on petition by executors, administrators, and guardians;

(j) To authorize the completion of real property contracts on petition of executors and administrators;

(k) To construe wills;

(l) To render declaratory judgments, including, but not limited to, those rendered pursuant to section 2107.084 of the Revised Code;

(m) To direct and control the conduct of fiduciaries and settle their accounts;

(n) To authorize the sale or lease of any estate created by will if the estate is held in trust, on petition by the trustee;

(o) To terminate a testamentary trust in any case in which a court of equity may do so;

(p) To hear and determine actions to contest the validity of wills;

(q) To make a determination of the presumption of death of missing

persons and to adjudicate the property rights and obligations of all parties affected by the presumption;

(r) To hear and determine an action commenced pursuant to section 3107.41 of the Revised Code to obtain the release of information pertaining to the birth name of the adopted person and the identity of the adopted person's biological parents and biological siblings;

(s) To act for and issue orders regarding wards pursuant to section 2111.50 of the Revised Code;

(t) To hear and determine actions against sureties on the bonds of fiduciaries appointed by the probate court;

(u) To hear and determine actions involving informed consent for medication of persons hospitalized pursuant to section 5122.141 or 5122.15 of the Revised Code;

(v) To hear and determine actions relating to durable powers of attorney for health care as described in division (D) of section 1337.16 of the Revised Code;

(w) To hear and determine actions commenced by objecting individuals, in accordance with section 2133.05 of the Revised Code;

(x) To hear and determine complaints that pertain to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with certain patients allegedly in a terminal condition or in a permanently unconscious state pursuant to division (E) of section 2133.08 of the Revised Code, in accordance with that division;

(y) To hear and determine applications that pertain to the withholding or withdrawal of nutrition and hydration from certain patients allegedly in a permanently unconscious state pursuant to section 2133.09 of the Revised Code, in accordance with that section;

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

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

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

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

(dd) To hear and determine actions relating to the exercise of the right

of disposition, in accordance with section 2108.90 of the Revised Code;

(ee) To hear and determine actions relating to the disinterment and reinterment of human remains under section 517.23 of the Revised Code;

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

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

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

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

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

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

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

(c) Subject to section 2101.31 of the Revised Code, any action with respect to a probate estate, guardianship, trust, or post-death dispute that involves any of the following:

(i) A designation or removal of a beneficiary of a life insurance policy, annuity contract, retirement plan, brokerage account, security account, bank account, real property, or tangible personal property;

(ii) A designation or removal of a payable-on-death beneficiary or transfer-on-death beneficiary;

(iii) A change in the title to any asset involving a joint and survivorship interest;

(iv) An alleged gift;

(v) The passing of assets upon the death of an individual otherwise than

by will, intestate succession, or trust.

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

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

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

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

(B) For the purposes of this section and subject to sections 1746.14, 1747.09, and 2131.09 of the Revised Code, the time of the creation of an interest in real or personal property subject to a power reserved by the grantor to revoke or terminate the interest shall be the time at which the reserved power expires by reason of the death of the grantor, by release of the power, or otherwise.

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

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

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

(2) The time of the creation of an interest in real or personal property resulting from the termination, without exercise, of a general power of appointment exercisable in a nonfiduciary capacity by deed, whether or not

also exercisable by will, shall be the time at which that power of appointment terminates by reason of the death of the power holder, by release of the power, or otherwise.

(E) Divisions (B) and (C) of this section shall be effective with respect to interests in real or personal property created by wills of decedents dying after December 31, 1967, with respect to interests in real or personal property created by inter vivos instruments executed after December 31, 1967, and with respect to interests in real or personal property created by inter vivos instruments executed on or before December 31, 1967, that by reason of division (B) of this section will be treated as interests created after December 31, 1967. Divisions (B) and (C) of this section shall be effective with respect to interests in real or personal property created by the exercise of a power of appointment if divisions (B) and (C) of this section apply to the instrument that exercises the power, whether or not divisions (B) and (C) of this section apply to the instrument that creates the power.

