



OHIO STATE BAR
ASSOCIATION

Connect. Advance. Succeed.

Council of Delegates Meeting

**April 27, 2016
1:00 PM
Duke Energy Center
Cincinnati**

Council of Delegates Meeting

**Wednesday, April 27, 2016
1:00 p.m.**

President John D. Holschuh Jr., presiding

Table of Contents

Council of Delegates Meeting Agenda	3
Council of Delegates Roster	5
Council of Delegates Bylaws	23
Report of the Banking, Commercial and Bankruptcy Law Committee	25
Report of the Corporation Law Committee	49
Report of Criminal Justice Committee	63
Report of the Estate Planning, Trust and Probate Law Section	65
Report of Family Law Committee	97
Report of Family Law Committee	99
Committee Contacts and Presenters	103
Agenda and Proposals for the General Assembly	105

[PAGE INTENTIONALLY LEFT BLANK]

COUNCIL OF DELEGATES MEETING AGENDA
Wednesday, April 27, 2016
1:00 p.m.

President John D. Holschuh Jr., presiding

- I. Roll Call of the Council, Mary Amos Augsburg
- II. Presentation of Awards
 - A. Eugene R. Weir Award for Ethics and Professionalism
 - B. Nettie Cronise Lutes Award
 - C. OLAF Presidential Award for Pro Bono Service
 - D. Lawyer-Legislator of the Year Award
- III. Report of the President, John D. Holschuh, Jr.
- IV. Report of the Executive Director, Mary Amos Augsburg
- V. Committee and Section Reports
 - A. Report of the Banking, Commercial and Bankruptcy Law Committee

To amend sections 1303.01, 1303.05, 1303.14, 1303.18, 1303.35, 1303.38, 1303.401, 1303.56, 1303.57, 1303.59, 1303.67, 1303.69, 1304.01, 1304.17, 1304.18, 1304.22, 1304.27, 1304.32, and 1304.35, to enact new section 1303.70, and to repeal section 1303.70 of the Revised Code to make changes to the laws on commercial paper and bank deposits and collections in the Ohio Uniform Commercial Code, pertaining to the enforcement of lost instruments, elimination of double payment obligation, unsigned and telephonically authorized checks, electronic records and signatures, modernized suretyship rules, and others.
 - B. Report of the Corporation Law Committee
 - 1. Amending Sections 1705.43(A)(4) and 1705.43(C) and adding new Section 1705.43(A)(6) to provide a default "rule" that an LLC is not automatically dissolved upon the death of the Member in a single member LLC or the death of the last remaining Member of an LLC.
 - 2. Amending Sections 1705.43(D)-(H), 1705.43(B), 1705.44, 1705.46 and 1705.48 and adding new Sections 1705.431, 1705.432 and 1705.441 to provide for a "statute of repose" in Chapter 1705 similar to Sections 1701.88(B)(2) and 1701.883(C).

C. Report of the Criminal Justice Committee

To add a new Section 3715.055 to the ORC establishing a foundation for admission of records to create a rebuttable presumption as to the identity of a purchaser of pseudoephedrine products.

D. Report of the Estate Planning, Trust and Probate Law Section

1. To add a new Chapter to the Ohio Revised Code to adopt the “Revised Uniform Fiduciary Access to Digital Assets Act” as recommended by the National Conference of Commissioners on Uniform State Laws.
2. To add a new Section 1337.571 and to amend Section 1337.60 of the Ohio Revised Code to define the breadth of an agent’s power over digital assets when conferred by a principal in a power of attorney and to add provisions to the statutory general power of attorney with regard to digital assets and access to the content of electronic communications, both toward conformity with the Revised Uniform Fiduciary Access to Digital Assets Act.
3. To amend Sections 2107.52 and 5808.19 of the Ohio Revised Code to clarify that the exception to the antilapse statutes preventing the creation of a substitute gift in the descendants of a deceased class member only applies if the defined class is multi-generational.
4. To add a new Chapter 5817 and delete Sections 2107.081 to 2107.085 of the Ohio Revised Code to allow a living settlor to determine the validity of his or her trust, just as a living testator may determine the validity of his or her will under current law, to make some modifications to the provisions for testators, and to coordinate the two sets of provisions into a single chapter.

