

Ohio Code TITLE [58] LVIII. Ohio Trust Code

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5801.01. Effective 1-1-07.

§ 5801.01. (UTC 103) Definitions.

As used in Chapters 5801. to 5811. of the Revised Code:

- (A) "Action," with respect to an act of a trustee, includes a failure to act.
- (B) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
- (C) "Beneficiary" means a person that has a present or future beneficial interest in a trust, whether vested or contingent, or that, in a capacity other than that of trustee, holds a power of appointment over trust property, or a charitable organization that is expressly designated in the terms of the trust to receive distributions. "Beneficiary" does not include any charitable organization that is not expressly designated in the terms of the trust to receive distributions, but to whom the trustee may in its discretion make distributions.
- (D) "Beneficiary surrogate" means a person, other than a trustee, designated by the settlor in the trust instrument to receive notices, information, and reports otherwise required to be provided to a current beneficiary under divisions (B)(8) and (9) of section 5801.04 of the Revised Code.
- (E) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in division (A) of section 5804.05 of the Revised Code.
- (F) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.
- (G) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
- (H) "Guardian of the estate" means a guardian appointed by a court to administer the estate of any individual or to serve as conservator of the property of an individual eighteen years of age or older under [section 2111.021](#) [2111.02.1] of the Revised Code.
- (I) "Guardian of the person" means a guardian appointed by a court to make decisions regarding the support, care, education, health, and welfare of any individual or to serve as conservator of the person of an individual eighteen years of age or older under [section 2111.021](#) [2111.02.1] of the Revised Code. "Guardian of the person" does not include a guardian ad litem.
- (J) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.
- (K) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.
- (L) "Jurisdiction," with respect to a geographic area, includes a state or country.
- (M) "Mandatory distribution" means a distribution of income or principal, including a distribution upon termination of the trust, that the trustee is required to make to a beneficiary under the terms of the trust. Mandatory distributions do not include distributions that a trustee is directed or authorized to make pursuant to a support or other standard, regardless of whether the terms of the trust provide that the trustee "may" or "shall" make the distributions pursuant to a support or other standard.

(N) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or instrumentality, public corporation, or any other legal or commercial entity.

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

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

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

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

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

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

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

(S) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(T) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

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

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

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

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

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

(a) The trust is irrevocable.

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

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

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

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

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

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

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

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

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

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

(4) If the beneficiary and one or more others have made contributions to the trust, the portion of the trust attributable to the beneficiary's contributions may not be a wholly discretionary trust with respect to that beneficiary, but the portion of the trust attributable to the contributions of others may be a wholly discretionary trust with respect to that beneficiary. If a beneficiary has a power of withdrawal, then upon the lapse, release, or waiver of the power, the beneficiary is treated as having made contributions to 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 beneficiary'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 beneficiary'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.

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

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

(b) A prohibition against providing food, clothing, and shelter to the beneficiary.

[§ 5801.01.1] § 5801.011. (UTC 101) Short title.

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

§ 5801.02. (UTC 102) Scope.

Except as otherwise provided in any provision of Chapters 5801. to 5811. of the Revised Code, those chapters apply to charitable and noncharitable inter vivos express trusts and to trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. Chapters 5801. to 5811. of the Revised Code apply to testamentary trusts to the extent provided by [section 2109.69](#) of the Revised Code.

§ 5801.03. (UTC 104) Knowledge.

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

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

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

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

(B) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time an employee having responsibility to act for the trust received the information or the information would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

§ 5801.04. (UTC 105) Default and mandatory rules.

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

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

(1) The requirements for creating a trust;

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

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

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

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

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

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

(8) Subject to division (C) of this section, the duty under divisions (B)(2) and (3) of section 5808.13 of the Revised Code to notify current beneficiaries of an irrevocable trust who have attained twenty-five years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;

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

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

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

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

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

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

(C) With respect to one or more of the current beneficiaries, the settlor, in the trust instrument, may waive or modify the duties of the trustee described in divisions (B)(8) and (9) of this section. The waiver or modification may be made only by the settlor designating in the trust instrument one or more beneficiary surrogates to receive any notices, information, or reports otherwise required under those divisions to be provided to the current beneficiaries. If the settlor makes a waiver or modification pursuant to this division, the trustee shall provide the notices, information, and reports to the beneficiary surrogate or surrogates in lieu of providing them to the current beneficiaries. The beneficiary surrogate or surrogates shall act in good faith to protect the interests of the current beneficiaries for whom the notices, information, or reports are received. A waiver or modification made under this division shall be effective for so long as the beneficiary surrogate or surrogates, or their successor or successors designated in accordance with the terms of the trust instrument, act in that capacity

§ 5801.05. (UTC 106) Common law of trusts; principles of equity.

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

§ 5801.06. (UTC 107) Governing law.

The law of the jurisdiction designated in the terms of a trust determines the meaning and effect of the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue determines the meaning and effect of the terms.

§ 5801.07. (UTC 108) Principal place of administration.

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

(B) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(C) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by division (B) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(D) The trustee shall notify the current beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of a proposed transfer shall include all of the following:

- (1) The name of the jurisdiction to which the principal place of administration is to be transferred;
- (2) The address and telephone number at the new location at which the trustee can be contacted;
- (3) An explanation of the reasons for the proposed transfer;
- (4) The date on which the trustee expects the proposed transfer to occur.

(E) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 5807.04 of the Revised Code.

§ 5801.08. (UTC 109) Methods and waiver of notice.

(A) Notice to a person or the sending of a document to a person under Chapters 5801. to 5811. of the Revised Code shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(B) Notice otherwise required or a document otherwise required to be sent under Chapters 5801. to 5811. of the Revised Code is not required to be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

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

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

§ 5801.09. (UTC 110) Others treated as current or qualified beneficiaries.

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

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

§ 5801.10. (UTC 111) Private settlement agreements.

(A) As used in this section, "creditor" means any of the following:

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

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

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

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

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

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

(2) All beneficiaries;

(3) All currently serving trustees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) A trustee serving under the trust instrument is not liable to any third person arising from any loss due to that trustee's actions or inactions taken or omitted in good faith reliance on the terms of an agreement entered into under this section.

(M) This section does not apply to any of the following:

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

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

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

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

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

5802. Judicial Proceedings.

§ 5802.01. (UTC 201) Role of court in administration of trust.

(A) A court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(B) An inter vivos trust is not subject to continuing judicial supervision unless ordered by the court. Trusts created pursuant to a section of the Revised Code or a judgment or decree of a court are subject to continuing judicial supervision to the extent provided by the section, judgment, or decree or by court order.

(C) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

§ 5802.02. (UTC 202) Jurisdiction over trustee and beneficiary.

(A) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(B) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from the trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(C) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

§ 5802.03. Subject-matter jurisdiction.

The probate division of the court of common pleas 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 any action that involves an inter vivos trust.

5803. Representation.

§ 5803.01. (UTC 301) Representation, basic effect.

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

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

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

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

§ 5803.02. (UTC 302) Representation by holder of general testamentary power of appointment.

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

§ 5803.03. (UTC 303) Representation by fiduciaries and parents.

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

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

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

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

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

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

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

§ 5803.04. (UTC 304) Representation by person having substantially identical interest.

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

§ 5803.05. (UTC 305) Appointment of representative.

(A) If the court determines that an interest is not represented under this chapter or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated individual, unborn individual, or person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

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

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

5804. Creation, Validity, Modification and Termination of Trust.

§ 5804.01. (UTC 401) Methods of creating trust.

A trust may be created by any of the following methods:

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

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

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

(D) A court order.

§ 5804.02. (UTC 402) Requirements for creation; when beneficiary is definite; trustee's power to select beneficiary from indefinite class; validity.

(A) A trust is created only if all of the following apply:

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

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

(3) The trust has a definite beneficiary or is one of the following:

(a) A charitable trust;

(b) A trust for the care of an animal, as provided in section 5804.08 of the Revised Code;

(c) A trust for a noncharitable purpose, as provided in section 5804.09 of the Revised Code.

(4) The trustee has duties to perform.

(5) The same person is not the sole trustee and sole beneficiary.

(B) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(C) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(D) A trust is valid regardless of the existence, size, or character of the corpus of the trust. This division applies to any trust that was executed prior to, or is executed on or after, the effective date of Chapters 5801. to 5811. of the Revised Code.

(E) A trust is not invalid because a person, including, but not limited to, the creator of the trust, is or may become the sole trustee and the sole holder of the present beneficial enjoyment of the corpus of the trust, provided that one or more other persons hold a vested, contingent, or expectant interest relative to the enjoyment of the corpus of the trust upon the cessation of the present beneficial enjoyment. A merger of the legal and equitable titles to the corpus of a trust described in this division does not occur in its creator, and, notwithstanding any contrary provision of [Chapter 2107.](#) of the Revised Code, the trust is not a testamentary trust that is required to comply with that chapter in order for its corpus to be legally distributed to other beneficiaries in accordance with the provisions of the trust upon the cessation of the present beneficial enjoyment. This division applies to any trust that satisfies the provisions of this division, whether the trust was executed prior to, on, or after October 10, 1991.

§ 5804.03. (UTC 403) Trusts created in other jurisdictions.

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

- (A) The settlor was domiciled in, had a place of abode in, or was a national of the jurisdiction.
- (B) A trustee was domiciled or had a place of business in the jurisdiction.
- (C) Any trust property was located in the jurisdiction.

§ 5804.05. (UTC 405) Charitable purposes; enforcement.

- (A) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.
- (B) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.
- (C) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

§ 5804.06. (UTC 406) Fraud, duress, or undue influence.

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

§ 5804.07. (UTC 407) Evidence of oral trust.

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

§ 5804.08. (UTC 408) Trust for care of animal.

- (A) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

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

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

§ 5804.09. (UTC 409) Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in section 5804.08 of the Revised Code or any other section of the Revised Code:

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

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

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

§ 5804.10. (UTC 410) Modification or termination of trust; proceedings for approval or disapproval.

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

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

§ 5804.11. (UTC 411) Modification or termination of noncharitable irrevocable trust by consent.

(A) If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. An agent under a power of attorney may exercise a settlor's power to consent to a trust's modification or termination only to the extent expressly authorized by both the power of attorney and the terms of the trust. The settlor's guardian of the estate may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized. The guardian of the settlor's person may exercise a settlor's power to consent to a trust's modification or termination with the approval of the court supervising the guardianship if an agent is not so authorized and a guardian of the estate has not been appointed. This division applies only to irrevocable trusts created on or after the effective date of Chapters 5801. to 5811. of the Revised Code and to revocable trusts that become irrevocable on or after the effective date of Chapters 5801. to 5811. of the Revised Code. This division does not apply to a noncharitable irrevocable trust described in 42 U.S.C. 1396p(d)(4).

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

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

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

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

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

§ 5804.12. (UTC 412) Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

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

(B) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or impair the trust's administration.

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

§ 5804.13. (UTC 413) Cy pres.

(A) Except as otherwise provided in division (B) of this section, if a particular charitable purpose becomes unlawful, impracticable, or impossible to achieve, all of the following apply:

(1) The trust does not fail in whole or in part.

(2) The trust property does not revert to the settlor or the settlor's successors in interest.

(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes. In accordance with [section 109.25](#) of the Revised Code, the attorney general is a necessary party to a judicial proceeding brought under this section.

(B) A provision in the terms of a charitable trust for the distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under division (A) of this section to apply cy pres to modify or terminate the trust.

§ 5804.14. (UTC 414) Modification or termination of uneconomic trust.

(A) (1) Except as provided in division (A)(2) of this section, after notice to the qualified beneficiaries, the trustee of an inter vivos trust consisting of trust property having a total value of less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

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

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

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

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

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

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

(C) Upon the termination of a trust pursuant to division (A)(1) of this section, the trustee shall distribute the trust estate in accordance with any provision specified in the trust instrument for the premature termination of the trust. If there is no provision of that nature in the trust instrument, the trustee shall distribute the trust estate among the beneficiaries of the trust in accordance with their respective beneficial interests and in a manner that the trustee determines to be equitable. For purposes of distributing the trust estate among the beneficiaries of the trust under this division, the trustee shall consider all of the following:

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

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

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

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

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

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

§ 5804.15. (UTC 415) Reformation to correct mistakes.

The court may reform the terms of a trust, even if they are unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

§ 5804.16. (UTC 416) Modification to achieve settlor's tax objectives.

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

§ 5804.17. (UTC 417) Combination and division of trusts.

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

§ 5804.18. Irrevocable trust under provision of social security act.

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

5805. Spendthrift Provision and Creditors; Mandatory Distributions.

§ 5805.01. (UTC 502) Spendthrift provision.

(A) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest or if it restrains involuntary transfer of a beneficiary's interest and permits voluntary transfer of a beneficiary's interest only with the consent of a trustee who is not the beneficiary.

(B) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(C) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter and in section 5810.04 of the Revised Code, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. Real property or tangible personal property that is owned by the trust but that is made available for a beneficiary's use or occupancy in accordance with the trustee's authority under the trust instrument shall not be considered to have been distributed by the trustee or received by the beneficiary for purposes of allowing a creditor or assignee of the beneficiary to reach the property.

§ 5805.02. (UTC 503) Exceptions to enforceability.

(A) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(B) Subject to section 5805.03 of the Revised Code, a spendthrift provision is unenforceable against either of the following:

(1) The beneficiary's child or spouse who has a judgment or court order against the beneficiary for support, but only if distributions can be made for the beneficiary's support or the beneficiary is entitled to receive mandatory distributions under the terms of the trust;

(2) A claim of this state or the United States to the extent provided by the Revised Code or federal law.

(C) A spendthrift provision is enforceable against the beneficiary's former spouse.

(D) A claimant described in division (B) of this section may obtain from the court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court the support needs of the beneficiary, the beneficiary's spouse, and the beneficiary's dependent children or, with respect to a beneficiary who is the recipient of public benefits, the supplemental needs of the beneficiary if the trust was not intended to provide for the beneficiary's basic support.

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

§ 5805.03. Wholly discretionary trusts.

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

§ 5805.04. (UTC 504) Discretionary trusts generally.

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

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

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

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

(1) The court may order a distribution to satisfy a judgment or court order against the beneficiary for support of the beneficiary's child or spouse, provided that the court may order the distributions only if distributions can be made for the beneficiary's support under the terms of the trust and that the court may not order any distributions under

this division to satisfy a judgment or court order against the beneficiary for support of the beneficiary's former spouse.

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

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

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

§ 5805.05. (UTC 506) Rights of creditor or assignee concerning mandatory distributions.

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

(B) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution the beneficiary is entitled to receive if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

§ 5805.06. (UTC 505) Creditor's claim against settlor.

(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 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 trust has more than one settlor, the amount the creditor or

assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(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.

§ 5805.07. (UTC 507) Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

5806. Revocable Trusts.

§ 5806.01. (UTC 601) Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

§ 5806.02. (UTC 602) Revocation or amendment of revocable trust.

(A) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This division does not apply to a trust created under an instrument executed before the effective date of this section.