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

(G) For purposes of this section:

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

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

Sec. 2131.09. (A) A trust of real or personal property created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan, for the benefit of some or all of the employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees or their beneficiaries the earnings or the principal, or both earnings and principal, of the fund so held in trust is not invalid as violating the rule against perpetuities, any other existing law against perpetuities, or any law restricting or limiting the duration of trusts; but the trust may continue for the time that is necessary to accomplish the purposes for which it was created.

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

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

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

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

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

(2) Division (B)(1) of this section shall apply to the interpretation of a testamentary or inter vivos trust instrument that creates an interest in real or personal property in relation to which one or more of the following conditions ~~applies~~ apply:

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

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

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

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

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

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

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

(c) An interest in real or personal property in trust created by the exercise of a general power of appointment on or after ~~the effective date of~~

~~this amendment~~ March 22, 1999:

(d) An interest in real or personal property in trust created by the exercise of a nongeneral power of appointment over any portion of a trust that meets the requirements of division (B) of this section, but only if the date of creation of that nongeneral power of appointment is on or after the effective date of this section.

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

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

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

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

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

(1) "General power of appointment" means a power that is exercisable in favor of the individual possessing the power, the person's individual's estate, the person's individual's creditors, or the creditors of the person's individual's estate other than either of the following:

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

(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.

(2) "Nongeneral power of appointment" means any power of appointment that is not a general power of appointment.

(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.

(4) "Exercisable by deed" has the same meaning as in section 2131.08 of the Revised Code.

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:

(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 debtor. Every person who is domiciled in this state may hold exempt from a judgment lien created pursuant to division (A)(1)(a) of this section the person's interest, not to exceed ~~twenty one hundred~~ twenty-five thousand two hundred dollars, in the exempted property.

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

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

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

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

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

personal, family, or household use of the person;

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

(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;

(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;

(b) The person's interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code;

(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;

(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;

(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.

(7) The person's professionally prescribed or medically necessary health aids;

(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;

(9) The person's interest in the following:

(a) Moneys paid or payable for living maintenance or rights, as exempted by section 3304.19 of the Revised Code;

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

(c) Unemployment compensation benefits, as exempted by section 4141.32 of the Revised Code;

(d) Cash assistance payments under the Ohio works first program, as exempted by section 5107.75 of the Revised Code;

(e) Benefits and services under the prevention, retention, and contingency program, as exempted by section 5108.08 of the Revised Code;

(f) Disability financial assistance payments, as exempted by section 5115.06 of the Revised Code;

(g) Payments under section 24 or 32 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(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 145.56, 146.13, 148.09, 742.47, 3307.41, 3309.66, or 5505.22 of the Revised Code, and the person's ~~right~~ rights to or interests in benefits from the Ohio public safety officers death benefit fund;

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

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

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

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

(c) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, the person's ~~right~~ rights or interests in the assets held in, or to directly

or indirectly receive any payment or benefit under, any individual retirement account, individual retirement annuity, "Roth IRA," "529 plan," or education individual retirement account that provides payments or benefits by reason of illness, disability, death, retirement, or age or provides payments or benefits for purposes of education, to the extent that the assets, payments, or benefits described in division (A)(10)(c) of this section are attributable to or derived from any of the following or from any earnings, dividends, interest, appreciation, or gains on any of the following:

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

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

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

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

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

(e) The person's rights to or interests in any assets held in, or to directly or indirectly receive any payment or benefit under, any individual retirement account, individual retirement annuity, "Roth IRA," "529 plan," or education individual retirement account that a decedent, upon or by reason of the decedent's death, directly or indirectly left to or for the benefit of the person, either outright or in trust or otherwise, including, but not limited to, any of those rights or interests in assets or to receive payments or benefits

that were transferred, conveyed, or otherwise transmitted by the decedent by means of a will, trust, exercise of a power of appointment, beneficiary designation, transfer or payment on death designation, or any other method or procedure.