E. Report of the Family Law Committee

To amend Ohio Rule of Juvenile Procedure 13 to add a procedure for establishing temporary parenting time and child support orders in private allocation of parental rights and responsibilities cases. The new provision mirrors the Ohio Rule of Civil Procedure 75(N) procedure for divorcing parents.

F. Report of the Family Law Committee

To amend the Ohio Revised Code (“ORC”) to comply with the United States Supreme Court decision in Obergefell v. Hodges by changing words such as “husband and wife” and “male and female” to “married couple” and “persons” and eliminating gender bias.

VI. Adjournment

**Ohio State Bar Association
2015-2016 Council of Delegates
John D. Holschuh, Jr., President**

District 1

(Lost 1 member 2014 certification)

Counties: Butler, Clermont, Clinton, Hamilton and Warren

Board of Governors Representative:

William H. Kaufman, P. O. Box 280 Lebanon, OH 45036-0280	06/30/17
---	----------

Council of Delegates (21):

Kendra L. Daugherty, 4529 Aicholtz Road Cincinnati, OH 45245-1001	06/30/16
--	----------

Stephanie M. Day, 600 Vine Street, Ste. 2700 Cincinnati, OH 45202-2409	06/30/16
---	----------

Timothy A. Garry, Jr., 127 N. 2nd Street Hamilton, OH 45011-2724	06/30/16
---	----------

Roger S. Gates, P. O. Box 515 Hamilton, OH 45012-0515	06/30/16
--	----------

John C. Kaspar, 130 E. Mulberry Street Lebanon, OH 45036-2206	06/30/16
--	----------

Doloris F. Learmonth, 3498 Forest Oak Court Cincinnati, OH 45208-1842	06/30/16
--	----------

David H. Lefton, 3074 Madison Road Cincinnati, OH 45209-1723	06/30/16
---	----------

Charles H. Rittgers, 12 E. Warren Street Lebanon, OH 45036-1860	06/30/16
--	----------

Kenneth F. Seibel, 30 Garfield Place, Ste. 905 Cincinnati, OH 45202-1116	06/30/16
---	----------

James C. Shew, 16 N. Main Street Middletown, OH 45042-1905	06/30/16
---	----------

William B. Strubbe, 1 W. 4th Street, Ste. 2100 Cincinnati, OH 45202-3608	06/30/16
Karen Buckley, 17 Peterson Place Wilmington, OH 45177-2132	06/30/17
Terrence M. Donnellon, 9079 Montgomery Road Cincinnati, OH 45242-7711	06/30/17
Tawanda J. Edwards, 7 W. 7 th Street Cincinnati, OH 45202-2471	06/30/17
Richard I. Fleischer, 810 Sycamore Street, 2 nd Floor Cincinnati, OH 45202	06/30/17
Gregory S. French, 1244 Padlock Hills Avenue Cincinnati, OH 45229-1218	06/30/17
Michael L. Gay, 537 East Pete Rose Way, Ste. 400 Cincinnati, OH 45202-3502	06/30/17
Barbara J. Howard, 120 E. Fourth Street, Ste. 960 Cincinnati, OH 45202-4096	06/30/17
Stephen C. Lane, 7419 Kingsgate Way, Ste. A West Chester, OH 45069-6517	06/30/17
Charles E. Strain, 4030 Mt. Carmel-Tobasco Road #103 Cincinnati, OH 45255	06/30/17
John J. Williams, 2712 Observatory Avenue Cincinnati, OH 45208	06/30/17

District 2

Counties: Darke, Miami, Montgomery, Preble and Shelby

Board of Governors Representative:

Judge James F. Stevenson, P. O. Box 947 Sidney, OH 45365-0947	06/30/18
--	----------

Council of Delegates (9):

