



Charitable Pledges May Be More Than a Promise

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Individuals often make pledges during their lifetimes to support their favored charitable organizations. It is important to know whether such pledges are legally enforceable when they remain outstanding upon the individual's death. Executors may be placed in a difficult situation by the conflicting interests of the decedent's heirs and the charitable organization. If the outstanding pledge is enforceable, it should be paid as a debt of the estate and will receive priority over other beneficial interests.

Enforceability of Charitable Pledges in General

Whether a pledge to make a charitable donation is an enforceable debt generally depends on state contract law. Some states, such as Florida, require either classic contractual consideration or a substitute such as promissory estoppel. Other states, like Ohio, maintain enforceability based on consideration but they strain the definition of consideration to hold written pledges enforceable in most situations.

Enforceability of Charitable Pledges under Ohio Law

In *Irwin v. Lombard*, the Ohio Supreme Court held that a written pledge was enforceable that provided in pertinent part: Two years after date, for value received, I promise to pay to the order of the treasurer of Lombard University, at Galesburg, Ill., one thousand dollars, for the endowment of said institution. The Court reasoned that many other persons made donations and executed similar obligations to the university and that the decedent's promise was an inducement to such donations and promises.

However, the Court held that it is not required that a charitable donee have done anything in particular in reliance upon a particular promise. Specifically the Court stated that: The requirements of the law are satisfied, the objects of the parties secured, and the perpetration of frauds prevented by the conclusion that the consideration for the promise in question is the accomplishment, through the university, of the purposes for which it was

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Tech Tip: Good starting point for Ohio Reference

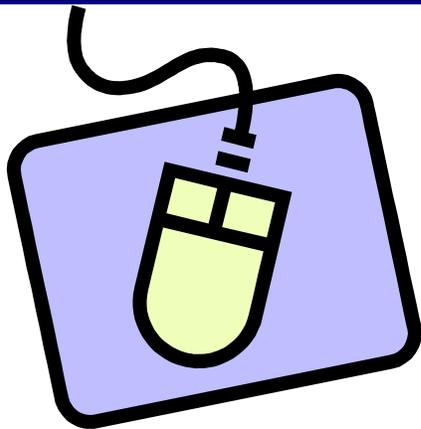
Start with us at <http://www.hamilton-co.org/cinlawlib/resources/ohio.html>

We have consolidated multiple sources to one page for your convenience. On this page checkout the different tabs we have available at the click of your mouse.

Ohio Government Resources

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Ohio Government Resources

Constitution | **Judiciary** | Legislature | Executive

[Ohio Case Law via Fastcase.com](#)
Law Library Members Only. Includes case law from all 50 states and Federal courts.

[Ohio State Supreme Court](#)
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 Summaries of recent Supreme Court opinions

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Ohio Government Resources

Constitution | Judiciary | **Legislature** | Executive

[Ohio Revised Code](#)
Hosted by the Legislative Services Commission, the code text is searchable and easy to browse.

[Ohio Session Laws](#)
Before laws are codified (into the Code, above), they are session laws. This gathers together the text of the laws as signed, prior to codification.

[Legislative Bill Analysis](#)
The Ohio Legislative Service Commission provides bill analysis on all current bills

[House of Representatives](#)

[Ohio Senate](#)

[Ohio House / Senate Journals](#)

[Status Report on Legislation](#)
Another Ohio Legislative Service Commission, giving a regular update on the progress a bill has made through the legislature.

[State Budget information](#)
Collects information together on the budget as it is introduced to the legislature as well as what is finally approved.

Subscribers are able to call the Law Library and request materials, such as, Shepard's.

The Hamilton County Law Library also archives older Ohio Revised Codes and Laws back to 1803.

Ohio Government Resources

Constitution | Judiciary | Legislature | **Executive**

[Administrative Code](#)
Regulations for Ohio state departments and divisions

[Attorney General Opinions](#)
Among the many duties of the Ohio Attorney General is that of providing formal advice by way of written opinions. The Attorney General's web site includes all formal opinions issued from 1994 to the present, in full-text format. [1994 - Current Opinions](#)

[Register of Ohio](#)
Information on proposed and adopted rules, and the rule making process in Ohio.

[Ohio State Forms](#)
Electronic, searchable, collection of state forms from a variety of agencies and ranging from procurement to tax and insurance forms. Some agencies will have additional forms at their Web sites, including the [Department of Taxation](#) and the [Bureau of Workers' Compensation](#)
Alternate site: [Top Requested Forms](#)

[State Agency Directory](#)

(Promise, continued from page 1)

incorporated and in whose aid the promise was made. The defense properly failed because there was neither allegation nor proof of abandonment of those purposes.

