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Ohio Becomes One of the Nation's Top Destinations for Asset Protection Planning

Under the Ohio Asset Management Modernization Act ("OAMMA"), Ohio is now a top destination for asset protection planning.





### Agenda

- Changes to Ohio's limited liability company ("LLC") statute that are favorable for asset protection
- Portions of OAMMA that enhance asset protection generally
- The Ohio Legacy Trust—a creation under OAMMA that allows new opportunities for planning



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#### Changes to Ohio LLC Statute

- HB 48 (2012) made significant changes to O.R.C.
   \$\$ 1705.18 and 1705.19
  - Charging order is now sole and exclusive remedy of judgment creditor against interest of a debtor-member
  - Other legal and equitable remedies are barred
  - This is excellent from an asset protection standpoint
- Ohio law still does not state that single-member and multi-member LLCs will be treated the same
  - Ohio statute could still be improved
  - Nevertheless one of the better LLC statutes in the country for asset protection purposes



#### Family LLCs

- Family LLCs have both estate planning and asset protection advantages
  - Can add protection without significant loss of control over assets
  - Ohio is now an excellent state in which to form a Family LLC



#### Homestead Exemption Change

- Old rule: \$21,625 in home equity exempt from creditors OAMMA exempts \$125,000 per person
- Exemption is "stackable" between spouses, so a married couple may protect \$250,000 of equity if home is titled in joint name
- · Does not apply as to
  - Tax liens of the State of Ohio; or
  - Claims against an uninsured motorist



## Exemptions for Certain Qualified Plans

- IRAs have long enjoyed creditor protection
- Inherited IRAs were not necessarily exempt from creditors, as they were not earned by the owner
- Now the following are exempt:
  - Inherited IRAs and Roth IRAs
  - Inherited 529 plans or educational IRAs
  - Interest as an alternate payee under a Qualified Domestic Relations Order



#### General Changes to Trust Code

- Trustee has no liability for payments to third parties on beneficiary's behalf if allowed under trust
  - Applies even if beneficiary is subject to other creditor claims
- Disclaiming (or refusing to inherit) property is no longer a "transfer" for fraudulent transfer purposes
- · Settlor may designate an "administrative Trustee"
  - Assists with maintaining Trust records and tax filings
  - Has no liability as to investments and distributions



# Who Should Set Up an Ohio Legacy Trust?

- Business owners
- CEOs and Directors
- Professionals (e.g., attorneys, physicians, athletes, accountants)
- People considering marriage
- Others who are willing to part with total control of a portion of their assets for protection from future creditors

Notes			



#### Ohio Legacy Trust: Key Terms O.R.C. § 5816.01

- An "Ohio Legacy Trust" is a trust that is:
  - Written
  - Irrevocable
  - Has a "qualified trustee"
  - States that Ohio law applies
  - Contains "spendthrift" provisions as to any beneficiaries, including transferor
- "Qualified Disposition": Transfer to an Ohio Legacy Trust
- "Qualified Trustee": An Ohio resident other than the transferor or a corporate
- Trustee able to do business in the State of Ohio



#### Exception Creditors ORC § 5816.03(C)

- Who may defeat the spendthrift provision of an Ohio Legacy Trust?
  - Claimants for child support, spousal support, or alimony
- Division of property for transferor's spouse or former spouse
- Planning Point:
  - These only apply to a "spouse or former spouse"
  - A Legacy Trust may be used as a unilateral prenuptial too preventing access by a spouse married after the transfer

### Rights Transferor May Retain O.R.C. § 5816.05

- The Transferor only retains rights stated in the Trust Agreement and allowed under Ohio law
- What rights may be retained?



#### Affidavit of Solvency O.R.C. § 5816.06

- At each transfer, the transferor must sign an affidavit stating:
  - Not made insolvent by transfer
  - Not contemplating bankruptcy
  - No pending court actions other than those listed
- Affidavit unnecessary if transferor is not a beneficiary
- Evidence of failure to sign may be used in an action to set aside a Legacy Trust or qualified disposition



### Rules Regarding Discretion O.R.C. § \$ 5816.12; 5816.13

- The Trustee is presumed to have the greatest possible discretion under law
  - Applies to administration and distributions
  - Discretion may be limited by Trust Agreement
- No beneficiary has any ownership interest in property held in a Legacy Trust subject to the discretion of a fiduciary



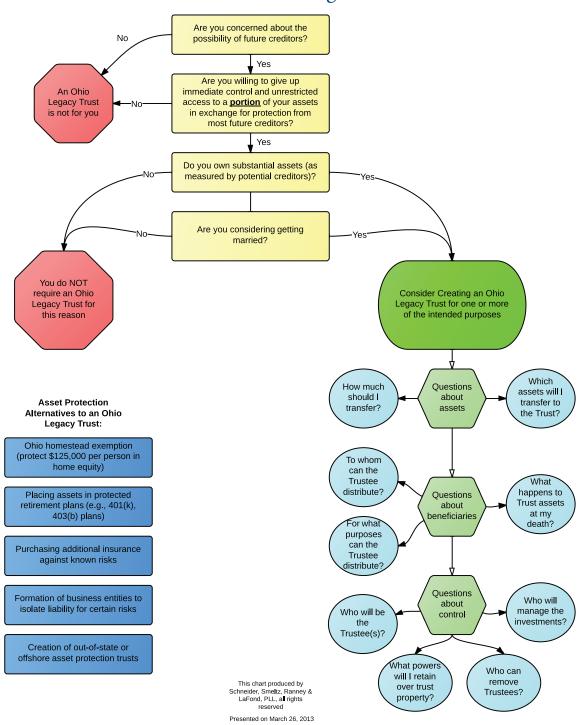
### Challenging a Qualified Transfer O.R.C. § 5816.07

- Creditors may challenge a qualified transfer only on the ground it was made with the specific intent to defraud the specific creditor bringing the action
- Statute of Limitations:
  - If claim existed before the disposition
  - If claim arose after the disposition, action must be brought within 18 months of the disposition
- Valid liens survive the qualified disposition
- Each qualified transfer evaluated separately and assets are presumed last-in-first-out
- Creditor must prevail under a clear and convincing evidence standard
- Transfer is only set aside to the extent necessary
- Trustee has lien for its fees in defending action
- After claim is made, distributions may still be made in good faith
- Attorney fee-shifting is mandatory in actions to set aside transfers ("loser-pays" rule)

Notes			

### Do I Need An Ohio Legacy Trust?

A Decision-Making Tool



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