(B) If a revocable trust is created or funded by more than one settlor, all of the following apply:

(1) To the extent the trust consists of community property, either spouse acting alone may revoke the trust, but the trust may be amended only by joint action of both spouses.

(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution.

(3) Upon the revocation or amendment of the trust by less than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(C) The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method, by any other method manifesting clear and convincing evidence of the settlor's intent, provided that a revocable trust may not be revoked or amended by a will or codicil, regardless of whether it refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust unless the terms of the trust expressly allow it to be revoked or amended by a will or codicil.

(D) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(E) An agent under a power of attorney may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only to the extent expressly authorized by both the terms of the trust and the power.

(F) A guardian of the estate of the settlor or, if no guardian of the estate has been appointed, a guardian of the person of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship.

(G) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

§ 5806.03. (UTC 603) Settlor's powers; apportionment of recovery from trustee; powers of withdrawal.

(A) During the lifetime of the settlor of a revocable trust, whether or not the settlor has capacity to revoke the trust, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. If the trustee breaches its duty during the lifetime of the settlor, any recovery obtained from the trustee after the settlor becomes incapacitated or dies shall be apportioned by the court. If the settlor is living when the recovery is obtained, the court shall apportion the recovery between the settlor and the trust, or allocate the entire recovery to the settlor or the trust, as it determines to be equitable under the circumstances. If the settlor is not living when the recovery is obtained, the court shall apportion the recovery between the settlor's estate and the trust, or allocate the entire recovery to the settlor's estate or the trust, as it determines to be equitable under the circumstances.

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

§ 5806.04. (UTC 604) Statute of limitations for actions concerning certain revocable trusts; distribution of trust property.

(A) Any of the following actions pertaining to a revocable trust that is made irrevocable by the death of the settlor of the trust shall be commenced within two years after the date of the death of the settlor of the trust:

- (1) An action to contest the validity of the trust;
- (2) An action to contest the validity of any amendment to the trust that was made during the lifetime of the settlor of the trust;
- (3) An action to contest the revocation of the trust during the lifetime of the settlor of the trust;
- (4) An action to contest the validity of any transfer made to the trust during the lifetime of the settlor of the trust.

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

- (1) The trustee has actual knowledge of a pending action to contest the validity of the trust, any amendment to the trust, the revocation of the trust, or any transfer made to the trust during the lifetime of the settlor of the trust.
- (2) The trustee receives written notification from a potential contestant of a potential action to contest the validity of the trust, any amendment to the trust, the revocation of the trust, or any transfer made to the trust during the lifetime of the settlor of the trust, and the action is actually filed within ninety days after the written notification was given to the trustee.

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

(D) This section applies only to revocable trusts that are made irrevocable by the death of the settlor of the trust if the grantor dies on or after July 23, 2002.

5807. Office of Trustee.

§ 5807.01. (UTC 701) Accepting or declining trusteeship.

(A) Except as otherwise provided in division (C) of this section, a person designated as trustee accepts the trusteeship by substantially complying with a method of acceptance provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

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

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

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

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

§ 5807.02. (UTC 702) Trustee's bond.

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

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

(C) A regulated financial-service institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

§ 5807.03. (UTC 703) Cotrustees.

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

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

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

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

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

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

(G) Except as otherwise provided in this division, each trustee shall exercise reasonable care to prevent a cotrustee from committing a serious breach of trust and to compel a cotrustee to redress a serious breach of trust. A trustee is not required to exercise reasonable care of that nature under this division, and a trustee is not liable for resulting losses, when section 5815.25 of the Revised Code is applicable or there is more than one other trustee and the other trustees act by majority vote.

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

§ 5807.04. (UTC 704) Vacancy in trusteeship; appointment of successor; court appointment of additional trustee or special fiduciary.

(A) A vacancy in a trusteeship occurs under any of the following circumstances:

- (1) A person designated as trustee rejects the trusteeship;
- (2) A person designated as trustee cannot be identified or does not exist;
- (3) A trustee resigns;
- (4) A trustee is disqualified or removed;
- (5) A trustee dies;
- (6) A guardian of the estate or person is appointed for an individual serving as trustee.

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

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

- (1) By a person designated in the terms of the trust to act as successor trustee;
- (2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;
- (3) By a person appointed by unanimous agreement of the qualified beneficiaries;
- (4) By a person appointed by the court.

(D) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

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

(2) By a person appointed by someone designated in the terms of the trust to appoint a successor trustee;

(3) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust;

(4) By a person appointed by the court.

(E) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

§ 5807.05. (UTC 705) Resignation of trustee.

(A) A trustee may resign upon at least thirty days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees or with the approval of the court.

(B) In approving a resignation of a trustee, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(C) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

§ 5807.06. (UTC 706) Removal of trustee.

(A) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or the court may remove a trustee on its own initiative.

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

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

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

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

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

§ 5807.07. (UTC 707) Delivery of property by former trustee.

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

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

§ 5807.08. (UTC 708) Compensation of trustee.

(A) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

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

§ 5807.09. (UTC 709) Reimbursement of expenses.

(A) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for expenses that were properly incurred in the administration of the trust and, to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

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

5808. Duties and Powers of Trustee.

§ 5808.01. (UTC 801) Duty to administer trust.

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

§ 5808.02. (UTC 802) Duty of loyalty.

(A) A trustee shall administer the trust solely in the interests of the beneficiaries.

(B) Subject to the rights of persons dealing with or assisting the trustee as provided in section 5810.12 of the Revised Code, a sale, encumbrance, or other transaction involving the investment or management of trust

property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless one of the following applies:

(1) The transaction was authorized by the terms of the trust or by other provisions of the Revised Code.

(2) The transaction was approved by the court.

(3) The beneficiary did not commence a judicial proceeding within the time allowed by section 5810.05 of the Revised Code.

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 5810.09 of the Revised Code.

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(C) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with one of the following:

(1) The trustee's spouse;

(2) The trustee's descendant, sibling, or parent or the spouse of a trustee's descendant, sibling, or parent;

(3) An agent or attorney of the trustee;

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(D) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

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

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

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

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

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

- (a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
 - (b) Payment of reasonable compensation to the trustee;
 - (c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;
 - (d) A deposit of trust money in a regulated financial-services institution that is an affiliate of the trustee;
 - (e) An advance by the trustee of money for the protection of the trust.
- (H) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

§ 5808.03. (UTC 803) Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

§ 5808.04. (UTC 804) Prudent administration.

A trustee shall administer the trust as a prudent person would and shall consider the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

§ 5808.05. (UTC 805) Costs of administration.

Except as otherwise permitted by law, in administering a trust, a trustee may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

§ 5808.06. (UTC 806) Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§ 5808.07. (UTC 807) Delegation by trustee.

(A) A trustee may delegate duties and powers that a prudent trustee having comparable skills could properly delegate under the circumstances. In accordance with this division, a trustee shall exercise reasonable care, skill, and caution in doing all of the following:

- (1) Selecting an agent, cotrustee, or other fiduciary to whom the delegation is made;
- (2) Establishing the scope and terms of the delegation consistent with the purposes and terms of the trust;
- (3) Periodically reviewing the agent's, cotrustee's, or other fiduciary's actions in order to monitor the agent's, cotrustee's, or other fiduciary's performance with the terms of the delegation.

(B) In performing a delegated function, an agent, cotrustee, or other fiduciary owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

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

(D) By accepting the delegation of powers or duties from the trustee of a trust that is subject to the laws of this state, an agent, cotrustee, or other fiduciary submits to the jurisdiction of this state.

§ 5808.08. (UTC 808) Powers to direct.

(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) A person other than a beneficiary who holds a power to direct 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.

§ 5808.09. (UTC 809) Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property.

§ 5808.10. (UTC 810) Recordkeeping and identification of trust property.

(A) A trustee shall keep adequate records of the administration of the trust.

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

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

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

§ 5808.11. (UTC 811) Enforcement and defense of claims.

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

§ 5808.12. (UTC 812) Collecting trust property.

A trustee shall take reasonable steps to collect trust property held by third persons. The responsibility of a successor trustee with respect to the administration of the trust by a prior trustee shall be governed by section 5815.24 of the Revised Code.

§ 5808.13. (UTC 813) Duty to inform and report.

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

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

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

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

(3) Within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, notify the current beneficiaries of the trust's existence, of the identity of the settlor or

settlers, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in division (C) of this section;

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

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

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

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

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

§ 5808.14. (UTC 814) Discretionary powers; tax savings.

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

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

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

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

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

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

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

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

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

§ 5808.15. (UTC 815) General powers of trustee.

(A) A trustee, without authorization by the court, may exercise powers conferred by the terms of the trust and, except as limited by the terms of the trust, may exercise all of the following powers:

(1) All powers over the trust property that an unmarried competent owner has over individually owned property;

(2) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property;

(3) Any other powers conferred by Chapters 5801. to 5811. of the Revised Code.

(B) The exercise of a power is subject to the fiduciary duties prescribed by Chapter 5808. of the Revised Code.

§ 5808.16. (UTC 816) Specific powers of trustee.

Without limiting the authority conferred by section 5808.15 of the Revised Code, a trustee may do all of the following:

(A) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(B) Acquire or sell property, for cash or on credit, at public or private sale;

(C) Exchange, partition, or otherwise change the character of trust property;

(D) Deposit trust money in an account in a regulated financial-service institution;

(E) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(F) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(G) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to do any of the following:

(1) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(2) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(3) Pay calls, assessments, and other sums chargeable or accruing against the securities and sell or exercise stock subscription or conversion rights;

(4) Deposit the securities with a depository or other regulated financial-service institution.

(H) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

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

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

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

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

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

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

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

(3) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(4) Compromise claims against the trust that may be asserted for an alleged violation of environmental law;

(5) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

(N) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(O) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(P) Exercise elections with respect to federal, state, and local taxes;

(Q) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance policy payable to the trustee, exercise rights under any employee benefit or retirement plan, annuity, or life insurance policy payable to the trustee, including the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(R) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(S) Pledge the property of a revocable trust to guarantee loans made by others to the settlor of the revocable trust, or, if the settlor so directs, to guarantee loans made by others to a third party;

(T) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

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

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

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

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

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

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

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

(X) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(Y) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(Z) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

§ 5808.17. (UTC 817) Distribution upon termination.

(A) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(B) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(C) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent that it was induced by improper conduct of the trustee or that the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

5809. Uniform Prudent Investor Act.

§ 5809.01. (UPIA § 1) Definitions; prudent investor rule.

(A) (1) As used in the Revised Code, the "Ohio Uniform Prudent Investor Act" means sections 5809.01 to 5809.08, 5808.03, 5808.05, and 5808.06, division (A) of section 5808.02, and division (B) of section 5808.07 of the Revised Code, and those sections may be cited as the "Ohio Uniform Prudent Investor Act."

(2) As used in the Ohio Uniform Prudent Investor Act, "trustee" means a trustee under any testamentary, inter vivos, or other trust.

(B) Except as provided in division (C) or (D) of this section, a trustee who invests and manages trust assets under the Ohio Uniform Prudent Investor Act owes a duty to the beneficiaries of the trust to comply with the Ohio Uniform Prudent Investor Act.

(C) The Ohio Uniform Prudent Investor Act may be expanded, restricted, eliminated, or otherwise altered, without express reference by the instrument creating a trust to the Ohio Uniform Prudent Investor Act or any section of the Revised Code that is part of that act.

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

§ 5809.02. (UPIA § 2) Standard of care; portfolio strategy; risk and return objectives.

(A) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this requirement, the trustee shall exercise reasonable care, skill, and caution.

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

(C) A trustee's investment and management decisions respecting individual trust assets shall not be evaluated in isolation but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(D) Among circumstances that a trustee shall consider in investing and managing trust assets are the following as are relevant to the trust or its beneficiaries:

(1) The general economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

§ 5809.03. (UPIA § 3) Scope of investment authority; diversification.

(A) A trustee may invest in any kind of property or type of investment provided that the investment is consistent with the requirements and standards of the Ohio Uniform Prudent Investor Act.

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

§ 5809.04. (UPIA § 4) Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of trust assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and in order to comply with the requirements and standards of the Ohio Uniform Prudent Investor Act.

§ 5809.05. (UPIA § 8) Compliance not determined by hindsight.

Compliance with the Ohio Uniform Prudent Investor Act shall be determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

§ 5809.06. (UPIA § 9) Delegation of investment and management.

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

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

(C) A trustee who delegates a function to an agent in compliance with division (A) of this section is not liable to the beneficiaries of the trust or to the trust for the decisions or actions of the agent to whom the function was delegated.

(D) By accepting the delegation of investment or management functions of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of this state.

§ 5809.07. (UPIA § 10) Language invoking standard of act.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted by the Ohio Uniform Prudent Investor Act: "investments permissible by law for investment of trust funds"; "legal investments"; "authorized investments"; "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds considering the probable income as well as the probable safety of their capital"; "prudent man rule"; "prudent trustee rule"; "prudent person rule"; and "prudent investor rule."

§ 5809.08. (UPIA §§ 11, 12) Uniformity of application and construction; application to existing trusts; temporary investments.

(A) The Ohio Uniform Prudent Investor Act shall be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of these sections among the states enacting it.

(B) The Ohio Uniform Prudent Investor Act applies to trusts existing on or created after March 22, 1999. As applied to trusts existing on March 22, 1999, the Ohio Uniform Prudent Investor Act governs only decisions or actions occurring after March 22, 1999.

(C) The temporary investment of cash or funds pursuant to section 5815.26 or 2109.372 [2109.37.2] of the Revised Code shall be considered a prudent investment in compliance with the Ohio Uniform Prudent Investor Act.

5810. Breach of Trust.

§ 5810.01. (UTC 1001) Remedies for breach of trust.

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

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

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

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

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

(4) Order a trustee to account;

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

(6) Suspend the trustee;

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

(8) Reduce or deny compensation to the trustee;

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

(10) Order any other appropriate relief.

§ 5810.02. (UTC 1002) Damages for breach of trust.

(A) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of the following:

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

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

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

§ 5810.03. (UTC 1003) Damages in absence of breach.

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

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

§ 5810.04. (UTC 1004) Attorney's fees and costs.

In a judicial proceeding involving the administration of a trust, including a trust that contains a spendthrift provision, the court, as justice and equity may require, may award costs, expenses, and reasonable attorney's fees to any party, to be paid by another party, from the trust that is the subject of the controversy, or from a party's interest in the trust that is the subject of the controversy.

§ 5810.05. (UTC 1005) Limitation of action against trustee.

(A) A beneficiary may not commence a proceeding against a trustee for breach of trust more than two years after the date the beneficiary, a representative of the beneficiary, or a beneficiary surrogate is sent a report that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary, the representative of the beneficiary, or the beneficiary surrogate of the time allowed for commencing a proceeding against a trustee.

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

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

- (1) The removal, resignation, or death of the trustee;
- (2) The termination of the beneficiary's interest in the trust;
- (3) The termination of the trust;
- (4) The time at which the beneficiary knew or should have known of the breach of trust.

§ 5810.06. (UTC 1006) Reliance on trust instrument.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§ 5810.07. (UTC 1007) Event affecting administration or distribution.