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

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

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

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

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

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

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

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

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

amounts:

(a) If paid weekly, thirty times the current federal minimum hourly wage; if paid biweekly, sixty times the current federal minimum hourly wage; if paid semimonthly, sixty-five times the current federal minimum hourly wage; or if paid monthly, one hundred thirty times the current federal minimum hourly wage that is in effect at the time the earnings are payable, as prescribed by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 206(a)(1), as amended;

(b) Seventy-five per cent of the disposable earnings owed to the person.

(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;

(15) A seal and official register of a notary public, as exempted by section 147.04 of the Revised Code;

(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;

(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;

(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.

(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 ~~the change~~ any increase 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.

The Ohio judicial conference shall prepare a memorandum specifying the adjusted dollar amounts. The judicial conference shall transmit the memorandum to the director of the legislative service commission, and the director shall publish the memorandum in the register of Ohio. (Publication of the memorandum in the register of Ohio shall continue until the next memorandum specifying an adjustment is so published.) The judicial conference also may publish the memorandum in any other manner it

concludes will be reasonably likely to inform persons who are affected by its adjustment of the dollar amounts.

(C) As used in this section:

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

(2) "Insider" means:

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

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

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

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

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

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

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

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

agreement.

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

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

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

(4) "Government unit" has the same meaning as in section 148.06 of the Revised Code.

(D) For purposes of this section, "interest" shall be determined as follows:

(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;

(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.

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.

Sec. 2329.661. (A) Division (A)(1) of section 2329.66 of the Revised Code does not:

(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;

(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; or 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; ~~or a lien for the payment of taxes due on real property;~~

(3) Affect or invalidate any mortgage on any real property; or any lien created by such a mortgage;

(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;

(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 1396p(d)(4)(A) or (C), the court may limit the award of a settlor's creditor under division (A)(1) or (2) of this section to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court, the supplemental needs of the beneficiary.

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

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

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

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

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

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

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

(a) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor only as a result of the exercise of a power of appointment held in a nonfiduciary capacity by any person other than the settlor;

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

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

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

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

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

(D) Except to the extent otherwise provided by the terms of a trust, a person other than a beneficiary who holds a power to direct, including, but not limited to, a power to direct the modification or termination of a trust, is presumptively a fiduciary who, as a fiduciary, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

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

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

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

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

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

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

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

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

(a) Grant a power of appointment to one or more of the beneficiaries for whose benefit the property was so distributed, including a power to appoint trust property to the power holder, the power holder's creditors, the power

holder's estate, the creditors of the power holder's estate, or any other person, whether or not that person is a beneficiary of the first trust or the second trust;

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

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

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

(B) Unless the trust instrument expressly provides otherwise and subject to the limitations set forth in this section, a trustee of a first trust who has power, other than absolute power as described in division (A) of this section, under the terms of the first trust to make distributions of principal to one or more current beneficiaries may exercise that power by distributing all or any part of the principal subject to the power, and all or any part of any income that is not otherwise currently required to be distributed, to the trustee of a second trust. The second trust may be a trust under the trust instrument for the first trust or under a different governing instrument, including a governing instrument created by the trustee of the first trust. The power described in this division may be exercised whether or not there is a current need to distribute trust principal under any standard contained in the first trust. The exercise of a trustee's power under this division is valid only if the governing instrument for the second trust does not materially change the interests of the 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 provisions of the Internal Revenue Code or under the same provisions of the applicable state law under which the transfer to the first trust so qualified.

(3) If any transfer to the first trust has been treated, or if not for the provisions of division (A) or (B) of this section would have been treated, as a gift qualifying for the exclusion from the gift tax described in section 2503(b) of the Internal Revenue Code, 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 any gift to the first trust from so qualifying under the same provisions of section 2503 of the Internal Revenue Code under which the transfer to the first trust so qualified.

(4) If the assets of the first trust include any shares of stock in an S corporation, as defined in section 1361 of the Internal Revenue Code, and the first trust is, or if not for the provisions of division (A) or (B) of this section would be, a permitted shareholder under any provision of section 1361 of the Internal Revenue Code, 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 as a permitted shareholder of shares of stock in an S corporation under the same provisions of section 1361 of the Internal Revenue Code under which the first trust so qualified.

