



Ohio Legacy Trusts

By Grant Stephenson, Porter Wright. Reprinted with permission.

Ohio is now one of a number of states with a so-called “asset protection” statute. Bankers with trust authority might view this development favorably because it may be another possible service line, and indeed Ohio trust companies and Ohio trust lawyers were the main proponents of the statute. Other bankers however, may encounter the statute as a roadblock in their collection efforts, to their dismay. The new statute was effective March 27, 2013.

Essentially, the statute creates another way to attempt to shield assets from creditor claims. Traditional spendthrift trusts provide such a shield, as does the incorporation of a business or the formation of a limited liability company. There are continuing questions about the effectiveness of asset protection trust statutes like the Ohio Legacy Trust Act. More on this later.

Here is a summary of how the statute works. A person referred

to as the “transferor” transfers assets in what the statute calls “qualified dispositions” to an irrevocable trust and, indeed the point of the statute, is that the transferor can still benefit from those assets through actions of a “qualified trustee,” which must be an Ohio trust company. A benefit might be, for example, a transfer annually of a portion of the trust. In short, the statute spells out what rights the transferor may retain in the trust and what authority a trustee can have under the trust instrument to honor those rights.

The transferor must create a “qualified affidavit” in connection with the transfer of assets and must say in that affidavit that the transfer will not render the transferor insolvent, will not defraud his or her creditors, or is not being done prior to a filing for bankruptcy.

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

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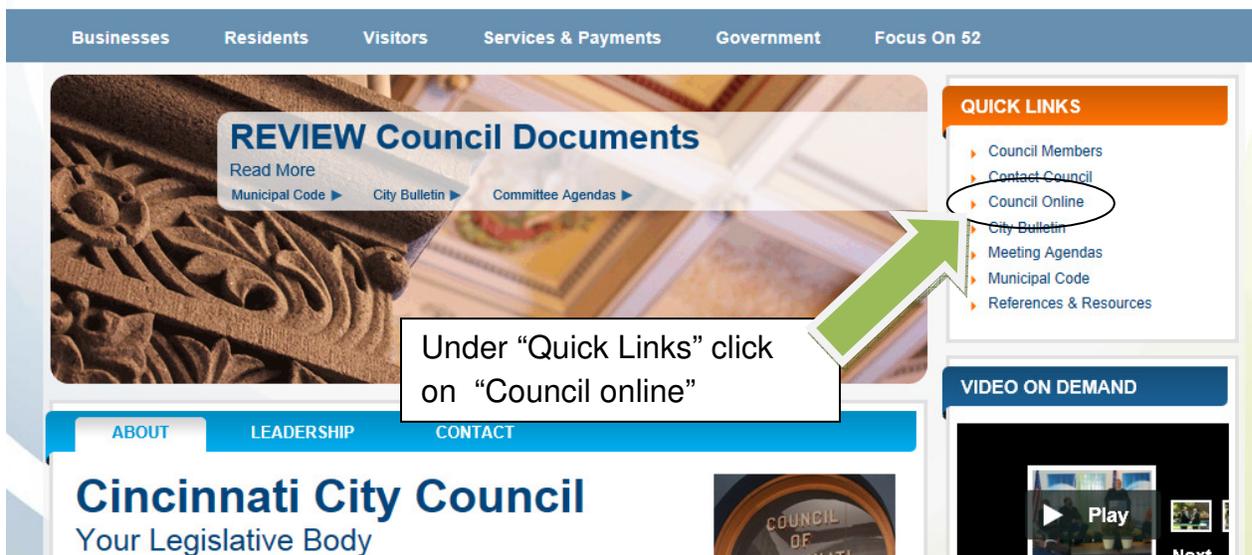
Check out how to get the City of Cincinnati's Ordinances and Resolutions! By Julie Koehne, Systems Librarian

The ordinances and resolutions are available online from 1993 to current.

[Prior to '93, they are still available by calling the Law Library @ (513) 946-5300 OR
City Council @ (513) 352- 3246]



From the City's "home page" go to "Council's home page" by clicking on the Council Tab, then clicking on the "Council Homepage" button. Or go straight to <http://cincinnati-oh.gov/council/>



Under "Quick Links" click on "Council online"

COUNCIL ONLINE

About Council Online

Council Items have been recorded in this database since January 1993. The storage of associated documents, however, did not begin until January 2001. Documents associated with council items prior to January 2001 will not be stored unless the items are brought before council again.