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

§ 5810.08. (UTC 1008) Exculpation of trustee.

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

§ 5810.09. (UTC 1009) Beneficiary's consent, release, or ratification.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee or, at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

§ 5810.10. (UTC 1010) Limitation on personal liability of trustee.

(A) Except as otherwise provided in the contract, for contracts entered into on or after March 22, 1984, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity. The words "trustee," "as trustee," "fiduciary," or "as fiduciary," or other words that indicate one's trustee capacity, following the name or signature of a trustee are sufficient disclosure for purposes of this division.

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

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

§ 5810.11. (UTC 1011) Interest as general partner.

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

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

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

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

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

(3) A contract or other written instrument that is delivered to a party that contracts with the partnership in which a trustee holds a general partnership interest in a fiduciary capacity and that indicates that the trustee so holds the

interest constitutes a disclosure for purposes of division (A)(1) of this section with respect to transactions between the party and the partnership. If a disclosure has been made by a certificate in accordance with division (A) of this section, a disclosure for purposes of division (A) of this section with respect to such transactions exists regardless of whether a contract or other instrument indicates the trustee holds the general partnership interest in a fiduciary capacity.

(B) Except as otherwise provided in division (C) of this section, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

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

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

§ 5810.12. (UTC 1012) Protection of person dealing with trustee.

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

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

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

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

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

§ 5810.13. (UTC 1013) Certification of trust.

(A) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing all of the following information:

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

(2) The identity of the settlor;

- (3) The identity and address of the currently acting trustee;
 - (4) The powers of the trustee;
 - (5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
 - (6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;
 - (7) The trust's taxpayer identification number;
 - (8) The manner of taking title to trust property.
- (B) Any trustee may sign or otherwise authenticate a certification of trust.
- (C) A certification of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
- (D) A certification of trust is not required to contain the dispositive terms of a trust.
- (E) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.
- (F) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.
- (G) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.
- (H) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.
- (I) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

5811. Miscellaneous Provisions.

§ 5811.01. (UTC 1101) Uniformity of application and construction.

In applying and construing Chapters 5801. to 5811. of the Revised Code, a court may consider the need to promote uniformity of the law with respect to the subject matter of those chapters among states that enact the

uniform trust code.

§ 5811.02. (UTC 1102) Electronic records and signatures.

The provisions of Chapters 5801. to 5811. of the Revised Code governing the legal effect, validity, or enforceability of electronic records or electronic signatures and of contracts formed or performed with the use of electronic records or electronic signatures conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7002, 114 Stat. 467, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

§ 5811.03. (UTC 1106) Application to existing relationships.

(A) Except as otherwise provided in Chapters 5801. to 5811. of the Revised Code, all of the following apply:

(1) Chapters 5801. to 5811. of the Revised Code apply to all trusts created before, on, or after their effective date.

(2) Chapters 5801. to 5811. of the Revised Code apply to all judicial proceedings concerning trusts commenced on or after their effective date.

(3) Chapters 5801. to 5811. of the Revised Code apply to judicial proceedings concerning trusts commenced before the effective date of those chapters unless the court finds that application of a particular provision of those chapters would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision does not apply, and the superseded law applies.

(4) Any rule of construction or presumption provided in Chapters 5801. to 5811. of the Revised Code applies to trust instruments executed before the effective date of those chapters unless there is a clear indication of a contrary intent in the terms of the trust.

(5) Chapters 5801. to 5811. of the Revised Code do not affect an act done before the effective date of those chapters.

(B) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of Chapters 5801. to 5811. of the Revised Code, that statute continues to apply to the right even if it has been repealed or superseded.

5812. Uniform Principal and Income Act.

§ 5812.01. (UPIA 102) Definitions.

As used in sections 5812.01 to 5812.52 of the Revised Code:

(A) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. "Accounting period" includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(B) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(C) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(D) "Income" means money or property that a fiduciary receives as current return from a principal asset. "Income" includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections 5812.18 to 5812.38 of the Revised Code.

(E) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(F) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require or authorize it to be distributed in the trustee's discretion.

(G) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(H) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under sections 5812.01 to 5812.52 of the Revised Code to or from income during the period.

(I) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(J) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(K) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(L) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(M) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

§ 5812.02. (UPIA 103) Fiduciary duties; general principles; tax considerations.

(A) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections 5812.07 to 5812.14 of the Revised Code, all of the following apply:

(1) A fiduciary shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in sections 5812.01 to 5812.52 of the Revised Code.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by any provision of sections 5812.01 to 5812.52 of the Revised Code.

(3) A fiduciary shall administer a trust or estate in accordance with sections 5812.01 to 5812.52 of the Revised Code if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.

(4) A fiduciary shall add a receipt, or charge a disbursement, to principal to the extent that the terms of the trust and any provision of sections 5812.01 to 5812.52 of the Revised Code do not provide for allocating the receipt or disbursement to or between principal and income.

(B) In exercising the power to adjust under division (A) of section 5812.03 of the Revised Code or a discretionary power of administration regarding a matter within the scope of sections 5812.01 to 5812.52 of the Revised Code, whether granted by the terms of a trust, a will, or a provision of any such section, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with sections 5812.01 to 5812.52 of the Revised Code is presumed to be fair and reasonable to all of the beneficiaries.

(C) In allocating receipts and disbursements to or between principal and income, a fiduciary may credit a receipt or charge an expenditure to income or principal with respect to a decedent's estate, a trust, or property passing to a trust, that is eligible for a federal estate tax marital deduction or Ohio estate tax marital deduction, or for a federal estate tax charitable deduction or Ohio estate tax charitable deduction, or for a federal gift tax marital deduction or federal gift tax charitable deduction only to the extent that the credit of the receipt or charge of the expenditure will not cause the reduction or loss of the deduction.

(D) As used in division (C) of this section:

(1) "Federal estate tax charitable deduction" means the estate tax charitable deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2055, as amended.

(2) "Federal estate tax marital deduction" means the estate tax marital deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended.

(3) "Federal gift tax charitable deduction" means the gift tax charitable deduction allowed by subtitle B, Chapter 12 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2522, as amended.

(4) "Federal gift tax marital deduction" means the gift tax marital deduction allowed by subtitle B, Chapter 12 of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2523, as amended.

(5) "Ohio estate tax charitable deduction" means the estate tax charitable deduction allowed by division (A) of [section 5731.17](#) of the Revised Code.

(6) "Ohio estate tax marital deduction" means the estate tax marital deduction allowed by [section 5731.15](#) of the Revised Code.

§ 5812.03. (UPIA 104) Trustee's power to adjust.

(A) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages the trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying division (A) of section 5812.02 of the Revised Code, that the trustee is unable to comply with division (B) of that section.

(B) In deciding whether and to what extent to exercise the power conferred by division (A) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including all of the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under sections 5812.01, 5812.02, and 5812.07 to 5812.52 of the Revised Code; and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation;

(9) The anticipated tax consequences of an adjustment.

(C) A trustee shall not make an adjustment if any of the following applies:

(1) The adjustment diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment.

(2) The adjustment reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

(3) The adjustment changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(4) The adjustment is from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside.

(5) If possessing or exercising the power to make the adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make the adjustment;

(6) If possessing or exercising the power to make the adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make the adjustment;

(7) If the trustee is a beneficiary of the trust;

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(D) If division (C)(5), (6), (7), or (8) of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(E) A trustee may release the entire power conferred by division (A) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in division (C)(1), (2), (3), (4), (5), (6), or (8) of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in division (C) of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

(F) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by division (A) of this section.

(G) The liability of a trustee relative to the exercise of adjustment authority conferred by divisions (A) to (F) of this section shall be limited in the following manner:

(1) Unless a court determines that a trustee has acted in bad faith, no trustee shall be held liable for damages for choosing not to make an adjustment.

(2) Unless a court determines that a trustee has acted in bad faith with respect to an adjustment, the sole remedy to be ordered by a court shall be a prospective correction of the adjustment.

(3) For purposes of this section, and subject to division (C) of this section, from time to time a trustee may make a safe-harbor adjustment to increase net trust accounting income up to and including an amount equal to four per

cent of the trust's fair market value determined as of the first business day of the current year. If a trustee determines to make this safe-harbor adjustment, the propriety of this adjustment shall be conclusively presumed. Nothing in division (G)(3) of this section prohibits any other type of adjustment authorized under any provision of this section.

§ 5812.07. (UPIA 201) Proceedings after decedent's death or termination of income interest.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, all of the following apply:

(A) The fiduciary of the estate or of the terminating income interest shall determine, under the provisions of sections 5812.12 to 5812.47 of the Revised Code that apply to trustees and under division (E) of this section, the amount of net income and net principal receipts received from property specifically given to a beneficiary. The fiduciary shall distribute the net income and net principal receipts to the beneficiary that is to receive the specific property.

(B) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions of sections 5812.12 to 5812.47 of the Revised Code that apply to trustees and by doing all of the following:

(1) Including in net income all income from property used to discharge liabilities;

(2) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes. However, the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction.

(3) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(C) A fiduciary shall distribute to a beneficiary that receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under division (B) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(D) A fiduciary shall distribute the net income remaining after distributions required by division (C) of this section, in the manner described in section 5812.08 of the Revised Code, to all other beneficiaries, including a beneficiary that receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable, general power of appointment over the trust.

(E) A fiduciary shall not reduce principal or income receipts from property described in division (A) of this section because of a payment described in section 5812.42 or 5812.43 of the Revised Code to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

§ 5812.08. (UPIA 202) Distribution to residuary and remainder beneficiaries.

(A) Each beneficiary described in division (D) of section 5812.07 of the Revised Code is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one that does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of the decedent's death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(B) In determining a beneficiary's share of net income for the purpose of this section, all of the following apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(C) If a fiduciary does not distribute all of the collected but undistributed net income described in divisions (A) and (B) of this section to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each.

(D) To the extent that a fiduciary considers it appropriate, the fiduciary may apply the provisions of divisions (A) to (C) of this section to any net gain or loss, realized after the date of the decedent's death or an income interest termination or earlier distribution date, from the disposition of a principal asset to which such provisions apply.

§ 5812.12. (UPIA 301) When right to income begins and ends.

(A) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(B) An asset becomes subject to a trust on any of the following dates:

(1) The date it is transferred to the trust, in the case of an asset that is transferred to a trust during the transferor's life;

(2) The date of a testator's death, in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate;

(3) The date of an individual's death, in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(C) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under division (D) of this section, even if there is an intervening period of administration to wind up the preceding income interest.

(D) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§ 5812.13. (UPIA 302) Apportionment of receipts and disbursements when decedent dies or income interest begins.

(A) A trustee shall allocate to principal an income receipt or disbursement other than one to which division (A) of section 5812.07 of the Revised Code applies, if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(B) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and if it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal, and the balance shall be allocated to income.

(C) For the purposes of this section, an item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date. Distributions to shareholders or other owners from an entity to which section 5812.18 of the Revised Code applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§ 5812.14. (UPIA 303) Apportionment when income interest ends.

(A) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. "Undistributed income" excludes an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(B) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary that survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust, unless the beneficiary has an unqualified power to revoke more than five per cent of the trust immediately before the income interest ends. If the beneficiary has such power, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(C) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

§ 5812.18. (UPIA 401) Character of receipts.

(A) As used in this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which section 5812.19 of the Revised Code applies, a business or activity to which section 5812.20 of the Revised Code applies, or an asset-backed security to which section 5812.38 of the Revised Code applies.

(B) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(C) A trustee shall allocate all of the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity;

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(D) Money is received in partial liquidation in either of the following circumstances:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation;

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty per cent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(E) Money is not received in partial liquidation, nor shall it be taken into account under division (D)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(F) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

§ 5812.19. (UPIA 402) Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 5812.18 or 5812.38 of the Revised Code applies to a receipt from the trust.

§ 5812.20. (UPIA 403) Business and other activities conducted by trustee.

(A) If a trust that conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(B) A trustee that accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(C) Activities for which a trustee may maintain separate accounting records under this section include all of the following:

- (1) Retail, manufacturing, service, and other traditional business activities;
- (2) Farming;
- (3) Raising and selling livestock and other animals;
- (4) Management of rental properties;

- (5) Extraction of minerals and other natural resources;
- (6) Timber operations;
- (7) Activities to which section 5812.37 of the Revised Code applies.

§ 5812.24. (UPIA 404) Principal receipts.

A trustee shall allocate to principal all of the following:

- (A) To the extent not allocated to income under sections 5812.01 to 5812.52 of the Revised Code, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;
- (B) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 5812.18 to 5812.38 of the Revised Code;
- (C) Amounts recovered from third parties to reimburse the trust because of disbursements described in division (A)(7) of section 5812.43 of the Revised Code or for other reasons to the extent not based on the loss of income;
- (D) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
- (E) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income;
- (F) Other receipts as provided in sections 5812.31 to 5812.38 of the Revised Code.

§ 5812.25. (UPIA 405) Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and shall not be available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

§ 5812.26. (UPIA 406) Obligation to pay money.

- (A) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(B) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after the date it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after the date it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(C) This section does not apply to an obligation to which section 5812.32, 5812.33, 5812.34, 5812.35, 5812.37, or 5812.38 of the Revised Code applies.

§ 5812.27. (UPIA 407) Insurance policies and similar contracts.

(A) Except as otherwise provided in division (B) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(B) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 5812.20 of the Revised Code, loss of profits from a business.

(C) This section does not apply to a contract to which section 5812.32 of the Revised Code applies.

§ 5812.31. (UPIA 408) Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by section 5812.32, 5812.33, 5812.34, 5812.35, or 5812.38 of the Revised Code is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in division (C) of section 5812.03 of the Revised Code applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in division (D) of that section and may be released for the reasons and in the manner described in division (E) of the section. An allocation is presumed to be insubstantial if either of the following applies:

(A) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten per cent.

(B) The value of the asset producing the receipt for which the allocation would be made is less than ten per cent of the total value of the trust's assets at the beginning of the accounting period.

§ 5812.32. (UPIA 409) Deferred compensation, annuities, and similar payments.

(A) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. "Payment" includes a payment made in money or property from the payer's general

assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, or a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(B) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(C) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten per cent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this division, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(D) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than is provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(E) This section does not apply to payments to which section 5812.33 of the Revised Code applies.

§ 5812.33. (UPIA 410) Liquidating asset.

(A) As used in this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. "Liquidating asset" includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. "Liquidating asset" excludes a payment subject to section 5812.32 of the Revised Code, resources subject to section 5812.34 of the Revised Code, timber subject to section 5812.35 of the Revised Code, an activity subject to section 5812.37 of the Revised Code, an asset subject to section 5812.38 of the Revised Code, or any asset for which the trustee establishes a reserve for depreciation under section 5812.44 of the Revised Code.

(B) A trustee shall allocate to income ten per cent of the receipts from a liquidating asset and the balance to principal.

§ 5812.34. (UPIA 411) Minerals, water, or other natural resources.

(A) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate the receipts in accordance with all of the following:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety per cent shall be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in division (A)(1), (2), or (3) of this section, ninety per cent of the net amount received shall be allocated to principal and the balance to income.