(5) If any transfer to the first trust has been treated, or if not for the provisions of division (A) or (B) of this section would have been treated, as a gift qualifying for a zero inclusion ratio for purposes of the federal generation-skipping transfer tax under section 2642(c) of the Internal Revenue Code, 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 transfer to the first trust from so qualifying.

(6) If the assets of the first trust include any interest subject to the minimum distribution rules of section 401(a)(9) of the Internal Revenue Code and the treasury regulations issued under that section, 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 shortened the maximum distribution period otherwise allowable under section 401(a)(9) of the Internal Revenue Code and the treasury regulations with respect to that interest under the first trust.

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

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

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

(a) An increase in, or a change in the method of determining, the compensation of the trustee unless the increase in, or change in the method of determining, that compensation has been consented to by all of the persons, other than the trustee of the second trust, who are current beneficiaries of the second trust or is approved by the court having jurisdiction over the trust. However, an increase in compensation of the trustee arising solely because the duration of the second trust is longer than

the duration of the first trust is not considered an increase in, or a change in the method of determining, the compensation of the trustee.

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

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

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

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

(G) Any person, other than the trustee, who has a power exercisable in a fiduciary capacity to direct the trustee to make any distribution of principal that, if held by the trustee, would be a power to make a distribution as

described in division (A) or (B) of this section, may exercise that power by directing the trustee to make a distribution under either division (A) or (B) of this section, whichever would be applicable if that person were the trustee, subject to all of the limitations described in this section that apply to a trustee's exercise of that power.

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

(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 governing instrument is signed by a person other than that settlor.

(N) Nothing in this section shall be construed to limit the power of any trustee to distribute trust property in further trust, whether that power arises under the terms of the trust instrument, under any other section of Title

LVIII of the Revised Code, under any other statute, or under the common law. The terms of a trust instrument may do any of the following:

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

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

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

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

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

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

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

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

(C) If a trustee is authorized or directed in a trust instrument to pay or

advance all or any part of the trust property to the personal representative of a decedent's estate for the payment of the decedent's legal obligations, death taxes, bequests, or expenses of administration, the trustee is not liable for the application of the trust property paid or advanced to the personal representative and is not liable for any act or omission of the personal representative with respect to the trust property, unless the trustee has actual knowledge, prior to the payment or advancement of the trust property, that the personal representative does not intend to use the trust property for such purposes.

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

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

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

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

(2) Maintaining and handling trust records, reports, correspondence, or communications;

(3) Maintaining an office for trust business;

(4) Filing any trust tax returns;

(5) Employing agents in connection with the fiduciary's administrative duties;

(6) Taking custody of or storing trust property;

(7) Any other similar administrative duties for the trust.

(C) If an instrument under which a fiduciary acts reserves to the grantor,

or vests in an advisory or investment committee or in one or more other persons, including one or more fiduciaries, to the exclusion of the fiduciary or of one or more of several fiduciaries, any power, including, but not limited to, the authority to direct the acquisition, disposition, or retention of any investment or the power to authorize any act that an excluded fiduciary may propose, any excluded fiduciary is not liable, either individually or as a fiduciary, for either of the following:

(1) Any loss that results from compliance with an authorized direction of the grantor, committee, person, or persons;

(2) Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the grantor, committee, person, or persons if that excluded fiduciary timely sought but failed to obtain that authorization.

~~(C)~~(D) Any administrative fiduciary as described in division (B) of this section or any excluded fiduciary as described in division ~~(B)~~(C) of this section is relieved from any obligation to perform investment reviews and make recommendations with respect to any investments to the extent the grantor, an advisory or investment committee, or one or more other persons have authority to direct the acquisition, disposition, or retention of any investment.

