

# There's No Place Like HOME

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

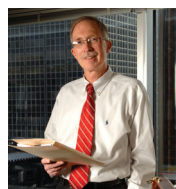
- Changes to Ohio's limited liability company ("LLC") statute that are favorable for asset protection
- Portions of OAMMA that enhance asset protection generally
- The Ohio Legacy Trust—a creation under OAMMA that allows new opportunities for planning



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- 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

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## 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

## Notes



## 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 tool 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

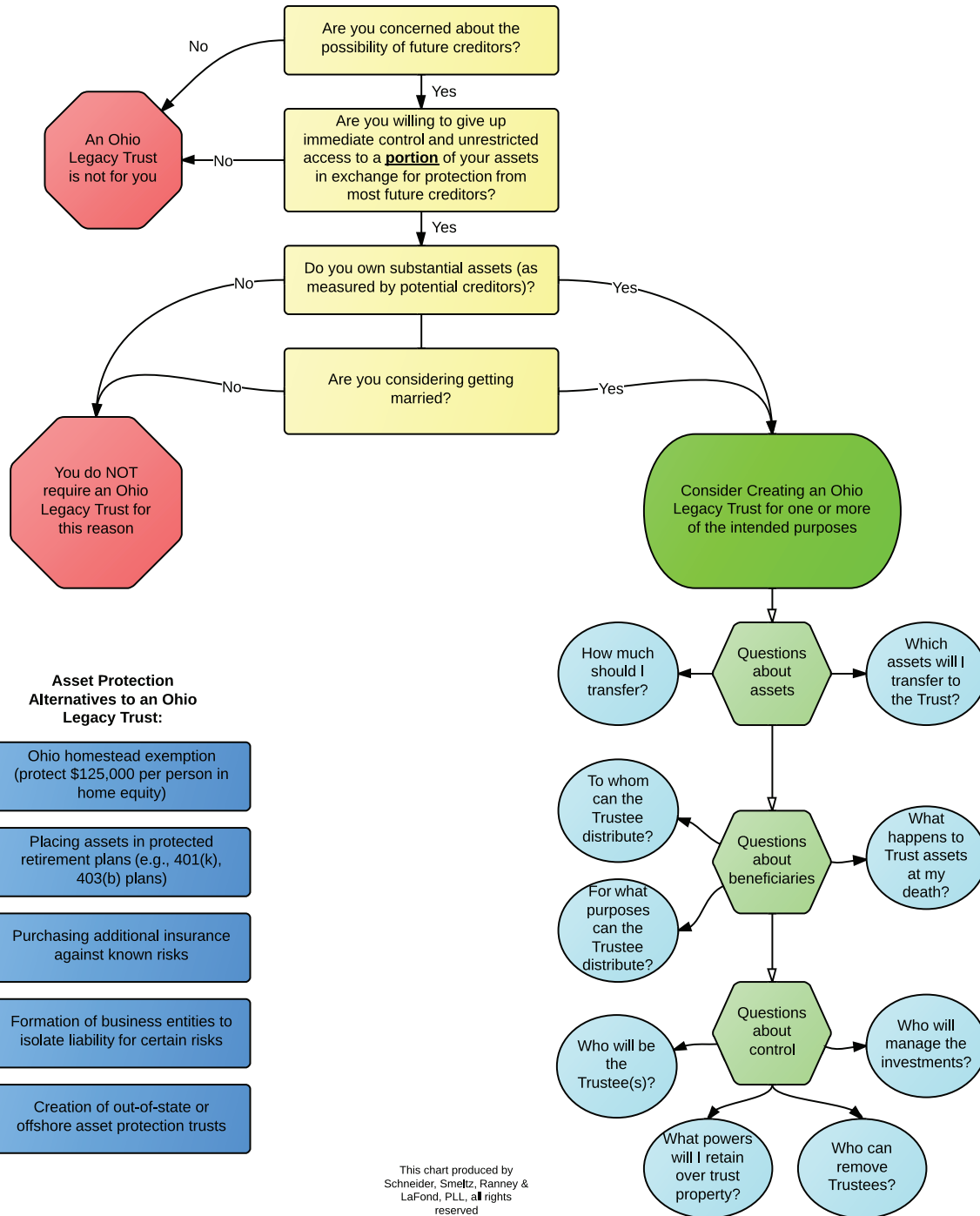


## Challenging a Qualified Transfer O.R.C. § 5816.07

- 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)

## Do I Need An Ohio Legacy Trust?

### A Decision-Making Tool



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