(B) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety per cent of the amount shall be allocated to principal and the balance to income.

(C) This section applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(D) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2003, the trustee may allocate receipts from the interest as provided in this section or in the manner used by the trustee before that date. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2003, the trustee shall allocate receipts from the interest as provided in this section.

§ 5812.35. (UPIA 412) Timber.

(A) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts in accordance with all of the following:

(1) To income, to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal, to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal, if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying divisions (A)(1) and (2) of this section;

(4) To principal, to the extent that advance payments, bonuses, and other payments are not allocated pursuant to division (A)(1), (2), or (3) of this section.

(B) In determining net receipts to be allocated pursuant to division (A) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(C) This section applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(D) If a trust owns an interest in timberland on January 1, 2003, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before that date. If the trust acquires an interest in timberland after January 1, 2003, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

§ 5812.36. (UPIA 413) Property not productive of income.

(A) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 5812.03 of the Revised Code and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by division (A) of that section. The trustee may decide which action or combination of actions to take.

(B) In cases not governed by division (A) of this section, proceeds from the sale or other disposition of an asset shall be principal without regard to the amount of income the asset produces during any accounting period.

§ 5812.37. (UPIA 414) Derivatives and options.

(A) As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(B) To the extent that a trustee does not account under section 5812.20 of the Revised Code for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(C) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

§ 5812.38. (UPIA 415) Asset-backed securities.

(A) As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. "Asset-backed security" includes an asset that gives the owner the right to receive from the collateral financial

assets only the interest or other current return or only the proceeds other than interest or current return. "Asset-backed security" excludes an asset to which section 5812.18 or 5812.32 of the Revised Code applies.

(B) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment that the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(C) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten per cent of the payment to income and the balance to principal.

§ 5812.42. (UPIA 501) Disbursements from income.

A trustee shall make all of the following disbursements from income to the extent that they are not disbursements to which division (B)(2) or (3) of section 5812.07 of the Revised Code applies:

(A) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(B) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(C) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest;

(D) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

§ 5812.43. (UPIA 502) Disbursements from principal.

(A) A trustee shall make all of the following disbursements from principal:

(1) The remaining one-half of the disbursements described in divisions (A) and (B) of section 5812.42 of the Revised Code;

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in division (D) of section 5812.42 of the Revised Code of which the trust is the owner and beneficiary;

(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust;

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(B) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

§ 5812.44. (UPIA 503) Transfers from income to principal for depreciation.

(A) As used in this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(B) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but shall not transfer any amount for depreciation under any of the following circumstances:

(1) Any amount for depreciation of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) Any amount for depreciation during the administration of a decedent's estate;

(3) Any amount for depreciation under this section if the trustee is accounting under section 5812.20 of the Revised Code for the business or activity in which the asset is used.

(C) An amount transferred to principal need not be held as a separate fund.

§ 5812.45. (UPIA 504) Transfers from income to reimburse principal.

(A) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(B) Principal disbursements to which division (A) of this section applies include all of the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments;

(5) Disbursements described in division (A)(7) of section 5812.43 of the Revised Code.

(C) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in division (A) of this section.

§ 5812.46. (UPIA 505) Income taxes.

(A) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(B) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(C) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately as follows:

(1) From income, to the extent that receipts from the entity are allocated to income;

(2) From principal, as follows:

(a) To the extent that receipts from the entity are allocated to principal; and

(b) To the extent that the trust's share of the entity's taxable income exceeds the total receipts described in divisions (C)(1) and (2)(a) of this section.

(D) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

§ 5812.47. (UPIA 506) Adjustments between principal and income because of taxes.

(A) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from any of the following:

(1) Elections and decisions, other than those described in division (B) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust;

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or beneficiary.

(B) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

§ 5812.51. (UPIA 101, 601) Short title; uniformity of application and construction.

(A) Sections 5812.01 to 5812.52 of the Revised Code may be cited as the "uniform principal and income act (1997)."

(B) In applying and construing the "uniform principal and income act (1997)", consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the "uniform principal and income act (1997)".

§ 5812.52. (UPIA 605) Application to existing trusts and estates.

Sections 5812.01 to 5812.51 of the Revised Code apply to every trust or decedent's estate existing on January 1, 2003, except as otherwise expressly provided in the will or terms of the trust or in sections 5812.01 to 5812.51 of the Revised Code.

5813. Institutional Trust Funds Act.

§ 5813.01. Definitions.

As used in sections 5813.01 to 5813.07 of the Revised Code:

(A) "Institution" means an incorporated or unincorporated organization that is organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of those purposes.

(B) "Governing board" means the body responsible for the management of an institution.

(C) "Institutional trust fund" means a trust fund, or a part of a trust fund, that is held by a trustee for the exclusive use, benefit, or purposes of one or more institutions and that is not wholly distributable to the institution or institutions on a current basis under the terms of the applicable trust instrument. "Institutional trust fund" does not include a fund in which a beneficiary that is not an institution has an interest other than a right that may arise upon a violation of a covenant under the terms of the applicable trust instrument or upon a violation of or the failure of the purposes of the fund.

(D) "Applicable fund value" means for any particular fiscal year the sum of the month-end values of the net assets of an institutional trust fund for the prior fiscal year for those months in which the institutional trust fund has been in existence during such prior fiscal year divided by the number of those months. The month-end values shall be determined by the trustee in accordance with the trustee's records, and any such determination made by a trustee in good faith is conclusive.

(E) "Trust instrument" means a testamentary or inter vivos trust under which the trustee of the trust holds an institutional trust fund.

(F) "Trustee" means an individual, corporation, institution, or organization, including, but not limited to, a bank, trust company, or other financial institution, serving as a trustee or as sole trustee under a trust instrument. "Trustee" includes an original trustee and any successor or added trustee.

§ 5813.02. Income defined; maximum annual distribution that institution's governing board may request.

(A) Subject to division (D) of this section and section 5813.03 of the Revised Code, during any fiscal year in which income may be or is required to be distributed to an institution from an institutional trust fund, income means the greater of the following:

(1) The income from the assets of the institutional trust fund for the fiscal year as determined in accordance with the applicable trust instrument and applicable law without regard to sections 5813.01 to 5813.07 of the Revised Code;

(2) The amount requested by the institution's governing board for the fiscal year pursuant to division (B) of this section.

(B) An institution's governing board may request that an amount be distributed to the institution for the fiscal year, and that amount shall not exceed the sum of both of the following:

(1) Five per cent of the applicable fund value for the institutional trust fund for the fiscal year;

(2) If, in any prior fiscal year that is after September 15, 1999, the governing board requested less than five per cent of the applicable fund value for that prior fiscal year and if the amount the institution actually received from the institutional trust fund pursuant to division (A) of this section was less than five per cent for that prior fiscal year, the aggregate difference between five per cent of the applicable fund value with respect to each such prior fiscal year and the amount the institution actually received pursuant to division (A) of this section for each prior fiscal year.

(C) If, under a trust instrument, more than one institution is a beneficiary of an institutional trust fund, the trustee shall take such actions that the trustee determines appropriate or necessary to allow for the distributions of income as contemplated by division (A) of this section, which actions may include dividing the institutional trust fund into separate shares according to the interest that each institution has in the total institutional trust fund held under the trust instrument.

(D) This section does not limit the authority or obligation of a trustee to distribute, or the authority of a governing board to request, funds as permitted or required under the terms of the applicable trust instrument.

§ 5813.03. Settlor's intention that income be otherwise determined; construction of instruments.

(A) Division (A) of section 5813.02 of the Revised Code does not apply if the applicable trust instrument expressly indicates the settlor's intention that income is to be otherwise than as defined in division (A) of section 5813.02 of the Revised Code.

(B) A restriction upon the definition of income in division (A) of section 5813.02 of the Revised Code may not be inferred from a designation of an institutional trust fund as an endowment; a direction or authorization in the applicable trust instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or a direction that contains other words of a similar import; a direction in a trust instrument that income and principal are to be determined by reference to certain statutory provisions; or, subject to division (A) of this section, the inclusion of specified provisions in a trust instrument setting forth the way in which income and principal are to be determined.

(C) The rule of construction set forth in division (B) of this section applies to trust instruments executed or in effect before, on, or after September 15, 1999.

§ 5813.04. Standard of care of governing board members; determination of expected total return.

(A) In administering the powers to request amounts from a trustee of an institutional trust fund in accordance with divisions (A) and (B) of section 5813.02 of the Revised Code, members of a governing board of an institution shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision and shall make requests for amounts under divisions (A) and (B) of section 5813.02 of the Revised Code only as is prudent under this standard. In so doing, the governing board shall consider the long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes; the institution's present and anticipated financial requirements; the expected total return on the investments held by the institution and held by the trustee under the applicable trust instrument; price level trends; and general economic conditions.

(B) In determining the expected total return on the investments held by a trustee of an institutional trust fund under the applicable trust instrument, the members of the governing board of an institution may follow, and are not required to examine independently, the determination of the trustee regarding the expected total return on the investments held by the trustee.

(C) A trustee of an institutional trust fund has no duty to inquire or ascertain whether the governing board of an institution has satisfied the standards set forth in divisions (A) and (B) of this section, and the trustee does not have any liability for the failure of the governing board to satisfy those standards.

§ 5813.05. Limits or restrictions on definition of income or on distributions.

Nothing in sections 5812.01 to 5812.52, or any other section of the Revised Code limits or restricts the definition of income in division (A) of section 5813.02 of the Revised Code or limits or restricts a governing board of an institution from requesting, or a trustee from making, distributions from an institutional trust fund in accordance with sections 5813.01 to 5813.07 of the Revised Code.

§ 5813.06. Relationship to uniform management of institutional funds act.

(A) Nothing in sections 5813.01 to 5813.05 of the Revised Code affects the construction or interpretation of [sections 1715.51 to 1715.59](#) of the Revised Code relating to the uniform management of institutional funds act. Specifically, neither the percentage set forth in division (B) of [section 1340.32](#) of the Revised Code nor the amount actually requested by a governing board pursuant to section 5813.02 of the Revised Code shall be construed or interpreted to limit or expand what is a prudent amount that can be expended by a governing board of an institution under [sections 1715.51 to 1715.59](#) of the Revised Code.

(B) If an institutional trust fund is also an institutional fund as defined in division (B) of [section 1715.51](#) of the Revised Code with the result that [sections 1715.51 to 1715.59](#) of the Revised Code also are applicable to the institutional trust fund, then [sections 1715.51 to 1715.59](#) of the Revised Code apply to the institutional trust fund, and sections 5813.01 to 5813.07 of the Revised Code do not apply to the institutional trust fund.

§ 5813.07. Citation of act.

Sections 5813.01 to 5813.07 of the Revised Code may be cited as the "institutional trust funds act."

5814. Transfers to Minors Act.

§ 5814.01. Definitions.

As used in sections 5814.01 to 5814.09 of the Revised Code, unless the context otherwise requires:

(A) "Benefit plan" means any plan of an employer for the benefit of any employee, any plan for the benefit of any partner, or any plan for the benefit of a proprietor, and includes, but is not limited to, any pension, retirement, death benefit, deferred compensation, employment agency, stock bonus, option, or profit-sharing contract, plan, system, account, or trust.

(B) "Broker" means a person that is lawfully engaged in the business of effecting transactions in securities for the account of others. A "broker" includes a financial institution that effects such transactions and a person who is lawfully engaged in buying and selling securities for the person's own account, through a broker or otherwise, as a part of a regular business.

(C) "Court" means the probate court.

(D) "The custodial property" includes:

(1) All securities, money, life or endowment insurance policies, annuity contracts, benefit plans, real estate, tangible and intangible personal property, proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan, and other types of property under the supervision of the same custodian for the same minor as a consequence of a transfer or transfers made to the minor, a gift or gifts made to the minor, or a purchase made by the custodian for the minor, in a manner prescribed in sections 5814.01 to 5814.09 of the Revised Code;

(2) The income from the custodial property;

(3) The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, or other disposition of the securities, money, life or endowment insurance policies, annuity contracts, benefit plans, real estate, tangible and intangible personal property, proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan, other types of property, and income.

(E) "Custodian" or "successor custodian" means a person so designated in a manner prescribed in sections 5814.01 to 5814.09 of the Revised Code.

(F) "Financial institution" means any bank, as defined in section 1101.01, any building and loan association, as defined in section 1151.01, any credit union as defined in [section 1733.01](#) of the Revised Code, and any federal credit union, as defined in the "Federal Credit Union Act," 73 Stat. 628 (1959), 12 U.S.C. 1752, as amended.

(G) "Guardian of the minor" includes the general guardian, guardian, tutor, or curator of the property, estate, or person of a minor.

(H) "Issuer" means a person who places or authorizes the placing of the person's name on a security, other than as a transfer agent, to evidence that it represents a share, participation, or other interest in the person's property or in an enterprise, or to evidence the person's duty or undertaking to perform an obligation that is evidenced by the security, or who becomes responsible for or in place of any such person.

(I) "Legal representative" of a person means the executor, administrator, general guardian, guardian, committee, conservator, tutor, or curator of the person's property or estate.

(J) "Member of the minor's family" means a parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt of the minor, whether of the whole or half blood, or by adoption.

(K) "Minor" means a person who has not attained the age of twenty-one years.

(L) "Security" includes any note, stock, treasury stock, common trust fund, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under an oil, gas, or mining title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. A "security" does not include a security of which the donor or transferor is the issuer. A security is in "registered form" when it specifies a person who is entitled to it or to the rights that it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(M) "Transfer" means a disposition, other than a gift, by a person who is eighteen years of age or older that creates custodial property under sections 5814.01 to 5814.09 of the Revised Code.

(N) "Transfer agent" means a person who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities, in the issue of new securities, or in the cancellation of surrendered securities.

(O) "Transferor" means a person who is eighteen years of age or older, who makes a transfer.

(P) "Trust company" means a financial institution that is authorized to exercise trust powers.

(Q) "Administrator" includes an "administrator with the will annexed."

§ 5814.02. Form of gift or transfer.

(A) A person who is eighteen years of age or older may, during the person's lifetime, make a gift or transfer of a security, money, a life or endowment insurance policy, an annuity contract, a benefit plan, real estate, tangible or intangible personal property, or any other property to, may designate as beneficiary of a life or endowment insurance policy, an annuity contract, or a benefit plan, or make a transfer by the irrevocable exercise of a power of appointment in favor of, a person who is a minor on the date of the gift or transfer:

(1) If the subject of the gift or transfer is a security in registered form, by registering it in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act";

(2) If the subject of the gift or transfer is a security not in registered form, by delivering it to the donor or transferor, another person who is eighteen years of age or older, or a trust company, accompanied by a statement of a gift or transfer in the following form, in substance, signed by the donor or transferor and the person or trust company designated as custodian:

"GIFT OR TRANSFER UNDER THE OHIO

TRANSFERS TO MINORS ACT

I, (name of donor or transferor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Ohio Transfers to Minors Act, the following security (ies): (insert an appropriate description of the security or securities delivered, sufficient to identify it or them).