Documents stored are for information purposes only. Official copies located in Room 308 of City Hall, phone 513-352-3246

COUNCIL ITEMS F/I MEMOS

Select "Council items"

CLERK OF COUNCIL

- Council Events
- Council Members
- Meeting Agendas & Minutes
- Council Meeting Videos
- References & Resources
- Lobbyist Information
- News
- Contact Us

Search Cincinnati City Council Items

Item Search Document Search Council Home Page

Search For: *Making a selection to any piece of information narrows your search to those specific items. Entering nothing returns all council items.*

Item Number:

Item numbers are unique. If you know the number no other search criteria is needed.

Calendar Date: On or After (YYYYMMDD)

Item Type:

Sponsors:

Description: Contains All

Ordinance/Resolution:

You must enter 4 numbers. The asterisk "" can be used if you are not sure of the number.*

Mayor Vetoes: YES

Field Connector: AND

Order By: Document # Descending

Options: Results Per Page: 10

Find Council Items Reset

On the "Council Items" page enter the ordinance number (note: enter in sets of four. i.e., ord. 416-2003 would be entered as 0416-2003) and click "Find Council Item"

Result Set Cincinnati City Council Items

Item Search Document Search Council Home Page

Records 1 to 1 of 1
Previous 10 Next 10

Item # SORT	Council Date SORT	Description	Get Documents
1 200307730	12/10/2003	ORDINANCE, (EMERGENCY) authorizing the City Manager to enter into agreements for the renting and licensing of market space in Findlay Market House notwithstanding Sections 845-7, 845-13, 845-15, 845-17, 845-33, 845-35, 845-37, 845-39, 845-43, 845-45, 845-61 and 845-63 of the Cincinnati Municipal Code.	Get Documents

Records 1 to 1 of 1
Previous 10 Next 10

On result screens click "Get Documents" (at right), and then on "ordinance"

Result Set Cincinnati City Council Documents

Document Search Council Home Page

Records 1 to 1 of 1
Previous 10 Next 10

Document #	Description
1 200307730	ORDINANCE

Records 1 to 1 of 1

RESOLUTION NO. R/2 - 1999

EXPRESSING the support of the Council of the City of Cincinnati for the designation of the Cincinnati-Chicago and Cincinnati-Cleveland rail routes as federal high speed corridors, as recommended by the 1998 Executive Report of the Midwest Regional Rail Initiative.

WHEREAS, the Midwest Regional Rail Initiative is a cooperative and collaborative effort among nine Midwestern states, including Ohio, which evaluated the economic potential of an improved rail transportation option for the Midwest region; and

(Continued from page 1)

The statute establishes the ability of creditors of the transferor to access the assets in the trust under certain circumstances and it defines who qualifies as an exception creditor, such as a child support creditor.

An Ohio legacy trust must contain a "spendthrift provision" providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, that are sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest. Any spendthrift provision in a legacy trust must be enforceable under section 541(c)(2) of the Bankruptcy Code regardless of whether or not the relevant legacy trust instrument makes any reference to that enforceability.

The Act prohibits a creditor from bringing any legal action: (1) against any person who made or received a qualified disposition, (2) against or involving any property that is the subject of a qualified disposition or is otherwise held by or for any trustee as part of a legacy trust, or (3) against any trustee of a legacy trust. For this purpose, a legal action would be an action to enforce a judgment entered by a court or other body having adjudicative authority, a court proceeding at law or in equity, or a court proceeding for an attachment or other final or provisional remedy.

Within certain time limitations, however, a creditor may bring a court proceeding to avoid any qualified disposition on the ground that a transferor made the qualified disposition with the specific intent to defraud the specific creditor bringing the action. If the creditor is a creditor of the transferor before

the relevant qualified disposition, this action must be brought within the later of the following periods: (a) 18 months after the qualified disposition, or (b) six months after the qualified disposition is, or reasonably could have been, discovered by the creditor if the creditor files a suit against the transferor (other than an action to avoid the qualified disposition), or makes a written demand for payment on the transferor that in either case asserts a claim based on an act or omission of the transferor that occurred before the qualified disposition, and that suit is filed, or the written demand is delivered to the transferor, within three years after the qualified disposition. If the creditor becomes a creditor after the qualified disposition, the action to avoid the qualified disposition must be brought within 18 months of the qualified disposition. The act also provides that in any action to avoid the qualified disposition, the burden is upon the creditor to prove the matter by clear and convincing evidence.