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

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

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

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

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

nontestamentary instrument;

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

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

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

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

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

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

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

(a) A reference to the donative instrument;

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

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

(4) The guardian of the estate of a minor or an incompetent, or the personal representative of a deceased person, whether or not authorized by the instrument to disclaim, with the consent of the probate division of the court of common pleas may disclaim, in whole or in part, the succession to any property, or interest in property, that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person may file an application with the probate division of the court of common pleas that has jurisdiction

of the estate, asking that the court order the guardian or personal representative to execute and deliver, file, or record the disclaimer on behalf of the ward, estate, or deceased person. The court shall order the guardian or personal representative to execute and deliver, file, or record the disclaimer if the court finds, upon hearing after notice to interested parties and such other persons as the court shall direct, that:

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

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

A written instrument of disclaimer ordered by the court under this division shall be executed and be delivered, filed, or recorded within the time and in the manner in which the person could have disclaimed if the person were living, an adult, and competent.

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

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

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

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

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

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

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

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

instrument.

(F)(1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, 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 to be appointed as personal representative to administer the decedent's estate. The disclaimer is effective whether or not proceedings thereafter are commenced to administer the decedent's estate. If proceedings thereafter are commenced for the administration of the decedent's estate, they shall be filed under, or consolidated with, the case number assigned to the disclaimer instrument.

(4) If an interest in real estate is disclaimed, an executed copy of the disclaimer instrument also shall be recorded in the office of the recorder of the county in which the real estate is located. The disclaimer instrument shall include a description of the real estate with sufficient certainty to identify it, and shall contain a reference to the record of the instrument that created the interest disclaimed. If title to the real estate is registered under Chapters 5309. and 5310. of the Revised Code, the disclaimer interest shall be entered as a memorial on the last certificate of title. A spouse of a

disclaimant has no dower or other interest in the real estate disclaimed.

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

(1) If intestate or testate succession is disclaimed, as if the disclaimant had predeceased the decedent;

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

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

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

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

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

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

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

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

(3) Accepts the property or an interest in it;

(4) Permits or suffers a sale or other disposition of the property pursuant to judicial action against the disclaimant.

(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.

(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.

(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.

(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.

(2) A disclaimer is not considered a transfer or conveyance by the disclaimant, and no creditor of a disclaimant may avoid a disclaimer.

(3) This section shall take precedence over any other section of the Revised Code that conflicts with this section.

(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.

(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.

(3) The interest in the real property is reconveyed back to one or more trustees of the trust within a reasonable time after 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.

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

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

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

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

(B) If a temporary conveyance and reconveyance of an interest in real property is made for the principal purpose of allowing a lender to acquire, perfect, foreclose on, or exercise collateral rights in and to the real property interest in question, the temporary conveyance to a beneficiary shall be disregarded for all other purposes, and the reconveyance back to a trustee

shall relate back to the date immediately preceding that reconveyance on which the interest in the real property was transferred to any trustee of the trust in a transaction other than a loan transaction described in division (A)(1) of this section.

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

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

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

(b) The lender's rights under any 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 the interest being reconveyed, including, but not limited to, a lender's right to foreclose on that interest in real property;

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

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

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

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

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

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

(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.

(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.

(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.

(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.

(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.

(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.

(H) An interest in real property may be subject to or involved in more than one loan transaction undertaken pursuant to this section.

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

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

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

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

(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.

(2) Any person to whom division (A)(1) of this section applies is considered an advisor even if that person is denominated by another title, such as protector.

(B) "Asset" means property of a transferor but does not include any of

the following:

(1) Property to the extent it is encumbered by a valid lien;

(2) Property to the extent it is exempt at the time of a qualified disposition under any applicable nonbankruptcy law, including, but not limited to, section 2329.66 of the Revised Code;

(3) Property held in the form of a tenancy by the entireties to the extent that, under the law governing the entireties estate at the time of a qualified disposition, it is not subject to process by a creditor holding a claim against only one tenant;

(4) Any property transferred from a nonlegacy trust to a legacy trust to the extent that the property would not be subject to attachment under the applicable nonbankruptcy law governing that nonlegacy trust.

(C) "Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. Chapter 11, as amended.

(D) "Beneficiary" has the same meaning as in section 5801.01 of the Revised Code.