(signature of donor or transferor)

..... (name of custodian) hereby acknowledges receipt of the above described security (ies) as custodian for the above minor under the Ohio Transfers to Minors Act.

Dated:

(signature of custodian)."

(3) If the subject of the gift or transfer is money, by paying or delivering it to a broker, or a financial institution for credit to an account in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act."

(4) If the subject of the gift or transfer is a life or endowment insurance policy, an annuity contract, or a benefit plan, by assigning the policy, contract, or plan to the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act."

(5) If the subject of the gift or transfer is an interest in real estate, by executing and delivering in the appropriate manner a deed, assignment, or similar instrument in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act."

(6) If the subject of the gift or transfer is tangible personal property, by delivering it to the donor or transferor, another person who is eighteen years of age or older, or a trust company, accompanied by a statement of a gift or transfer in the following form, in substance, signed by the donor or transferor and the person or trust company designated as custodian:

"GIFT OR TRANSFER UNDER THE OHIO

TRANSFERS TO MINORS ACT

I, (name of donor or transferor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Ohio Transfers to Minors Act, the following security (ies): (insert an appropriate description of the security or securities delivered sufficient to identify it).

.....

(signature of donor or transferor)

..... (name of custodian) hereby acknowledges receipt of the above described security (ies) as custodian for the above minor under the Ohio Transfers to Minors Act.

Dated:

(signature of custodian)."

(7) If the subject of the gift or transfer is tangible personal property, title to which is evidenced by a certificate of title issued by a department or agency of a state or of the United States, by issuing title to the donor or transferor, another person who is eighteen years of age or older, or a trust company, accompanied by a statement of a gift or transfer in the following form, in substance: "as custodian for (name of minor) under the Ohio Transfers to Minors Act"; or by delivering the title to another person who is eighteen years of age or older or a trust company, endorsed to that person followed in substance by the following words: "as custodian for under the Ohio Transfers to Minors Act."

(8) If the subject of the gift or transfer is the designation of a minor as beneficiary of a life or endowment insurance policy, an annuity contract, or a benefit plan, by designating as beneficiary of the policy, contract, or plan the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act."

(9) If the subject of the gift or transfer is an irrevocable exercise of a power of appointment in favor of a minor or is an interest in any property that is not described in divisions (A)(1) to (8) of this section, by causing the ownership of the property to be transferred by any written document in the name of the donor or transferor, another person who is eighteen years of age or older, or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act."

(B) Trustees, inter vivos or testamentary, executors, and administrators having authority to distribute or pay any trust or estate property to or for the benefit of a minor, or having authority to distribute or pay any trust or estate property to any other person for the benefit of a minor may, if authorized by a will or trust instrument, distribute or pay trust or estate property of any type mentioned in division (A) of this section in the manner and form provided in that division, and may name the custodian or successor custodian of the property if the will or trust instrument does not name an eligible custodian, or if the will or trust does not name an eligible successor custodian and the naming of a successor custodian is necessary. A person who is eighteen years of age or older, in the person's will or trust instrument, may provide that the fiduciary shall make any payment or distribution as provided in this division and may name the custodian and a successor custodian of the trust or estate property. As to any distribution or payment so made, the testator of a will, under the provisions of which a testamentary trust or estate is being administered, or the settlor of an inter vivos trust shall be deemed the donor or transferor.

(C) Any gift, transfer, payment, or distribution that is made in a manner prescribed in division (A), (B), or (E) of this section may be made to only one minor and only one person may be the custodian. All gifts, transfers, payments, and distributions made by a person in a manner prescribed in sections 5814.01 to 5814.09 of the Revised Code to the same custodian for the benefit of the same minor result in a single custodianship.

(D) A donor or transferor who makes a gift or transfer to a minor in a manner prescribed in division (A) of this section and a trustee, executor, or administrator acting under division (B) or (E) of this section shall promptly do all things within the donor's, transferor's, trustee's, executor's, or administrator's power to put the subject of the gift or transfer in the possession and control of the custodian, but neither the donor's, transferor's, trustee's, executor's, or administrator's failure to comply with this division, nor the designation by the donor, transferor, trustee, executor, or administrator of an ineligible custodian, nor the renunciation by the person or trust company designated as custodian, affects the consummation of the gift or transfer.

(E) If there is no will, or if a will, trust, or other governing instrument does not contain an authorization to make a transfer as described in this division, a trustee, executor, or administrator may make a transfer in a manner prescribed in division (A) of this section to self, another person who is eighteen years of age or older, or a trust company, as custodian, if all of the following apply:

- (1) Irrespective of the value of the property, the trustee, executor, or administrator considers the transfer to be in the best interest of the minor;
- (2) Irrespective of the value of the property, the transfer is not prohibited by or inconsistent with the applicable will, trust agreement, or other governing instrument;
- (3) If the value of the property exceeds ten thousand dollars, the transfer is authorized by the appropriate court.

§ 5814.03. Effect of making gift or transfer.

(A) A gift or transfer made in a manner prescribed in sections 5814.01 to 5814.09 of the Revised Code, is irrevocable and conveys to the minor indefeasibly vested legal title to the security, money, life or endowment insurance policy, annuity contract, benefit plan, real estate, tangible or intangible personal property, or other property given or, subject to the right of the owner of the policy, contract, or benefit plan to change the beneficiary if the custodian is not the owner, to the proceeds of a life or endowment insurance policy, an annuity contract, or a benefit plan given, but no guardian of the minor has any right, power, duty, or authority with respect to the custodial property except as provided in sections 5814.01 to 5814.09 of the Revised Code.

(B) By making a gift or transfer in a manner prescribed in sections 5814.01 to 5814.09 of the Revised Code, the donor or transferor incorporates in the gift or transfer all the provisions of these sections and grants to the custodian, and to any issuer, transfer agent, financial institution, broker, or third person dealing with a person or trust company designated as custodian, the respective powers, rights, and immunities provided in these sections.

§ 5814.04. Powers and duties of custodian.

(A) The custodian shall collect, hold, manage, invest, and reinvest the custodial property.

(B) The custodian shall pay over to the minor for expenditure by the minor, or expend for the use or benefit of the minor, as much of or all the custodial property as the custodian considers advisable for the use and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in the custodian's discretion considers suitable and proper, with or without court order, with or without regard to the duty or ability of the custodian or of any other person to support the minor or the minor's ability to do so, and with or without regard to any other income or property of the minor that may be applicable or available for any purpose. Any payment or expenditure that is made under this division is in addition to, is not a substitute for, and does not affect the obligation of any person to support the minor for whom the payment or expenditure is made.

(C) The court, on the petition of a parent or guardian of the minor or of the minor, if the minor has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by the minor or to expend as much of or all the custodial property as is necessary for the use and benefit of the minor.

(D) (1) Except as provided in division (D)(2) of this section, to the extent that the custodial property is not so expended, the custodian shall deliver or pay the custodial property over to the minor on the minor's attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, shall, upon the minor's death, deliver or pay the custodial property over to the estate of the minor.

(2) If the donor or transferor, in the written instrument that makes or provides for the gift or transfer, directs the custodian to deliver or pay over the custodial property to the minor on the minor's attaining any age between eighteen and twenty-one, the custodian shall deliver or pay over the custodial property to the minor on the minor's attaining that age, or, if the minor dies before attaining that age, the custodian shall, upon the minor's death, deliver or pay the custodial property over to the estate of the minor.

(E) The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent person of discretion and intelligence dealing with the property of another, except that the custodian may, in the discretion of the custodian and without liability to the minor or the estate of the minor, retain any custodial property received in a manner prescribed in sections 5814.01 to 5814.09 of the Revised Code. If a custodian has special skills or is named custodian on the basis of representations of special skills or expertise, the custodian is under a duty to use those skills or that expertise.

(F) The custodian may sell, exchange, convert, or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices, and upon the terms the custodian considers advisable. The custodian may vote in person or by general or limited proxy a security that is custodial property. The custodian may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of an issuer of a security that is custodial property, and to the sale, lease, pledge, or mortgage of any property by or to such an issuer, and to any other action by such an issuer. The custodian may purchase any life or endowment insurance policy or annuity contract on the life of the minor or any member of the family of the minor and pay, from funds in the custodian's custody, any premiums on any life or endowment insurance policy or annuity contract held by the custodian as custodial property. The custodian may execute and deliver any and all instruments in writing that the custodian considers advisable to carry out any of the custodian's powers as custodian.

(G) The custodian shall register each security that is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio

Transfers to Minors Act," or shall maintain each security that is custodial property and in registered form in an account with a broker or in a financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act." A security held in an account with a broker or in a financial institution in the name of the custodian may be held in the name of the broker or financial institution. A security that is custodial property and in registered form and that is held by a broker or in a financial institution in which the broker or financial institution does not have a lien for indebtedness due to it from a custodial account may not be pledged, lent, hypothecated, or disposed of except upon the specific instructions of the custodian. The custodian shall hold all money that is custodial property in an account with a broker or in a financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act." The custodian shall hold all life or endowment insurance policies, annuity contracts, or benefit plans that are custodial property in the name of the custodian, followed, in substance, by the words "as custodian for (name of minor) under the Ohio Transfers to Minors Act." The custodian shall take title to all real estate that is custodial property in the name of the custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act." The custodian shall keep all other custodial property separate and distinct from the custodian's own property in a manner to identify it clearly as custodial property.

(H) The custodian shall keep records of all transactions with respect to the custodial property and make the records available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if the minor has attained the age of fourteen years.

(I) A custodian has, with respect to the custodial property, in addition to the rights and powers provided in sections 5814.01 to 5814.09 of the Revised Code, all the rights and powers that a guardian has with respect to property not held as custodial property.

(J) The custodian may invest in or pay premiums on any life or endowment insurance policy or annuity contract on either of the following:

- (1) The life of the minor, if the minor or the estate of the minor is the sole beneficiary under the policy or contract;
- (2) The life of any person in whom the minor has an insurable interest, if the minor, the minor's estate, or the custodian in the custodian's capacity as custodian is the sole beneficiary.

(K) All of the rights, powers, and authority of the custodian over custodial property, including all of the incidents of ownership in any life or endowment insurance policy, annuity contract, or benefit plan, are held only in the capacity of the custodian as custodian.

§ 5814.05. Reimbursement, compensation, and liability.

(A) A custodian is entitled to reimbursement from the custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(B) A custodian may act without compensation for the custodian's services.

(C) Unless the custodian is a donor or transferor, the custodian may receive from custodial property reasonable compensation for the custodian's services determined by one of the following standards in the order stated:

(1) A direction by the donor or transferor when the gift or transfer is made;

(2) A statute of this state applicable to custodians;

(3) The statute of this state applicable to guardians;

(4) An order of the court.

(D) Except as otherwise provided in sections 5814.01 to 5814.09 of the Revised Code, a custodian shall not be required to give a bond for the performance of the custodian's duties.

(E) A custodian not compensated for the custodian's services is not liable for losses to the custodial property unless they result from the custodian's bad faith, intentional wrongdoing, or gross negligence or from the custodian's failure to maintain the standard of prudence in investing the custodial property provided in sections 5814.01 to 5814.09 of the Revised Code.

§ 5814.06. Limitations on liability of third parties.

An issuer, transfer agent, financial institution, broker, life insurance company, or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or transferor or dealing with any person or trust company purporting to act as a custodian is not required to do any of the following:

(A) Determine either of the following:

(1) Whether the person or trust company designated by the purported donor or transferor, or the person or trust company purporting to act as a custodian, has been duly designated;

(2) Whether any purchase, sale, or transfer to or by, or any other act of, any person or trust company purporting to act as a custodian is in accordance with or authorized by sections 5814.01 to 5814.09 of the Revised Code.

(B) Inquire into the validity or propriety under sections 5814.01 to 5814.09 of the Revised Code of any instrument or instructions executed or given by a person purporting to act as a donor or transferor or by a person or trust company purporting to act as a custodian;

(C) See to the application by any person or trust company purporting to act as a custodian of any money or other property paid or delivered to the person or trust company.

§ 5814.07. Successor custodian.

(A) Any person who is eighteen years of age or older or a trust company is eligible to become a successor custodian. A successor custodian has all the rights, powers, duties, and immunities of a custodian designated in a manner prescribed by sections 5814.01 to 5814.09 of the Revised Code.

(B) A custodian may resign and designate the custodian's successor by doing all of the following:

(1) Executing an instrument of resignation that designates the successor custodian;

(2) Causing each security that is custodial property and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act;"

(3) Executing in the appropriate manner a deed, assignment, or similar instrument for all interest in real estate that is custodial property in the name of the successor custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act;"

(4) Delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian, each deed, assignment, or similar instrument for all interest in real estate that is in the name of the successor custodian, and all other custodial property, together with any additional instruments that are required for the transfer of the custodial property.

(C) A custodian may petition the court for permission to resign and for the designation of a successor custodian.

(D) A custodian may designate by the custodian's will a successor custodian, which designation is effective at the custodian's death. Upon the custodian's death, the custodian's legal representative shall do each of the following:

(1) Cause each security that is custodial property and in registered form to be registered in the name of the successor custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act;"

(2) Execute in the appropriate manner a deed, assignment, or similar instrument for all interest in real estate that is custodial property in the name of the successor custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Ohio Transfers to Minors Act;"

(3) Deliver to the successor custodian each security registered in the name of the successor custodian, each deed, assignment, or similar instrument for all interest in real estate that is in the name of the successor custodian, and all other custodial property, together with any additional instruments that are required for the transfer of the custodial property.

(E) If no eligible successor custodian is designated by the donor or transferor in the donor's or transferor's will or trust or by the custodian in the custodian's will, or if the custodian dies intestate or is adjudged to be an incompetent by a court, the legal representative of the custodian may designate a successor custodian. If the court in which the estate or guardianship proceedings relative to the custodian are pending approves the designation, the designation shall be regarded as having been effective as of the date of the death of the custodian or as of the date the custodian was adjudged to be an incompetent. Upon the approval of the court, the legal representative of the custodian shall cause the custodial property to be transferred or registered in the name of the successor custodian as provided in divisions (D)(1) to (3) of this section.

(F) If a person or entity designated as successor custodian is not eligible, or renounces or dies before the minor attains the age of twenty-one years, or if the custodian dies without designating a successor custodian and division (E) of this section does not apply because the custodian does not have a legal representative, the guardian of the

minor shall be the successor custodian. If the minor does not have a guardian, a donor or transferor, the legal representative of the donor or transferor, the legal representative of the custodian, a member of the minor's family who is eighteen years of age or older, or the minor, if the minor has attained the age of fourteen years, may petition the court for the designation of a successor custodian.

(G) A donor or transferor, the legal representative of a donor or transferor, a member of the minor's family who is eighteen years of age or older, a guardian of the minor, or the minor, if the minor has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of the custodian's duties.

(H) Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on any notice that the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant any relief that the court finds to be in the best interests of the minor.

§ 5814.08. Accounting by custodian.

(A) The minor, if the minor has attained the age of fourteen years, or the legal representative of the minor, a member of the minor's family who is eighteen years of age or older, or a donor or transferor or the donor's or transferor's legal representative may petition the court for an accounting by the custodian or the custodian's legal representative. A successor custodian may petition the court for an accounting by the custodian that the successor custodian succeeded.