There are continuing criticisms of domestic asset protection trust statutes like the Ohio statute that have developed in the states that have had such statutes for a period of time like Alaska, Delaware and Hawaii. Generally speaking, under common law, the assets in self-settled trusts (a self-settled trust is one in which the settlor is a beneficiary of the trust) are available to creditors of the settlor to the same extent the assets would be in the hands of the settlor. Asset protection statutes, which thwart that result, have been attacked frequently.

One argument is that under the Full Faith and Credit Clause of the U.S. Constitution a state court must recognize and enforce the judgments granted by another state's court.

The argument is that an Ohio court would not be able to apply the protective provisions of the Ohio legacy trust act against a judgment rendered in another state that the transfer to the legacy trust was a fraud on creditors. For example, if a resident of Texas settled an Ohio legacy trust, a Texas court could nevertheless ignore Ohio law and grant a judgment against the trustee or the trust assets under Texas law. Thus it has been suggested that the Ohio legacy trust act can only protect assets of (i) an Ohio resident against (ii) an Ohio-resident creditor where (iii) both the trustee and the trust assets are situated in Ohio.

Another criticism is based on federal bankruptcy law. Section 548(e) of the Bankruptcy Act includes a ten-year clawback for assets transferred by a bankrupt settlor into a spendthrift trust. Recent cases suggest that federal law may prevail in this context, thereby extending the exposure of a transfer to ten years instead of the relatively short time periods envisioned by the Ohio statute. The requirement that the trustee be an Ohio trust company has also been criticized as another weakness of the act in that it may limit appeal of Ohio legacy trusts because many Ohio residents move to warmer climates later in life and may view an irrevocable Ohio trust with an Ohio trust company as an impediment to their ability to do so.

Asset protection arrangements are complex and knowledgeable counsel will be helpful in assessing them.

This article appeared originally on the Banking & Finance Law Report (www.bankingandfinancelawreport.com), a blog published by Porter Wright that is devoted to highlighting news and trends across the banking and financial industry .

Free CLE

**Free to subscribers;
\$50 for non-subscribers**

To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

Lexis CLE: Statutes & Secondary Sources

Presenter: Mallory Coakley

Thursday, November 14, 2013

Noon-1pm

Approved for 1.0 hour of general credit in Ohio

Divorce Law CLE: Restraining Orders, Contempt Actions and Frivolous Conduct

Presenter: Craig Newburger

December 11, 2013

Noon-1pm

Approved for 1.0 hour of general credit in Ohio and Kentucky.

2014 Subscriber Renewals

We are starting to take subscriber payments for 2014. If you have questions, please contact Vanessa or Mary at 513.946.5300. Here is our top three Q&A list:

Q. May I pay early?

A. Of course! Your subscription will run through December 2014.

Q. Will there be an increase in the fee?

A. We are not increasing the annual subscriber fees for 2014.

Q. Will you invoice me?

A. Yes, we will mail invoices in early December. Law firm invoices go to our contact person, either the librarian or the office manager, typically.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Consumer Credit Law

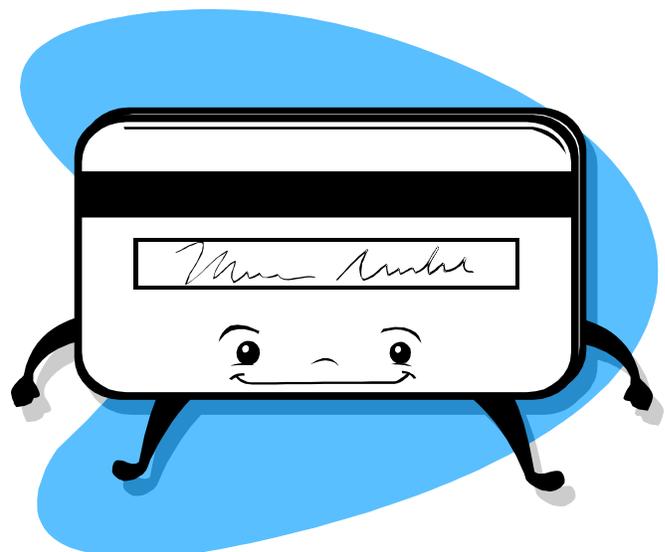
Attorney Steve Felton is our next speaker in the *You and the Legal System* series for the public. Mr. Sinclair will discuss Consumer Credit Law on Friday, November 8 at 12 noon in the Law Library.