Although the Court in *Irwin* discussed the evidence of reliance, the holding concludes that most written charitable pledges are enforceable merely because they have consideration in the form of accomplishment of the purposes of the charity. The Tenth Appellate District Court of Appeals in a Franklin County case, *Hirsch v. Hirsch*, came to the same conclusion when in reliance on *Irwin* it said: We therefore, conclude that pledges made in writing to institutions and organizations are enforceable debts supported by consideration, unless the writing itself otherwise indicates or it is otherwise proved.

One cautionary note regarding *Irwin* is that the Court expressly did not overrule its previous decision in *Johnson v. University* where it found a written pledge was not enforceable. The Court in *Irwin* stated that it was not required to overrule *Johnson* because there was not “such identity of facts” in the two cases. In *Johnson*, the pledge provided in pertinent part: Three years after date, I promise to pay to the trustees of Otterbein University of Ohio, or their agents, one hundred dollars, with interest, at the rate of no percent, to be used exclusively to liquidate the present, that is, February (1869) indebtedness of said University. Because there was no evidence of reliance or liabilities incurred on the faith of the pledge, the Court found that the pledge in *Johnson* was unenforceable. Therefore, a written pledge that is earmarked for the previously incurred debt of a charitable organization may not be enforceable.

Governing Law

Because state law controls the enforceability of pledges, it is important to determine which state's law applies. While this determination may be simple in many cases, an Executor may be faced with more than one possibility. For example, a decedent who was domiciled in Ohio may have executed a written pledge to a charitable organization located in another state.

Each state has rules to determine which law (its own local law or the local law of another state) shall be applied to determine issues in a case involving foreign elements. Ohio follows the traditional “choice of law” principle which generally provides that the law of the forum state governs on matters of procedural issues, with certain constitutional limits. This is consistent with the Restatement, which provides that a court usually applies its own local law rules for issues of judicial administration, even when it applies the local law of another state to resolve other issues. To determine the law to be applied to substantive issues, the “conflict of laws” rules for the particular type of issue are used. Substantive law creates, defines and regulates rights as opposed to adjective or procedural law that provides the method of enforcing and protesting such rights, duties and obligations.

1. the chosen state has no substantial relationship to the parties or the transactions and there is no other reasonable basis for the parties' choice; or

2. the application of the law of the chosen state would be contrary to the fundamental policy of a state having a greater material interest in the issue than the chosen state, and such a state would be the state of the applicable law in the absence of the choice by the parties.

Where the parties have not chosen the law of a particular state, Ohio courts will apply the law of the state with the most significant relationship to the contract. To determine which state has the most significant relationship, Ohio courts have adopted the Restatement test.

The Restatement provides that the following contacts should be taken into account to determine the applicable law:

1. the place of contracting;
2. the place of negotiation of the contract;
3. the place of performance;
4. the location of the subject matter of the contract; and
5. the domicile, residence, nationality, place of incorporation and place of business of the parties.

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Ohio Estate Tax Deduction

When charitable pledges are found to be enforceable debts of an estate, taxpayers get the benefit of an Ohio estate tax deduction. In general, an Ohio estate tax deduction is allowed for claims against an estate only when the claim is founded on a promise or agreement that was contracted for adequate and full consideration. However, Ohio law has an exception that allows a deduction for a claim based on a promise or agreement to make a gift to a charitable organization, to the extent that a deduction would have been allowed if the claim had been a bequest.

Conclusion

Individuals should take care when making charitable pledges to ensure that the result will be what they intend. When providing advice, planners should determine whether their client expects any outstanding balance due at their death to be paid and whether the payment should be an enforceable debt or a bequest. If the individual anticipates a pledge that is an enforceable debt, the planner should also make sure that sufficient assets are available to satisfy the obligation under the individual's estate plan.

Reprinted from the Probate Law Journal of Ohio, Sept./Oct. 2009, with permission of Thomson Reuters. For more information about this publication please visit ww.west.thomson.com.



You and the Legal System: Foreclosure

Friday, February 19, 2010

12 noon at the Hamilton County Law Library

The Hamilton County Law Library and the Cincinnati Bar Association's Lawyer Referral Service are pleased to present a one-hour program on foreclosure. This program is free to the public and is designed for the non-lawyer citizen who is interested in understanding foreclosure, or who has questions regarding the same. The speaker, attorney Thomas D. Richards, will address default and options for the defaulting party.

Please note that this is not a CLE event. However, attorneys may want to pass along the program announcement to clients, staff, and community organizations. For more information, please call 513.946.5300.

To Our "Individual" Attorneys

Attorneys with firms that are not firm subscribers to the Law Library are most welcome to use the library's resources and services. If you are an individual attorney user of the Law Library, you know how helpful it is to have access to all of the print and online materials here at the library as well as the quality research guidance that is just a phone call or email away. We are quick to email or fax needed cases or articles, for example.