(B) The court, in a proceeding under sections 5814.01 to 5814.09 of the Revised Code, or otherwise, may require or permit the custodian or the custodian's legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer of the custodial property.

§ 5814.09. Construction of act.

(A) Sections 5814.01 to 5814.09 of the Revised Code shall be construed to effectuate their general purpose to make uniform the law of those states that enact similar provisions.

(B) Sections 5814.01 to 5814.09 of the Revised Code shall not be construed as providing an exclusive method for making gifts or transfers to minors.

(C) Nothing in sections 5814.01 to 5814.09 of the Revised Code, shall affect gifts made under former sections 1339.19 to 1339.28 of the Revised Code, nor the powers, duties, and immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. Sections 5814.01 to 5814.09 of the Revised Code henceforth apply, however, to all gifts made in a manner and form prescribed in former sections 1339.19 to 1339.28 of the Revised Code, except insofar as the application impairs constitutionally vested rights. Sections

5814.01 to 5814.09 of the Revised Code shall be construed as a continuation of the provisions of former sections 1339.19 to 1339.28 of the Revised Code, according to the language employed, and not as a new enactment.

(D) Nothing in sections 5814.01 to 5814.09 of the Revised Code, as of May 7, 1986, shall affect gifts made under those sections as they existed prior to May 7, 1986, or the powers, duties, and immunities conferred by the gifts in any manner upon custodians and persons dealing with custodians. Sections 5814.01 to 5814.09 of the Revised Code, as of May 7, 1986, hereafter apply to all gifts made in a manner and form prescribed in those sections as they existed prior to May 7, 1986, except to the extent that the application of those sections, as of May 7, 1986, would impair constitutionally vested rights.

5815. Fiduciary Law.

§ 5815.01. Construction of use of "inheritance" and "bequest."

Except when the intent of the settlor clearly is to the contrary, the following rules of construction shall apply in interpreting the terms "inheritance" and "bequest":

(A) The term "inheritance," in addition to its meaning at common law or under any other section or sections of the Revised Code, includes any change of title to real property by reason of the death of the owner of that real property, regardless of whether the owner died testate or intestate.

(B) The term "bequest," in addition to its meaning at common law or under any other section or sections of the Revised Code, includes any disposition of real property that occurs as a result of the death of the settlor.

Ownership of Holders of Record.

§ 5815.02. Definitions.

As used in sections 5815.02 and 5815.03 of the Revised Code:

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

(B) "Good faith" includes an act done honestly, whether it is done negligently or not.

(C) "Issuer" includes domestic corporations, companies, associations, and trusts; foreign corporations, companies, associations, and trusts, to the extent that securities issued by them are held of record by persons in this state or are held on deposit in this state, and to the extent that such foreign corporation, company, association, or trust is a holder of record of, or otherwise interested in, securities of domestic corporations, companies, associations, or trusts; and also the transfer agents and registrars of the issuer and the depositories for its securities.

(D) "Person" includes a corporation, partnership, association, or two or more persons having a joint or common interest.

(E) "Securities" includes the items in the following enumeration, which, however, is not exclusive:

(1) Shares, share certificates, and other certificates and evidences of ownership or participation in property, assets, or trust estate; bonds, notes, debentures, certificates, or evidences of indebtedness, certificates of interest or participation, collateral trust certificates, equipment-trust certificates, preorganization or subscription certificates or receipts, and voting-trust certificates; passbooks or certificates of deposit of money, securities, or other property; scrip certificates, fractional interests certificates, and, in general, interests or instruments commonly known as securities, and certificates of interest or participation in, temporary or interim certificates or receipts for, or warrants or rights to subscribe to, purchase, or receive, any of the foregoing, whether such securities were issued by the issuer in its corporate capacity, in its individual capacity, or in a fiduciary capacity;

(2) Securities that were issued originally by other corporations, companies, associations, or trusts, but have become the securities of the present issuer, individually or as a fiduciary.

§ 5815.03. Issuer of securities may treat holders of record as competent.

Unless there has been delivered to an issuer a certified copy of an order, judgment, or decree of a court, judge, or administrative body or official, the legal effect of which is to restrict, suspend, or remove such capacity or authority, the issuer may treat all persons in whose names its securities are of record on its records as being of full age and competent and as having capacity and authority to exercise all rights of ownership in respect of the securities, including the right to receive and to give receipts for payments and distributions, the right to transfer the securities, and the right to vote or to give consent in person or by proxy, notwithstanding any description, limitation, or qualification appearing on the securities or on the records, any reference thereon to another instrument or to any fiduciary or pledgee or other relationship, or any knowledge or notice, actual or constructive, of the right, interest, or claim of any other person or of the infancy or lack of capacity or authority of the persons in whose names the securities are of record.

The issuer may treat a fiduciary as having capacity and authority to exercise all rights of ownership in respect of the securities that are of record in the name of a decedent holder, of a person in conservation, receivership, or bankruptcy, or of a minor, incompetent person, or person under disability; and the issuer shall be protected in any action taken or suffered by it in reliance upon any instrument showing the appointment of the fiduciary.

The issuer is not liable for loss caused by any act done or omitted by it under this section. The issuer need not see to the execution of any trust, or to the observance or performance of any obligation of a holder of record, a fiduciary, or a pledgee of the securities, and it need not inquire or inform itself concerning those matters.

This section does not enlarge the capacity, right, or authority of any holder of record of the securities as against any person other than the issuer, nor prevent any court of competent jurisdiction from enforcing or protecting any

right, title, or interest in the securities in any person who is not a holder of record the securities.À

This section does not protect any issuer who participates with a fiduciary in a breach of the fiduciary's trust with knowledge of such facts that the action of the issuer amounts to bad faith.

Uniform Fiduciary Act.

§ 5815.04. Definitions.

As used in sections 5815.04 to 5815.11 of the Revised Code:

(A) "Bank" includes any person, carrying on the business of banking and any financial institution defined in [section 5725.01](#) of the Revised Code.

(B) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting, or constructive, an executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

(C) "Person" includes a corporation, partnership, association, or two or more persons having a joint or common interest.

(D) "Principal" includes any person to whom a fiduciary as such owes an obligation.

(E) "Good faith" includes an act when it is in fact done honestly.

§ 5815.05. Transferee not responsible for proper application of money.

A person who in good faith pays or transfers to a fiduciary any money or other property that the fiduciary as such is authorized to receive is not responsible for the proper application of the money or other property by the fiduciary. Any right or title acquired from the fiduciary in consideration of the payment or transfer is not invalid because of a misapplication by the fiduciary.

§ 5815.06. Deposit in name of fiduciary as such; liability of bank.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank may pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which the deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of the obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith.

If such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of the obligation as fiduciary in drawing or delivering the check.

§ 5815.07. Check drawn by fiduciary upon account of principal; liability of bank.

If a check is drawn upon the principal's account by a fiduciary who is empowered to do so, the bank may pay the check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of the obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith.

If such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of the obligation as fiduciary in drawing or delivering the check.

§ 5815.08. Deposit to personal credit of fiduciary.

If a fiduciary makes a deposit in a bank to the fiduciary's personal credit of checks drawn by the fiduciary upon an account in the fiduciary's own name as fiduciary, checks payable to the fiduciary as fiduciary, checks drawn by the fiduciary upon an account in the name of the principal if the fiduciary is empowered to draw checks thereon, checks payable to the principal and indorsed by the fiduciary if the fiduciary is empowered to indorse the checks, or if the fiduciary otherwise makes a deposit of funds held by the fiduciary as fiduciary, the bank receiving the deposit is not bound to inquire whether the fiduciary is committing a breach of the obligation as fiduciary.

The bank may pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of the obligation as fiduciary in making the deposit or in drawing the check, or with knowledge of such facts that the action of the bank in receiving the deposit or paying the check amounts to bad faith.

§ 5815.09. Deposit in name of two or more trustees; checks.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee authorized to do so by the other, neither the payee or other holder nor the bank is bound to inquire whether it is a breach of trust to authorize the trustee to draw checks upon the trust account and neither is liable unless the circumstances are such that the action of the payee or other holder or the bank amounts to bad faith.

§ 5815.10. Interpretation and construction.

Sections 5815.04 to 5815.11 of the Revised Code shall be construed to effectuate their general purpose of making the law of this state uniform with the law of those states that enact similar legislation.

§ 5815.11. Rules of law and equity applicable.

In any case not provided for in sections 5815.04 to 5815.11 of the Revised Code, the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking apply.

Powers of Appointment.

§ 5815.12. Power of appointment defined.

As used in sections 5815.13, 5815.14, and 5815.15 of the Revised Code, "power of appointment" means any power that is in effect a power to appoint, however created, regardless of the nomenclature used in creating the power and regardless of connotations under the law of property, trusts, or wills. The power includes but is not limited to powers which are special, general, limited, absolute, in gross, appendant, appurtenant, or collateral.

§ 5815.13. Age of person exercising power of appointment.

Any power of appointment that is not subject to an express condition that it may be exercised only by a donee or holder of a greater age may be exercised by any donee or holder of the age of eighteen years or over.

§ 5815.14. Release and disclaimer of power.

Any power of appointment may be released in whole or in part by the donee or holder of the power by an instrument in writing, signed and acknowledged in the manner prescribed for the execution of deeds. No such release is ineffective because it was given either for or without consideration, because it was signed and acknowledged before June 3, 1943, or because no delivery is made of a copy of the release as provided for in section 5815.15 of the Revised Code.

Sections 5815.14 and 5815.15 of the Revised Code do not affect the validity of a release of a power of appointment effected in any other form or manner.

A donee or holder of a power of appointment may disclaim the same at any time, wholly or in part, in the same manner and to the same extent as the donee or holder of the power might release it.

§ 5815.15. Notice of release.

No fiduciary or other person having the possession or control of any property subject to a power of appointment, other than the donee or holder of such power, has notice of a release of the power until a copy of the release is delivered to the fiduciary or other person having possession or control.

No purchaser or mortgagee of real property subject to a power of appointment has notice of a release of the power until a copy of the release is delivered to the officer charged by law with the recording of deeds in the county in which the property is situated. If the property is in this state the county recorder to whom a release is delivered shall record the release in the record of powers of attorney and shall charge a fee computed in the same manner as the fee charged for recording deeds.

Attorney for Fiduciary.

§ 5815.16. Attorney for fiduciary not liable to third parties.

(A) Absent an express agreement to the contrary, an attorney who performs legal services for a fiduciary, by reason of the attorney performing those legal services for the fiduciary, has no duty or obligation in contract, tort, or otherwise to any third party to whom the fiduciary owes fiduciary obligations.

(B) As used in this section, "fiduciary" means a trustee under an express trust or an executor or administrator of a decedent's estate.

Inter Vivos or Testamentary Trusts.

§ 5815.21. Distributions involving federal estate tax marital deduction.

Whenever the executor of a will or the trustee of a testamentary or inter vivos trust is permitted or required to select assets in kind to satisfy a gift, devise, or bequest, whether outright or in trust, intended to qualify for the federal estate tax marital deduction prescribed by the United States "Internal Revenue Code of 1954," 68A Stat. 392, 26 U.S.C. 2056, or any comparable federal statute enacted after July 20, 1965, and the will or trust instrument empowers or requires the fiduciary to satisfy such gift, devise, or bequest by allocating assets thereto at any values other than market values at the date of satisfaction of such gift, devise, or bequest, the executor or trustee shall satisfy such gift, devise, or bequest by distribution of assets having a value fairly representative in the aggregate of appreciation or depreciation in the value of all property, including cash, available for distribution in satisfaction of such gift, devise, or bequest, unless the will or trust instrument expressly requires that distribution

be made in a manner so as not to be fairly representative of such appreciation or depreciation.

§ 5815.22. Spendthrift provision in trust.

(A) (1) Except as provided in divisions (A)(2), (3), and (4) of this section, a spendthrift provision in an instrument that creates an inter vivos or testamentary trust shall not cause any forfeiture or postponement of any interest in property that satisfies both of the following:

(a) It is granted to a surviving spouse of the testator or other settlor.

(b) It qualifies for the federal estate tax marital deduction allowed by Subtitle B, Chapter 11, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended, the estate tax marital deduction allowed by division (A) of [section 5731.15](#) of the Revised Code, or the qualified terminable interest property deduction allowed by division (B) of [section 5731.15](#) of the Revised Code.

(2) Division (A)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that obtaining a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section is less important than enforcing the forfeiture or postponement of the interest in property in accordance with the spendthrift provision in the instrument.

(3) Division (A)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(4) Division (A)(1) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section.

(B) (1) Except as provided in divisions (B)(2) and (3) of this section, if an instrument creating an inter vivos or testamentary trust includes a spendthrift provision and the trust holds shares in an S corporation, the spendthrift provision shall not cause any forfeiture or postponement of any beneficial interest, income, principal, or other interest in the shares of the S corporation held by the trust. For purposes of division (B)(1) of this section, "S corporation" has the same meaning as in section 1361 of the "Internal Revenue Code of 1986," 26 U.S.C. 1361.

(2) Division (B)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that maintenance of the corporation's status as an S corporation is less important than enforcing the forfeiture or postponement of any beneficial interest, income, principal, or other interest in the S corporation shares in accordance with the spendthrift provision in the instrument.

(3) Division (B)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating,

or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(C) (1) Except as provided in divisions (C)(2) and (3) of this section, a spendthrift provision in an instrument that creates an inter vivos or testamentary trust shall not cause any forfeiture or postponement of any interest in property that satisfies both of the following:

(a) It is granted to a person who is a skip person under the federal generation-skipping transfer tax imposed by Subtitle B, Chapter 13, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2601-2663, as amended.

(b) It qualifies as a nontaxable gift under section 2642(c) of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2642(c).

(2) Division (C)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that qualifying as a nontaxable trust gift as described in division (C)(1)(b) of this section is less important than enforcing the forfeiture or postponement of the interest in property in accordance with the spendthrift provision in the instrument.

(3) Division (C)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(D) Divisions (A), (B), and (C) of this section are intended to codify certain fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the provisions of a trust. Divisions (A), (B), and (C) of this section apply to trust instruments executed prior to and existing on August 29, 2000, and to trust instruments executed on or after August 29, 2000.

§ 5815.23. Restriction on accumulation of income for more than one year.

(A) Except as provided in division (B) of this section, an instrument that creates an inter vivos or testamentary trust shall not require or permit the accumulation for more than one year of any income of property that satisfies both of the following:

(1) The property is granted to a surviving spouse of the testator or other settlor.

(2) The property qualifies for the federal estate tax marital deduction allowed by subtitle B, Chapter 11 of the "Internal Revenue Code of 1986," 26 U.S.C. 2056, as amended, the estate tax marital deduction allowed by division (A) of [section 5731.15](#) of the Revised Code, or the qualified terminable interest property deduction allowed by division (B) of [section 5731.15](#) of the Revised Code.