Magistrate Gary J. Carter, P. O. Box 947 Sidney, OH 45365-0947	06/30/16
Dalma C. Grandjean, 1 S. Main Street, Ste. 1590 Dayton, OH 45402-2024	06/30/16
Magistrate Stephen R. Bruns, 123 W. Main Street Eaton, OH 45320	06/30/17
Michael P. Brush, 2233 Miamisburg-Centerville Road Dayton, OH 45459-3816	06/30/17
Thomas Guillozet, 9265 Brush Creek Drive Piqua, OH 45356-9589	06/30/17
Robert A. McCarthy, P. O. Box 8 Troy, OH 45373-0008	06/30/17
Michael W. Sandner, 75 Trevor Lane Springboro, OH 45066-8306	06/30/17
Andrew C. Storar, 40 N. Main Street, Ste. 2700 Dayton, OH 45423-2700	06/30/17
Danyelle S. Wright, 11067 Cold Spring Drive Dayton, OH 45458	06/30/17

District 3

**Counties: Defiance, Fulton, Hancock, Henry, Paulding, Putnam,
Van Wert, Williams and Wood**

Board of Governors Representative:

Alan J. Lehenbauer, P.O. Box 237 Swanton, OH 43558-0237	06/30/16
--	----------

Council of Delegates (3):

Scott T. Coon, 100 S. Main, 2 nd Floor Bowling Green, OH 43402-2945	06/30/16
---	----------

Michael A. Shaffer, 117 W. Maple Street
Bryan, OH 43506-1691 06/30/16

Steven J. Sondergaard, 116 Grand Avenue
Defiance, OH 43512-1646 06/30/17

District 4

Counties: Lucas, Ottawa and Sandusky

Board of Governors Representative:

Louise A. Jackson, 1 SeaGate, 24th Floor
Toledo, OH 43604-1576 06/30/17

Council of Delegates (8):

Paula S. Hicks-Hudson, 2633 Robinwood Avenue
Toledo, OH 43610-1354 06/30/16

Gary A. Kohli, 142 W. Water Street
Oak Harbor, OH 43449-1332 06/30/16

Linde H. Webb, 2630 Edgehill Road
Ottawa Hills, OH 43615 06/30/16

James D. Caruso, 1933 Spielbusch Avenue
Toledo, OH 43604-5360 06/30/17

Stuart F. Cubbon, P. O. Box 387
Toledo, OH 43697-0387 06/30/17

Judge Kathleen L. Giesler, 315 Madison Street
Port Clinton, OH 43452 06/30/17

John F. Hall, 1430 Oak Harbor Road
Fremont, OH 43420-2424 06/30/17

Sarah K. Skow, 4 SeaGate, Ste. 400
Toledo, OH 43604-2622 06/30/17

District 5

Counties: **Crawford, Delaware, Marion, Morrow, Seneca and Wyandot**

Board of Governors Representative:

Vacant 06/30/17

Council of Delegates (3):

Sean A. Martin, 102 E. Findlay Street
Carey, OH 43316-1248 06/30/16

Victor H. Perez, P. O. Box 101
Tiffin, OH 44883-0101 06/30/16

Grant B. Garverick, 126 S. Market Street
Galion, OH 44833 06/30/17

District 6

Counties: **Champaign, Clark, Fayette, Greene, Logan, Madison and Union**

Board of Governors Representative:

Randall M. Comer, P. O. Box 1488
Springfield, OH 45501-1488 06/30/16

Council of Delegates (3):

William C. Hicks, P. O. Box 1687
Springfield, OH 45501-1687 06/30/16

James F. Peifer, P. O. Box 1087
Springfield, OH 45501-1087 06/30/17

Douglas M. Smith, 112 N. Main Street
Bellefontaine, OH 43311-2089 06/30/17

District 7

Counties: Franklin

Board of Governors Representative:

Judge Stephen L. McIntosh, 345 S. High Street, Ct. Rm. 4B Columbus, OH 43215-4516	06/30/17
Kristin J. Long, 443 Garden Road Columbus, OH 43214	06/30/17
Eleni A. Drakatos, 1243 S. High Street Columbus, OH 43206-3445	06/30/18

Council of Delegates (31):