(E) "Claim" means a right to payment, whether or not the right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(F) "Creditor" means a person who has a claim against a transferor and any transferee or assignee of, or successor to, that claim.

(G) "Debt" means a liability on a claim.

(H) "Disposition" means a transfer, conveyance, or assignment of property, including, but not limited to, a partial, contingent, undivided, or co-ownership interest in property. "Disposition" includes the exercise of a general power so as to cause a transfer of property to a trustee or trustees but does not include any of the following:

(1) The release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition;

(2) The exercise of a limited power so as to cause a transfer of property to a trustee or trustees;

(3) A disclaimer of an interest in a trust, bequest, devise, or inheritance.

(I) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.

(J) "Investment decision" means any participation in any decision regarding the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments.

(K)(1) "Legacy trust" means a trust evidenced by a written trust instrument to which all of the following apply:

(a) The trust has, names, or appoints at least one qualified trustee for or in connection with the property that is the subject of a qualified disposition.

(b) The trust expressly incorporates the laws of this state to wholly or partially govern its validity, construction, and administration.

(c) The trust expressly states that it is irrevocable.

(d) The trust has a spendthrift provision applicable to the interests of any beneficiary in the trust property, including any interests of a transferor in the trust property.

(2) A trust that satisfies the criteria specified in division (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.

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

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

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

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

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

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

(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.

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

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

(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.

(2) The person maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the legacy trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the legacy trust, or otherwise materially participates in the administration of the legacy trust.

(T) "Spendthrift provision" has the same meaning as in section 5801.01

of the Revised Code.

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

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

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

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

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

(C) Notwithstanding division (B) of this section or the terms of any spendthrift provision, but subject to divisions (D), (E), and (F) of this section, a transferor's interest in property that is the subject of a qualified disposition may be attached or otherwise involuntarily alienated in connection with any debt that the transferor owes pursuant to an agreement or court order for either of the following:

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

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

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

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

similarity exists.

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

Sec. 5816.04. To the extent conferred by the governing legacy trust instrument, a transferor to a legacy trust may have any or all of the rights, powers, and interests described in section 5816.05 of the Revised Code. A transferor shall have no rights, powers, or interests in, over, to, or regarding the corpus or income of a legacy trust unless those rights, powers, or interests are granted, permitted, or recognized by both section 5816.05 of the Revised Code and the governing legacy trust instrument. Any written, verbal, tacit, express, or implied agreement or understanding or any other agreement or understanding purporting to grant, permit, or recognize any greater rights, powers, or interests than are provided in this section or the governing legacy trust instrument is void. Any portion of a legacy trust instrument that is not voided under this section shall remain valid and effective.

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

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

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

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

(D) The right of a transferor to receive trust income as set forth in the trust instrument.

(E) Both of the following:

(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;

(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:

(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;

(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:

(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.

(2) A qualified trustee's acting pursuant to a standard in the trust instrument that governs the distribution or use of principal or income;

(3) A qualified trustee's acting at the direction of an advisor who is acting in the advisor's discretion or pursuant to a standard in the trust instrument that governs the distribution or use of principal or income. If an advisor is authorized to direct that distribution or use, the advisor's authority shall be discretionary unless otherwise expressly stated in the trust instrument.

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

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

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

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

(L) The ability of a qualified trustee, whether pursuant to the qualified trustee's discretion or the terms of the legacy trust instrument or at the direction of an advisor, to pay after the death of a transferor all or any part

of the debts of the transferor outstanding on or before the transferor's death, the expenses of administering the transferor's estate, or any estate, gift, generation skipping transfer, or inheritance tax;

(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;

(N) Any other rights, powers, interests, or provisions permitted or allowed by any other section of this chapter.

Sec. 5816.06. (A) Except as otherwise provided in this section, a transferor shall sign a qualified affidavit before or substantially contemporaneously with making a qualified disposition.

(B) A qualified affidavit shall be notarized and shall contain all of the following statements under oath:

(1) The property being transferred to the trust was not derived from unlawful activities.