(B) (1) Division (A) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that obtaining a marital deduction or a qualified terminable interest property deduction as described in division (A)(2) of this section is less important than requiring

or permitting the accumulation of income of property in accordance with a provision in the instrument that requires or permits the accumulation for more than one year of any income of property.

(2) Division (A) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest property deduction as described in division (A)(2) of this section.

(C) (1) The trustee of a trust that qualifies for an estate tax marital deduction for federal or Ohio estate tax purposes and that is the beneficiary of an individual retirement account has a fiduciary duty, in regard to the income distribution provision of the trust, to withdraw and distribute the income of the individual retirement account, at least annually, to the surviving spouse of the testator or other settlor.

(2) A trustee's fiduciary duty as described in division (C)(1) of this section is satisfied if the terms of the trust instrument expressly provide the surviving spouse a right to withdraw all of the assets from the trust or a right to compel the trustee to withdraw and distribute the income of the individual retirement account to the surviving spouse.

(D) Divisions (A), (B), and (C)(1) of this section are intended to codify existing fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the income provisions of a trust. Divisions (A), (B), and (C) of this section apply to trust instruments executed prior to and existing on October 1, 1996, or executed thereafter. The trustee of a trust described in division (A) or (B) of this section, in a written trust amendment, may elect to not apply divisions (A) and (B) of this section to the trust. Any election of that nature, when made, is irrevocable.

§ 5815.24. Limitation on liability of certain fiduciaries.

(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.

§ 5815.25. Excluded fiduciary not liable.

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

§ 5815.26. When fiduciary may hold cash or make a temporary investment.

(A) As used in this section:

(1) "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 a person, trust, or estate.

(2) "Short term trust-quality investment fund" means a short term investment fund that meets both of the following conditions:

(a) The fund may be either a collective investment fund established pursuant to [section 1111.14](#) of the Revised Code or a registered investment company, including any affiliated investment company whether or not the fiduciary has invested other funds held by it in an agency or other nonfiduciary capacity in the securities of the same registered investment company or affiliated investment company.

(b) The fund is invested in any one or more of the following manners:

(i) In obligations of the United States or of its agencies;

(ii) In obligations of one or more of the states of the United States or their political subdivisions;

(iii) In variable demand notes, corporate money market instruments including, but not limited to, commercial paper rated at the time of purchase in either of the two highest classifications established by at least one nationally recognized standard rating service;

(iv) In deposits in banks or savings and loan associations whose deposits are insured by the federal deposit insurance corporation, if the rate of interest paid on such deposits is at least equal to the rate of interest generally paid by such banks or savings and loan associations on deposits of similar terms or amounts;

(v) In fully collateralized repurchase agreements or other evidences of indebtedness that are of trust quality and are payable on demand or have a maturity date consistent with the purpose of the fund and the duty of fiduciary prudence.

(3) "Registered investment company" means any investment company that is defined in and registered under sections 3 and 8 of the "Investment Company Act of 1940," 54 Stat. 789, 15 U.S.C.A. 80a-3 and 80a-8.

(4) "Affiliated investment company" has the same meaning as in division (E)(1) of section 1111.10 of the Revised Code.

(B) A fiduciary is not required to invest cash that belongs to the trust and may hold that cash for the period prior to distribution if either of the following applies:

(1) The fiduciary reasonably expects to do either of the following:

(a) Distribute the cash to beneficiaries of the trust on a quarterly or more frequent basis;

(b) Use the cash for the payment of debts, taxes, or expenses of administration within the ninety-day period following the receipt of the cash by the fiduciary.

(2) Determined on the basis of the facilities available to the fiduciary and the amount of the income that reasonably could be earned by the investment of the cash, the amount of the cash does not justify the administrative burden or expense associated with its investment.

(C) If a fiduciary wishes to hold funds that belong to the trust in liquid form and division (B) of this section does not apply, the fiduciary may so hold the funds as long as they are temporarily invested as described in division (D) of this section.

(D) (1) A fiduciary may make a temporary investment of cash that may be held uninvested in accordance with division (B) of this section, and shall make a temporary investment of funds held in liquid form pursuant to division (C) of this section, in any of the following investments, unless the governing instrument provides for other investments in which the temporary investment of cash or funds is permitted:

(a) A short term trust-quality investment fund;

(b) Direct obligations of the United States or of its agencies;

(c) A deposit with a bank or savings and loan association, including a deposit with the fiduciary itself or any bank subsidiary corporation owned or controlled by the bank holding company that owns or controls the fiduciary, whose deposits are insured by the federal deposit insurance corporation, if the rate of interest paid on that deposit is at least equal to the rate of interest generally paid by that bank or savings and loan association on deposits of similar terms or amounts.

(2) A fiduciary that makes a temporary investment of cash or funds pursuant to division (D)(1) of this section may charge a reasonable fee for the services associated with that investment. The fee shall be in addition to the compensation to which the fiduciary is entitled for his ordinary fiduciary services.

(3) Fiduciaries that make one or more temporary investments of cash or funds pursuant to division (D)(1) of this section shall provide to the beneficiaries of the trusts involved, that are currently receiving income or have a right to receive income, a written disclosure of their temporary investment practices and, if applicable, the method of computing reasonable fees for their temporary investment services pursuant to division (D)(2) of this section. Fiduciaries may comply with this requirement in any appropriate written document, including, but not limited to, any periodic statement or account.

(4) A fiduciary that makes a temporary investment of cash or funds in an affiliated investment company pursuant to division (D)(1)(a) of this section shall, when providing any periodic account statements of its temporary investment practices, report the net asset value of the shares comprising the investment in the affiliated investment company.

(5) If a fiduciary that makes a temporary investment of cash or funds in an affiliated investment company pursuant to division (D)(1)(a) of this section invests in any mutual fund, the fiduciary shall provide to the beneficiaries of the trust involved, that are currently receiving income or have a right to receive income, a written disclosure, in at least ten-point boldface type, that the mutual fund is not insured or guaranteed by the federal deposit insurance corporation or by any other government agency or government-sponsored agency of the federal government or of this state.

§ 5815.27. Generation-skipping transfer tax.

(A) A provision in a will or trust agreement, which provision pertains to the payment of any taxes that are imposed by reason of the testator's or trust creator's death, does not include the payment of any portion of any tax that is imposed on any transfer under any other will or trust agreement by Chapter 13 of subtitle B of the "Internal Revenue Code of 1986," 100 Stat. 2718, 26 U.S.C. 2601-2624, as amended, unless the provision of the will or trust agreement specifically states, using the words "generation-skipping transfer tax," that the payment of the tax imposed under that chapter is included within the provision of the will or trust agreement.

(B) This section applies to wills and trust agreements that are executed before or after March 14, 1979.

§ 5815.28. Testamentary trust to fund supplemental services for beneficiary with physical or mental disability.

(A) As used in this section:

(1) "Ascertainable standard" includes a standard in a trust instrument requiring the trustee to provide for the care, comfort, maintenance, welfare, education, or general well-being of the beneficiary.

(2) "Disability" means any substantial, medically determinable impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least twelve months, except that "disability" does not include an impairment that is the result of abuse of alcohol or drugs.

(3) "Political subdivision" and "state" have the same meanings as in [section 2744.01](#) of the Revised Code.

(4) "Supplemental services" means services specified by rule of the department of mental health under [section 5119.01](#) of the Revised Code or the department of mental retardation and developmental disabilities under [section 5123.04](#) of the Revised Code that are provided to an individual with a disability in addition to services the individual is eligible to receive under programs authorized by federal or state law.

(B) Any person may create a trust under this section to provide funding for supplemental services for the benefit of another individual who meets either of the following conditions:

(1) The individual has a physical or mental disability and is eligible to receive services through the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities;

(2) The individual has a mental disability and is eligible to receive services through the department of mental health or a board of alcohol, drug addiction, and mental health services.

The trust may confer discretion upon the trustee and may contain specific instructions or conditions governing the exercise of the discretion.

(C) The general division of the court of common pleas and the probate court of the county in which the beneficiary of a trust authorized by division (B) of this section resides or is confined have concurrent original jurisdiction to hear and determine actions pertaining to the trust. In any action pertaining to the trust in a court of common pleas or probate court and in any appeal of the action, all of the following apply to the trial or appellate court:

(1) The court shall render determinations consistent with the testator's or other settlor's intent in creating the trust, as evidenced by the terms of the trust instrument.

(2) The court may order the trustee to exercise discretion that the trust instrument confers upon the trustee only if the instrument contains specific instructions or conditions governing the exercise of that discretion and the trustee has failed to comply with the instructions or conditions. In issuing an order pursuant to this division, the court shall require the trustee to exercise the trustee's discretion only in accordance with the instructions or conditions.

(3) The court may order the trustee to maintain the trust and distribute assets in accordance with rules adopted by the director of mental health under [section 5119.01](#) of the Revised Code or the director of mental retardation and developmental disabilities under [section 5123.04](#) of the Revised Code if the trustee has failed to comply with such rules.

(D) To the extent permitted by federal law and subject to the provisions of division (C)(2) of this section pertaining to the enforcement of specific instructions or conditions governing a trustee's discretion, a trust authorized by division (B) of this section that confers discretion upon the trustee shall not be considered an asset or resource of

the beneficiary, the beneficiary's estate, the settlor, or the settlor's estate and shall be exempt from the claims of creditors, political subdivisions, the state, other governmental entities, and other claimants against the beneficiary, the beneficiary's estate, the settlor, or the settlor's estate, including claims based on provisions of [Chapters 5111., 5121., or 5123.](#) of the Revised Code and claims sought to be satisfied by way of a civil action, subrogation, execution, garnishment, attachment, judicial sale, or other legal process, if all of the following apply:

- (1) At the time the trust is created, the trust principal does not exceed the maximum amount determined under division (E) of this section;
- (2) The trust instrument contains a statement of the settlor's intent, or otherwise clearly evidences the settlor's intent, that the beneficiary does not have authority to compel the trustee under any circumstances to furnish the beneficiary with minimal or other maintenance or support, to make payments from the principal of the trust or from the income derived from the principal, or to convert any portion of the principal into cash, whether pursuant to an ascertainable standard specified in the instrument or otherwise;
- (3) The trust instrument provides that trust assets can be used only to provide supplemental services, as defined by rule of the director of mental health under [section 5119.01](#) of the Revised Code or the director of mental retardation and developmental disabilities under [section 5123.04](#) of the Revised Code, to the beneficiary;
- (4) The trust is maintained and assets are distributed in accordance with rules adopted by the director of mental health under [section 5119.01](#) of the Revised Code or the director of mental retardation and developmental disabilities under [section 5123.04](#) of the Revised Code;
- (5) The trust instrument provides that on the death of the beneficiary, a portion of the remaining assets of the trust, which shall be not less than fifty per cent of such assets, will be deposited to the credit of the services fund for individuals with mental illness created by [section 5119.17](#) of the Revised Code or the services fund for individuals with mental retardation and developmental disabilities created by [section 5123.40](#) of the Revised Code.

(E) In 1994, the trust principal maximum amount for a trust created under this section shall be two hundred thousand dollars. The maximum amount for a trust created under this section prior to November 11, 1994, may be increased to two hundred thousand dollars.

In 1995, the maximum amount for a trust created under this section shall be two hundred two thousand dollars. Each year thereafter, the maximum amount shall be the prior year's amount plus two thousand dollars.

(F) This section does not limit or otherwise affect the creation, validity, interpretation, or effect of any trust that is not created under this section.

(G) Once a trustee takes action on a trust created by a settlor under this section and disburses trust funds on behalf of the beneficiary of the trust, then the trust may not be terminated or otherwise revoked by a particular event or otherwise without payment into the services fund created pursuant to [section 5119.17](#) or [5123.40](#) of the Revised Code of an amount that is equal to the disbursements made on behalf of the beneficiary for medical care by the state from the date the trust vests but that is not more than fifty per cent of the trust corpus.

Miscellaneous Provisions.

§ 5815.31. Spouse or former spouse deemed to have predeceased grantor.

Unless the trust or separation agreement provides otherwise, if, after executing a trust in which the grantor reserves to self a power to alter, amend, revoke, or terminate the provisions of the trust, a grantor is divorced, obtains a dissolution of marriage, has the grantor's marriage annulled, or, upon actual separation from the grantor's spouse, enters into a separation agreement pursuant to which the parties intend to fully and finally settle their prospective property rights in the property of the other, whether by expected inheritance or otherwise, the spouse or former spouse of the grantor shall be deemed to have predeceased the grantor and any provision in the trust conferring a general or special power of appointment on the spouse or former spouse or nominating the spouse or former spouse as trustee or trust advisor shall be revoked. If the grantor remarries the grantor's former spouse or if the separation agreement is terminated, the spouse shall not be deemed to have predeceased the grantor and any provision in the trust conferring a general or special power of appointment on the spouse or former spouse or nominating the spouse or former spouse as trustee or trust advisor shall not be revoked.

§ 5815.32. Revocation of power of attorney designating principal's spouse.

If a principal executes a power of attorney designating the principal's spouse as the attorney in fact for the principal and if after executing the power of attorney, the principal and the principal's spouse are divorced, obtain a dissolution or annulment of their marriage, or enter into a separation agreement pursuant to which they intend to fully and finally settle each spouse's prospective property rights in the property of the other, the designation in the power of attorney of the spouse or former spouse of the principal to act as attorney in fact for the principal is revoked, unless the power of attorney provides otherwise. The subsequent remarriage of the principal to the principal's former spouse, or the termination of a separation agreement between the principal and the principal's spouse, does not revive a power of attorney that is revoked under this section.

§ 5815.33. Termination of marriage revokes designation of spouse as beneficiary of death benefits; immunity.

(A) As used in this section:

(1) "Beneficiary" means a beneficiary of a life insurance policy, an annuity, a payable on death account, an individual retirement plan, an employer death benefit plan, or another right to death benefits arising under a contract.

(2) "Employer death benefit plan" means any funded or unfunded plan or program, or any fund, that is established to provide the beneficiaries of an employee participating in the plan, program, or fund with benefits that may be payable upon the death of that employee.

(3) "Individual retirement plan" means an individual retirement account or individual retirement annuity as defined in section 408 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 408, as amended.

(B) (1) Unless the designation of beneficiary or the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (B)(2) of this section, if a spouse designates the other spouse as a beneficiary or if another person having the right to designate a beneficiary on behalf of the spouse designates the other spouse as a beneficiary, and if, after either type of designation, the spouse who made the designation or on whose behalf the designation was made, is divorced from the other spouse, obtains a dissolution of marriage, or has the marriage to the other spouse annulled, then the other spouse shall be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is revoked as a result of the divorce, dissolution of marriage, or annulment.

(2) If the spouse who made the designation or on whose behalf the designation was made remarries the other spouse, then, unless the designation no longer can be made, the other spouse shall not be deemed to have predeceased the spouse who made the designation or on whose behalf the designation was made, and the designation of the other spouse as a beneficiary is not revoked because of the previous divorce, dissolution of marriage, or annulment.