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

You and the Legal System will be taking a hiatus in December and January. Check back with us next month for a list of 2014 topics.



Finding Ohio Forms

One of the most common questions we get at the Law Library is “Do you have a form for.....?” Check out this list of form resources available here the Law Library.

Form Books:

Am Jur Forms
 Anderson’s Ohio Civil Practice
 Baldwin’s Ohio Civil Practice
 Couse’s Ohio Forms
 Katz & Giannelli Criminal Law
 Merrick-Rippner Probate Law
 Ohio Annotated Business Entities
 Ohio Domestic Relations Practice Manual
 Ohio DUI Law
 Ohio Estate Planning: Wills and Trusts Library
 Ohio Forms of Pleading and Practice
 Ohio Forms and Transactions
 Ohio Landlord Tenant Law
 Ohio Limited Liability Companies: Forms and Practice Manual
 Ohio Probate Practice and Procedure
 Ohio Real Property Law and Practice
 Ohio Transaction Guide
 West Legal Forms

Online Resources:

Onsite Access

Most of the form books mentioned above are also available online through Lexis and West. Another option for locating forms is West’s Formfinder. Formfinder allows you to search for forms by key words or topics. You can limit forms by litigation/transactional, civil /criminal and by jurisdiction.

Remote Access*

Aspen/LoisLaw

Forms and checklists are available in the following treatise libraries:

Bankruptcy Law
 Business Practice Law
 Construction Law
 Elder Law
 Employment Discrimination Law
 Employment Law

Estate Planning
 Evidence
 Family Law
 General Litigation
 Internet and E-Commerce Law
 Personal Injury
 Product Liability
 Real Estate

EBSCO

The EBSCO library offers forms for topics such as:

Accident Claims
 Bankruptcy
 Real Estate
 Consulting & Contracting
 Divorce
 Green Cards
 Human Resources
 Living Trusts
 Patents
 Personal Injury
 Wills

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Hamilton County Forms:

Common Pleas:

http://www.hamilton-co.org/common_pleas/common_%20pleas_forms.htm

Domestic Relations Forms:

<http://www.hamilton-co.org/domestic/FormsProcedures/Forms.html>

Juvenile Forms:

http://www.hamilton-co.org/juvenilecourt/FormsHome/forms_home.asp

Probate Forms:

<http://www.probatect.org/services/index.htm>

First District Court of Appeals:

<http://www.hamilton-co.org/appealscourt/forms.asp>

Upcoming Events:

November 8: You and the Legal System: Consumer Credit

November 14: Lexis CLE

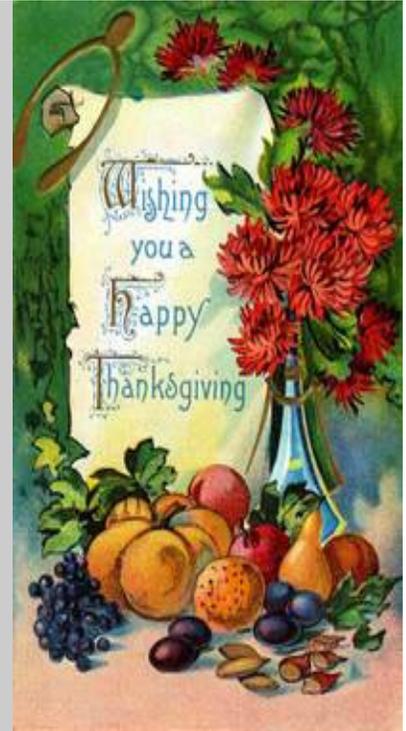
December 11: Divorce CLE

Law Library Holidays

The Law Library will be closed:

Monday, November 11 in observance of Veterans' Day.

Thursday, November 28 and Friday, November 29 in observance of Thanksgiving.



November 2013 Law Library Newsletter

- Ohio Legacy Trust Act
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ADDRESS CORRECTION REQUESTED

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