We would love to have colleagues at your firm as subscribers to the Law Library, too. Not only would they also have access to the library's materials and services, but you would also benefit. A firm subscription entitles all of the firm's attorneys and staff to use the Law Library, including the remotely available databases like CCH newsletters, Fastcase, HeinOnline law journals, Loislaw treatises for many practice areas, and more. Remote access does require 100% participation, though. Fortunately for firms, the subscription rate is discounted based on the number of attorneys with the firm.

Authentic Online Legal Information

Written by Mary Jenkins, Law Librarian & Director

Two years ago, the American Association of Law Libraries (AALL) published a seminal state-by-state report on the state of authenticated online legal resources. The organization asks, “Are government-hosted legal resources on the Web *official* and capable of being considered *authentic*?” The conclusion reached by the Law Librarian of the Supreme Court of Ohio, who researched the issue? “Ohio online legal resources are not *official*. However, in general, they appear to invite users to regard them as such. *The state does not specifically certify or authenticate its Web resources, other than by presenting them on “official” government Websites...* Ohio is not addressing the authentication of online legal resources... Ohio judicial decisions are the only online legal resources known to utilize authentication procedures.” (Ohio’s was the first state Supreme Court to digitally sign online opinions.) See the full report at http://www.aallnet.org/aallwash/authen_rprt/AuthenFinalReport.pdf

As more courts and state agencies across the United States move to digital-only publication of legal resources, it is increasingly important that we know what is official and authenticated. Since the publication of that report, there has been quite a lot of attention to e-life cycle management (authentication, version control, permanent public access and preservation) at the national and state level. The U.S. Government Printing Office now uses FDsys to authenticate congressional materials and, since fall 2009, the Federal Register is digitally signed. In Ohio, a Supreme Court working group produced a 2008 report entitled *Authentication Standards for the Use of Electronic Signatures in Electronic Documents* to “establish minimum authentication requirements for the use of electronic signatures in electronic records by the courts of Ohio”. <http://www.sconet.state.oh.us/Boards/ACTC/SGR/ESignatures.pdf>

A national organization of state CIOs and IT directors, NASCIO recently issued a report entitled *A Call to Action for State Government: Guidance for Opening the Doors to State Data* (see <http://www.nascio.org/publications/documents/NASCIO-DataTransparency.pdf>) to educate and urge states to act on issues related to access to data. While principally calling for transparency and open government, the organization acknowledges the need to protect the integrity of government and court information resources. Still, NASCIO is calling for state data portals like the federal Data.gov, which hosts XML (raw) data that is not authenticated. If that occurs, it is particularly important that users see disclaimers that explain that such information is neither official nor authentic.

It will take advocacy and educational efforts of many in the legal and library community to ensure that open government efforts result in data that are secure, official, and authenticated. There is great risk of misuse and misinformation if our state governmental agencies and courts’ digitally released information (reports, rulings, opinions, and so on) are not very deliberately processed in ways that guarantees their authenticity. The AALL Government Relations Office is forming working groups in every state to stop the threat of elimination of state official print legal resources in favor of online-only and increase understanding among state officials about authentication.

What can the legal community do in response to this issue? While many of us are eager for all the online content we can get, we should continue to advocate for quality, accessible, official materials. We should be wary of the potential for commercial access only to official government and court documents.

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Ohio's Uniform Partnership Act

Written by Chuck Kallendorf

Last year, Ohio joined 32 other states, the District of Columbia, Puerto Rico, and the Virgin Islands, in adopting the 1997 revisions to the "Uniform Partnership Act." On January 1, 2010, the new partnership law became fully active, repealing the old law and Chapters 1775, 1777, and 1779 of the Revised Code.

Ohio originally adopted a uniform partnership act in 1949, creating Chapter 8105 of the Ohio General Code. That became Ohio Revised Code Chapter 1775 in 1953, being comparable to statutes in California, Florida, Illinois, Indiana, Kentucky, Missouri, New York, and Pennsylvania. The *National Conference of Commissioners on Uniform State Laws* first considered uniform partnership laws as early as 1902, but nothing had materialized until 1914. The Act was adopted by every state in the nation except Louisiana.

In 1986, the American Bar Association began recommending extensive revisions to the Act. The *Revised Uniform Partnership Act* (RUPA) was unanimously adopted by the States in 1992, with the ABA giving its blessing in August 1994. In 1995, the Conference considered the addition of provisions for "limited liability partnerships," which were added to RUPA in 1997. It is this version of RUPA which Ohio adopted and became effective in August 2008. [Note: Both *Page's* and *Baldwin's* print versions of the Ohio Revised Code, and *LAWriter* and *WestLaw* online show all statutes with those repealed marked as such. We've highlighted that in our paper copies. *LexisNexis* no longer shows those sections repealed.]