(C) An agent, bank, broker, custodian, issuer, life insurance company, plan administrator, savings and loan association, transfer agent, trustee, or other person is not liable in damages or otherwise in a civil or criminal action or proceeding for distributing or disposing of property in reliance on and in accordance with a designation of beneficiary as described in division (B)(1) of this section, if both of the following apply:

(1) The distribution or disposition otherwise is proper;

(2) The agent, bank, broker, custodian, issuer, life insurance company, plan administrator, savings and loan association, transfer agent, trustee, or other person did not have any notice of the facts that resulted in the revocation of the beneficiary designation by operation of division (B)(1) of this section.

§ 5815.34. Termination of survivorship rights of former spouse in personal property; immunity.

(A) (1) Unless the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (A)(2) of this section, if the title to any personal property is held by two persons who are married to each other, if the title is so held for the joint lives of the spouses and then to the survivor of them, and if the marriage of the spouses subsequently is terminated by a judgment or decree granting a divorce, dissolution of marriage, or annulment, then the survivorship rights of the spouses terminate, and each spouse shall be deemed the owner of an undivided interest in common in the title to the personal property, that is in proportion to the spouse's net contributions to the personal property.

(2) If the spouses described in division (A)(1) of this section remarry each other and the title to the personal property continues to be held by them in accordance with that division, then the survivorship rights of the spouses are not terminated, and the spouses again hold title in the personal property for their joint lives and then to the survivor of them.

(B) (1) Unless the judgment or decree granting the divorce, dissolution of marriage, or annulment specifically provides otherwise, and subject to division (B)(2) of this section, if the title to any personal property is held by more than two persons and at least two of the persons are married to each other, if the title is so held for the joint lives of

the titleholders and then to the survivor or survivors of them, and if the marriage of any of the titleholders who are married to each other subsequently is terminated by a judgment or decree granting a divorce, dissolution of marriage, or annulment, then the survivorship rights of the titleholders who were married to each other terminate, the survivorship rights of the other titleholders are not affected, and each of the titleholders who were married to each other shall be deemed to be the owner of an undivided interest in common in the personal property, that is in proportion to the net contributions of the titleholders who were married to each other to the personal property.

(2) If the titleholders who were married to each other as described in division (B)(1) of this section remarry each other, and if the title to the personal property continues to be held by them, and the other titleholders whose survivorship rights continued unaffected, in accordance with that division, then the survivorship rights of the remarried titleholders are not terminated, and the remarried and other titleholders again hold title in the personal property for their joint lives and then to the survivor or survivors of them.

(C) An agent, bank, broker, custodian, issuer, life insurance company, plan administrator, savings and loan association, transfer agent, trustee, or other person is not liable in damages or otherwise in a civil or criminal action or proceeding for distributing or disposing of personal property in reliance on and in accordance with a registration in the form of a joint ownership for life, with rights of survivorship, as described in division (A)(1) or (B)(1) of this section, if both of the following apply:

(1) The distribution or disposition otherwise is proper;

(2) The agent, bank, broker, custodian, issuer, life insurance company, plan administrator, savings and loan association, transfer agent, trustee, or other person did not have any notice of the facts that resulted in the termination of the rights of survivorship by operation of division (A)(1) or (B)(1) of this section.

§ 5815.35. Liability of general partners when acting as fiduciary.

(A) (1) As used in this division, fiduciary "means any person, association, or corporation, other than a trustee of a testamentary trust, an assignee or trustee for an insolvent debtor, or a guardian under [Chapter 5905](#) of the Revised Code, that is appointed by and accountable to the probate court, and that is acting in a fiduciary capacity for another or charged with duties in relation to any property, interest, or estate for another's benefit. A fiduciary also includes an agency under contract with the department of mental retardation and developmental disabilities for the provision of protective service under [sections 5123.55](#) to [5123.59](#) of the Revised Code, when appointed by and accountable to the probate court as a guardian or trustee for a mentally retarded or developmentally disabled person.

(2) A fiduciary who enters a contract as fiduciary on or after March 22, 1984, is not personally liable on that contract, unless the contract otherwise specifies, if the contract is within the fiduciary's authority and the fiduciary discloses that the contract is being entered into in a fiduciary capacity. In a contract, the words "fiduciary" or "as fiduciary" or other words that indicate one's fiduciary capacity following the name or signature of a fiduciary are sufficient disclosure for purposes of this division.

(B) (1) As used in this division, "partnership" includes a partnership composed of only general partners and a partnership composed of general and limited partners.

(2) Subject to division (D) of this section, an executor or administrator who acquires, in a fiduciary capacity, a general partnership interest upon the death of a general partner of a partnership is not personally liable for any debt, obligation, or liability of the partnership that arises from the executor's or administrator's actions, except as provided in this division, as a general partner, or for any debt, obligation, or liability of the partnership for which the executor or administrator otherwise would be personally liable because the executor or administrator holds the general partnership interest, if the executor or administrator discloses that the general partnership interest is held by the executor or administrator in a fiduciary capacity. This immunity does not apply if an executor or administrator causes loss or injury to a person who is not a partner in the partnership by a wrongful act or omission. This immunity is not available to an executor or administrator who holds a general partnership interest in a fiduciary capacity if the spouse or any lineal descendants of the executor or administrator, or the executor or administrator other than in a fiduciary capacity, holds any interest in the partnership.

A partnership certificate that is filed pursuant to [Chapter 1777](#), or another chapter of the Revised Code and that indicates that an executor or administrator holds a general partnership interest in a fiduciary capacity by the use following the name or signature of the executor or administrator of the words "executor under the will of (name of decedent)" or "administrator of the estate of (name of decedent)" or other words that indicate the executor's or administrator's fiduciary capacity constitutes a sufficient disclosure for purposes of this division.

If a partnership certificate is not required to be filed pursuant to [Chapter 1777](#), or another chapter of the Revised Code, a sufficient disclosure for purposes of this division can be made by an executor or administrator if a certificate that satisfies the following requirements is filed with the recorder of the county in which the partnership's principal office or place of business is situated and with the recorder of each county in which the partnership owns real estate:

- (a) The certificate shall state in full the names of all persons holding interests in the partnership and their places of residence;
- (b) The certificate shall be signed by all persons who are general partners in the partnership, and shall be acknowledged by a person authorized to take acknowledgements of deeds;
- (c) The certificate shall use the words "executor under the will of (name of decedent)" or "administrator of the estate of (name of decedent)" or other words that indicate the executor's or administrator's fiduciary capacity, following the name or signature of the executor or administrator.

A contract or other written instrument delivered to a party that contracts with the partnership in which an executor or administrator holds a general partnership interest in a fiduciary capacity, which indicates that the executor or administrator so holds the interest, constitutes a disclosure for purposes of this division with respect to transactions between the party and the partnership. If a disclosure has been made by a certificate in accordance with this division, a disclosure for purposes of this division with respect to such transactions exists regardless of whether a contract or other instrument indicates the executor or administrator holds the general partnership interest in a fiduciary capacity.

If an executor or administrator acquires, in a fiduciary capacity, a general partnership interest, the decedent's estate is liable for debts, obligations, or liabilities of the partnership.

(C) An estate that includes a general partnership interest is not liable for the debts, obligations, or liabilities of a partnership in which another estate has a general partnership interest, merely because the executor or

administrator of the estates holds a general partnership interest in both of the partnerships in the executor's or administrator's fiduciary capacities.

(D) Divisions (B) and (C) of this section apply to general partnership interests held by executors or administrators in their fiduciary capacities prior to and on or after the effective date of this section. If an appropriate disclosure is made pursuant to division (B) of this section, the immunity acquired under that division extends only to debts, obligations, and liabilities of the partnership arising on and after the date of the disclosure and to debts, obligations, and liabilities of the partnership that arose prior to the acquisition of the general partnership interest by the executor or administrator becoming a general partner.

§ 5815.36. Disclaimer of succession to property.

(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 entireties, 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 entireties, 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. This section does not authorize a fiduciary to disclaim the rights of beneficiaries unless the instrument creating the fiduciary relationship authorizes such a disclaimer.

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

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

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

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

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

(a) A reference to the donative instrument;

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

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

(4) The guardian of the estate of a minor or an incompetent, or the personal representative of a deceased person, with the consent of the probate division of the court of common pleas, may disclaim, in whole or in part, the succession to any property, or interest in property, that the ward, if an adult and competent, or the deceased, if living, might have disclaimed. The guardian or personal representative, or any interested person may file an application with the probate division of the court of common pleas that has jurisdiction of the estate, asking that the court order the guardian or personal representative to execute and deliver, file, or record the disclaimer on behalf of the ward or estate. The court shall order the guardian or personal representative to execute and deliver, file, or record the disclaimer if the court finds, upon hearing after notice to interested parties and such other persons as the court shall direct, that:

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

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

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

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

(D) The disclaimant shall deliver, file, or record the disclaimer, or cause the same to be done, not later than nine months after the latest of the following dates:

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

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

(3) The date on which the disclaimant attains twenty-one years of age or is no longer an incompetent, without tendering or repaying any benefit received while the disclaimant was under twenty-one years of age or an incompetent, and even if a guardian of a minor or incompetent had filed an application pursuant to division (B)(4)

of this section and the probate division of the court of common pleas involved did not consent to the guardian executing a disclaimer.

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

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

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

(F) (1) Subject to division (F)(2) of this section, if the interest disclaimed is created by a nontestamentary instrument, the disclaimer instrument shall be delivered personally or by certified mail to the trustee or other person who has legal title to, or possession of, the property disclaimed.

(2) If the interest disclaimed is created by a testamentary instrument, by intestate succession, by a transfer on death deed pursuant to [section 5302.22](#) of the Revised Code, or by a certificate of title to a motor vehicle, watercraft, or outboard motor that evidences ownership of the motor vehicle, watercraft, or outboard motor that is transferable on death pursuant to [section 2131.13](#) of the Revised Code, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate have been commenced, and an executed copy of the disclaimer instrument shall be delivered personally or by certified mail to the personal representative of the decedent's estate.

(3) If no proceedings for the administration of the decedent's estate have been commenced, the disclaimer instrument shall be filed in the probate division of the court of common pleas in the county in which proceedings for the administration of the decedent's estate might be commenced according to law. The disclaimer instrument shall be filed and indexed, and fees charged, in the same manner as provided by law for an application to be appointed as personal representative to administer the decedent's estate. The disclaimer is effective whether or not proceedings thereafter are commenced to administer the decedent's estate. If proceedings thereafter are commenced for the administration of the decedent's estate, they shall be filed under, or consolidated with, the case number assigned to the disclaimer instrument.

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

(G) Unless the donative instrument expressly provides that, if there is a disclaimer, there shall not be any acceleration of remainders or other interests, 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, before the expiration of the period within which the disclaimant may disclaim the interest, 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) A fiduciary's application for appointment or assumption of duties as a fiduciary does not waive or bar the disclaimant's right to disclaim a right, power, privilege, or immunity.

(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) 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 existing under any other section of the Revised Code or at common law to assign, convey, release, refuse to accept, renounce, waive, or disclaim property.

(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.

Consignment of Art Works to Dealers.

§ 5815.41. Definitions.

As used in sections 5815.41 to 5815.48 of the Revised Code:

(A) "Art dealer" means a person engaged in the business of selling works of art, other than a person exclusively engaged in the business of selling goods at public auction.

(B) "Artist" means the creator of a work of art.

(C) "On consignment" means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer other than at a public auction.

(D) "Work of art" means an original art work that is any of the following:

(1) A visual rendition including, but not limited to, a painting, drawing, sculpture, mosaic, or photograph;

(2) A work of calligraphy;

(3) A work of graphic art, including, but not limited to, an etching, lithograph, offset print, or silk screen;

(4) A craft work in materials, including, but not limited to, clay, textile, fiber, wood, metal, plastic, or glass;

(5) A work in mixed media, including, but not limited to, a collage or a work consisting of any combination of the items listed in divisions (D)(1) to (4) of this section.

§ 5815.42. Consequences of art dealer's acceptance of work on consignment from artist.

If an art dealer accepts a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art, the following consequences attach:

(A) The art dealer is, with respect to that work of art, the agent of the artist.

(B) The work of art is trust property and the art dealer is a trustee for the benefit of the artist until the work of art is sold to a bona fide third party or returned to the artist.

(C) The proceeds of the sale of the work of art are trust property and the art dealer is a trustee for the benefit of the artist until the amount due the artist from the sale is paid.

(D) The art dealer is strictly liable for the loss of, or damage to, the work of art while it is in the art dealer's possession or control. The value of the work of art is, for the purpose of this division, the value established in the written contract between the artist and art dealer entered into pursuant to section 5815.45 of the Revised Code.

§ 5815.43. Purchase by dealer for own account.

(A) If a work of art is trust property under section 5815.42 of the Revised Code when it is initially received by the art dealer, it remains trust property, notwithstanding the subsequent purchase of the work of art by the art dealer directly or indirectly for the art dealer's own account, until the purchase price specified pursuant to division (A)(3) of section 5815.45 of the Revised Code is paid in full to the artist.

(B) If an art dealer resells a work of art that the art dealer purchased for the art dealer's own account to a bona fide third party before the artist has been paid in full, the work of art ceases to be trust property and the proceeds of the resale are trust funds in the possession or control of the art dealer for the benefit of the artist to the extent necessary to pay any balance still due to the artist. The trusteeship of the proceeds continues until the artist is paid in full under the contract entered into pursuant to section 5815.45 of the Revised Code.

§ 5815.44. Trust property not subject to claims of dealer's creditors.

A work of art that is trust property under section 5815.42 or 5815.43 of the Revised Code is not subject to the claims, liens, or security interests of the creditors of the art dealer, notwithstanding [Chapters 1301.](#) to 1310. of the Revised Code.

§ 5815.45. Dealer not to accept work without written contract.

(A) An art dealer shall not accept a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art unless, prior to or at the time of acceptance, the art dealer enters into a written contract with the artist that contains all of the following:

(1) The value of the work of art and whether it may be sold;

(2) The time within which the proceeds of the sale are to be paid to the artist, if the work of art is sold;

(3) The minimum price for the sale of the work of art;

(4) The fee or percentage of the sale price that is to be paid to the art dealer for displaying or selling the work of art.

(B) If an art dealer violates this section, a court, at the request of the artist, may void the obligation of the artist to that art dealer or to a person to whom the obligation is transferred, other than a holder in due course.

§ 5815.46. Conditions for display of work or photograph.

An art dealer who accepts a work of art, on a fee, commission, or other compensation basis, on consignment from the artist who created the work of art shall not use or display the work of art or a photograph of the work of art, or permit the use or display of the work of art or a photograph of the work of art, unless both of the following occur:

(A) Notice is given to users or viewers that the work of art is the work of the artist;

(B) The artist gives prior written consent to the particular use or display.

§ 5815.47. Waiver is void.

Any portion of an agreement that waives any provision of sections 5815.41 to 5815.48 of the Revised Code is void.

§ 5815.48. Dealer's liability for violation.

Any art dealer who violates section 5815.45 or 5815.46 of the Revised Code is liable to the artist for the artist's reasonable attorney's fees and in an amount equal to the greater of either of the following:

(A) Fifty dollars;

(B) The actual damages, if any, including the incidental and consequential damages, sustained by the artist by reason of the violation.