(2) The transferor has full right, title, and authority to transfer the property to the legacy trust.

(3) The transferor will not be rendered insolvent immediately after the transfer of the property to the legacy trust.

(4) The transferor does not intend to defraud any creditor by transferring the property to the legacy trust.

(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.

(6) The transferor is not involved in any administrative proceeding, except for any proceeding identified by the affidavit or an attachment to the affidavit.

(7) The transferor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code.

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

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

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

(3) Any technical errors in the form, substance, or method of administering an oath if those errors were not the fault of the affiant, and the

affiant reasonably relied upon another person to prepare or administer the oath.

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

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

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

Sec. 5816.07. (A) Notwithstanding any provision of law to the contrary but subject to division (G) of section 5816.10 of the Revised Code, no creditor may bring an 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, an action at law or in equity, or an action for an attachment or other final or provisional remedy, against any person who made or received a qualified disposition, against or involving any property that is the subject of a qualified disposition or is otherwise held by or for any trustee as part of a legacy trust, or against any trustee of a legacy trust, except that a creditor, subject to this section and section 5816.08 of the Revised Code, may bring an action to avoid any qualified disposition of an asset on the ground that a transferor made the qualified disposition with the specific intent to defraud the specific creditor bringing the action.

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

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

(a) Eighteen months after the qualified disposition;

(b) Six months after the qualified disposition is or reasonably could have been discovered by the creditor if the creditor files a suit against the transferor, other than an action under division (A) of this section to avoid

the qualified disposition, or makes a written demand for payment on the transferor that in either case asserts a claim based on an act or 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.

(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.

(C) In any action to avoid the qualified disposition under this section, the burden is upon the creditor to prove the matter by clear and convincing evidence. This division is construed as providing a substantive rather than a procedural rule or right under the law of this state.

(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.

(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 funding of, a legacy trust if and to the extent that, in connection with the qualified disposition that forms the basis of that action, the time in which a creditor could sue to avoid that qualified disposition would have expired under this section.

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

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

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

(a) Any payment, application, or distribution of money is considered to

have been made from or with the money most recently received or acquired by any trustee of a legacy trust except to the extent that it is proven otherwise beyond a reasonable doubt. As used in division (F)(2)(a) of this section:

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

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

(iii) "Cash equivalent" includes certified or uncertified checks; money orders; bank drafts; any electronic transfer of funds; negotiable instruments; instruments indorsed in blank or in bearer form; securities issued or guaranteed by the United States, any state of the United States, or any state or federal agency; funds on deposit in any savings or checking account or any similar account; funds on deposit in any money market account or similar account; any demand deposit account, time deposit account, or savings deposit account at any bank, savings and loan association, brokerage house, or similar institution; or any other monetary instrument or device that is commonly or routinely accepted as a cash equivalent. Division (F)(2)(a)(iii) of this section shall be liberally construed and applied.

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

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

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

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

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

Sec. 5816.08. All of the following apply in connection with any action brought pursuant to this section or division (A) of section 5816.07 of the Revised Code:

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

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

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

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

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

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

(c) For purposes of division (A)(3) of this section, no trustee shall be considered to have acted in bad faith merely because the trustee accepted the property that is the subject of the qualified disposition.

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

(5) A creditor has the burden of proving by clear and convincing

evidence that a trustee or a beneficiary acted in bad faith under division (A)(3) or (4) of this section. Division (A)(5) of this section is construed as providing a substantive rather than a procedural rule or right under the law of this state.

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

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

(A)(1) Division (A)(2) of this section applies if in any action involving a legacy trust or any trustee of the legacy trust a court takes an action in which the court declines to apply the law of this state in determining any of the following matters:

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

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

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

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

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

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

(1) If a legacy trust ceases to have at least one qualified trustee, the vacancy in the qualified trusteeship shall be filled pursuant to section

5807.04 of the Revised Code except to the extent that the legacy trust expressly provides otherwise.