One of the most significant changes this Act made was to define a partnership as an entity, not as an *aggregate* of separate persons. The Columbus-based firm of *Bricker & Eckler* observed in a July 2008 article that "As an entity, a partnership: (1) is treated as

a distinct body which is placed between the partners and the partnership assets; and (2) may sue and be sued in the partnership name. As a result, no one partner has an interest in specific property of the partnership." It seeks to clarify the law regarding partnership property ownership and ownership records, and changes the rules regarding the dissociation of partners, and the continuation and dissolution of Ohio partnerships. And an important feature the Secretary of State points out is the mandatory requirement for *limited liability partnerships* to file statements of qualifications with that office under §1776.81 of the new code. House Bill 332 has created seven new filing statement requirements for partnerships and other related fees. To read more about these changes, follow this link: <http://cincinnatilaw.blogspot.com/2010/01/new-ohio-laws.html>

Subscription Renewal

Don't forget to renew your subscription.

Privileges will be revoked on March 1 for subscribers who have not paid by that date. Interested in a quote for an annual subscription? Contact Mary Ann Sweeney at 513.946.5300 or masweeney@cms.hamilton-co.org.

Renewing your subscription will ensure your continued access to our remote resources like CCH newsletters, Fast-case.com and HeinOnline law journals.

Is your firm looking for ways to save on legal research fees? Firm subscriptions provide all lawyers and professional staff with access to our resources for a discounted fee. For more information about becoming a subscriber, visit our website <http://www.hamilton-co.org/cinlawlib/>

(Authenticate, Continued from page 5)

We should be aware of the implications of [data policies like Data.gov's](#) which clearly says that the government cannot vouch for the quality and timeliness of data or analyses thereof once they are downloaded. We should look for and insist on secure access and claims of authenticity. If legal information resources are not official, we should expect to see disclaimers to that effect. We should insist on reasonable access to print versions of materials until we can count on the authenticity of those materials in digital format. Just as we need to authenticate and secure important documents in our personal and work lives, so, too, must we advocate for protections and assurances for government-produced legal information resources.

Free CLE with Westlaw

Thursday, February 18

12:30 - 1:30 - Westlaw overview

(1 Ohio CLE Credit)

Our Westlaw representative, Denice Fogle, will introduce us to the finer points of searching the Westlaw databases available to law library subscribers. Afterwards, join Denice in the computer lab. She will be available to help you with personal research questions about Westlaw from 1:30-3:15 P.M. Please R.S.V.P by email: gherald@cms.hamilton-co.org or call: 513.946.5300. We look forward to seeing you then!

Free CCH IntelliConnect Training

Tuesday, March 2

1:00

Dan Totillo will introduce us to IntelliConnect, CCH's new interface. Learn about the content available through this service and effective search strategies. Register by email: gherald@cms.hamilton-co.org or call: 513.946.5300. Join us, won't you?

Suggestions for the Collection

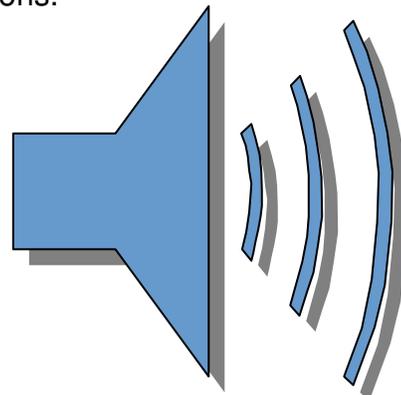
Do you wish the Law Library had more content in your area of practice? Is there a specific item you'd like to recommend? Please contact Law Librarian & Director Mary Jenkins at mjenkins@cms.hamilton-co.org with your recommendations. The Law Library's new acquisitions are posted to the library catalog regularly.

Go to <http://www.hamilton-co.org/cinlawlib/catalog/> and click on *Lists* and then *New Titles* at the top of the screen. Would you like us to hold a book for you until you can come in for it? Call 513.946.5300.

If We Talked, Would You Listen?

Would you find it useful to have podcasts or webcasts on current legal topics or new developments available to you free of charge from your law library? We could arrange for ABA CLE podcasts for our users or offer our own sessions, whether for credit or strictly informational purposes.

It would be wise to know first, though, if our patrons are interested in this service. In addition to audio CLEs available from vendors and associations, we could offer conversations with experts in various practice areas, discussion of new court rules or programs, interviews with leaders in the Hamilton County legal community, tips on legal research, and more. Contact Mary Jenkins at mjenkins@cms.hamilton-co.org or 513.946.5300 if you have suggestions or questions.



Presidents' Day

The law library will be closed Monday, February 15, 2010 in observance of Presidents' Day.



February 2010 Law Library Newsletter

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