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

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

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

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

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

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

(2) There is no qualified trustee serving but the circumstances require the appointment or installation of a qualified trustee pursuant to division (A)(2) of section 5816.09 of the Revised Code.

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

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

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

(2) The date of the disposition to the legacy trust shall be considered to be the date on which the property that was part of the nonlegacy trust was first continuously subject to any law of a jurisdiction other than this state that is similar to this chapter. A court shall liberally construe and apply

division (E)(2) of this section in finding that such continuity and similarity exist.

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

(G) Any valid lien attaching to property before a disposition of that property to a trustee of a legacy trust shall survive the disposition, and the trustee shall take title to the property subject to the valid lien and subject to any agreements that created or perfected the valid lien. Nothing in this chapter shall be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages, indentures, instruments, undertakings, or other documents. In the event of any conflict between this division and any other provision of this chapter, this division shall control.

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

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

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

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

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

Sec. 5816.12. Except to the extent expressly provided otherwise by the terms of a legacy trust instrument, each trustee and each advisor of a legacy trust shall have the greatest discretion permitted by law in connection with all matters of trust administration, all trust distributions, and all other trustee

or advisor decisions.

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

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

SECTION 2. That existing sections 317.08, 317.32, 317.321, 1336.04, 1701.73, 1702.38, 1703.22, 2101.24, 2131.08, 2131.09, 2329.66, 2329.661, 5805.06, 5808.08, 5808.18, 5815.24, 5815.25, and 5815.36 of the Revised Code are hereby repealed.

SECTION 3. The amendments made by this act to section 1336.04 of the Revised Code shall apply to transfers made on or after the effective date of this act. The amendments made by this act to sections 2329.66 and 2329.661 of the Revised Code shall apply to claims accruing on or after the effective date of this act. The amendments made by this act to section 5815.36 of the Revised Code shall apply to disclaimers made on or after the effective date of this act. Section 5815.37 of the Revised Code as enacted by this act shall apply to conveyances made on or after the effective date of this act. The application of the amendments made by this act to section 2131.08 of the Revised Code is provided in division (F) of section 2131.08 of the Revised Code as amended by this act. The application of the amendments made by this act to section 2131.09 of the Revised Code is provided for in divisions (C) and (E) of section 2131.09 of the Revised Code as amended by this act. The application of the sections of Chapter 5816. of the Revised Code as enacted by this act is provided for in section 5816.14 of the Revised Code as enacted by this act. Sections 1319.07 to 1319.09 of the Revised Code, as enacted by this act, apply to the enforcement and interpretation of all nonrecourse loan documents in existence on, or entered into on or after, the effective date of this act. This act is not intended to impair any secured or unsecured creditors' claims that accrue prior to the effective date of this act.

SECTION 4. The amendments made by this act to sections 5805.06, 5808.08, 5815.24, and 5815.25 of the Revised Code, other than the

references to Chapter 5815. of the Revised Code in division (A)(2) of section 5805.06 of the Revised Code as amended by this act, are intended to be a statement of the common law of this state.

SECTION 5. The General Assembly recognizes that it is inherent in a nonrecourse loan that the lender takes the risk of a borrower's insolvency, inability to pay, or lack of adequate capital after the loan is made and that the parties do not intend that the borrower is personally liable for payment of a nonrecourse loan if the borrower is insolvent, unable to pay, or lacks adequate capital after the loan is made. The General Assembly also recognizes that the use of a postclosing solvency covenant as a nonrecourse carveout, or an interpretation of any provision in a loan document that results in a determination that a postclosing solvency covenant is a nonrecourse carveout, is inconsistent with this act and the nature of a nonrecourse loan, is an unfair and deceptive business practice and against public policy, and should not be enforced. It is the intent of the General Assembly that this act applies to any claim made or action taken to enforce a postclosing solvency covenant on or after the effective date of this act and to any action to enforce a postclosing solvency covenant that is pending on the effective date of this act, unless a judgment or final order has been entered in that action.

SECTION 6. Section 2101.24 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. S.B. 117 and Am. Sub. S.B. 124 of the 129th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 479

129th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____