Belinda S. Barnes, 471 E. Broad Street, 19 th Floor Columbus, OH 43215-3872	06/30/16
Sally W. Bloomfield, 100 S. Third Street Columbus, OH 43215-4291	06/30/16
Alphonse P. Cincione, 556 E. Town Street, Ste. 100 Columbus, OH 43215	06/30/16
H. Ritchey Hollenbaugh, 366 E. Broad Street Columbus, OH 43215-3876	06/30/16
Amy B. Koorn, 373 S. High Street, 22 nd Floor Columbus, OH 43215-6311	06/30/16
Helen M. MacMurray, 6530 W. Campus Oval, Ste. 210, New Albany, OH 43054	06/30/16
LeeAnn M. Massucci, 250 Civic Center Drive, Ste. 630 Columbus, OH 43215	06/30/16
Alvin E. Mathews, 115 W. Main Street, 4 th Floor Columbus, OH 43215-5099	06/30/16
Sandra R. McIntosh, 65 E. State Street, Ste. 800 Columbus, OH 43215-4247	06/30/16
Keith W. Schneider, 1650 Lake Shore Drive, Ste. 150 Columbus, OH 43204-4942	06/30/16

Heather G. Sowald, 400 S. Fifth Street, Ste. 101 Columbus, OH 43215-5430	06/30/16
Magistrate Elizabeth J. Watters, 345 S. High Street, Room 5807, Columbus, OH 43215-4516	06/30/16
Bradley B. Wrightsel, 3300 Riverside Drive, Ste. 100 Columbus, OH 43221-1726	06/30/16
Jennifer A. Adair, 30 E. Broad Street, 16 th Floor Columbus, OH 43215	06/30/17
Stephanie D. Adams, 5582 Nash Trail Columbus, OH 43228-8919	06/30/17
Kathleen N. Battle, 650 Ackerman Road, Room 224 Columbus. OH 43202-4500	06/30/17
Thomas J. Bonasera, 191 W. Nationwide Boulevard, Ste. 300 Columbus, OH 43215-2569	06/30/17
Katherine S. Chappellear, 373 S. High Street, 14 th Floor Columbus, OH 43215-4591	06/30/17
Stephen E. Chappellear, 10 W. Broad Street, Ste. 2390 Columbus, OH 43215-3467	06/30/17
Donald B. Leach, Jr., 191 W. Nationwide Boulevard, Ste. 300 Columbus, OH 43215-2569	06/30/17
Scott R. Mote, 1650 Lake Shore Drive, Ste. 375 Columbus, OH 43204-4991	06/30/17
Jay G. Perez, 330 S. High Street Columbus, OH 43215	06/30/17
Stacy V. Pollock, 175 S. 3 rd Street, Ste. 1000 Columbus, OH 43215-5197	06/30/17
Rene L. Rimelspach, 100 E. Broad Street, Ste. 2100 Columbus, OH 43215-3659	06/30/17
Andrea M. Salimbene, 167 W. Winter Street Delaware, OH 43015-2451	06/30/17

Carl D. Smallwood, P. O. Box 1008 Columbus, OH 43216-1008	06/30/17
Beatrice K. Sowald, 125 Eastmoor Boulevard Columbus, OH 43209-2017	06/30/17
Chad M. Stonebrook, 1487 Westwood Avenue Columbus, OH 43212-2768	06/30/17
E. Jane Taylor, 10 W. Broad Street, Ste. 950 Columbus, OH 43215-3483	06/30/17
Levi J. Tkach, 604 E. Rich Street Columbus, OH 43215-5341	06/30/17
Thomas W. Weeks, 555 Buttles Avenue Columbus, OH 43215-1137	06/30/17

District 8

Counties: Adams, Brown, Gallia, Highland, Jackson, Lawrence, Pickaway, Pike, Ross, Scioto and Vinton

Board of Governors Representative:

Judge Howard H. Harcha, III, 602 7th Street Portsmouth, OH 45662-3948	06/30/18
--	----------

Council of Delegates (2):

Frederick C. Fisher, 311 Park Avenue Ironton, OH 45638-1525	06/30/16
George L. Davis, III, 602 Chillicothe Street, Ste. 802 Portsmouth, OH 45662	06/30/17

District 9

Counties: Coshocton, Fairfield, Knox, Licking, Muskingum and Perry

Board of Governors Representative:

J. Kristen Burkett, 73 N. 6 th Street Newark, OH 43055-4903	06/30/16
---	----------

Council of Delegates (3):

William M. Owens, 20960 County Road 151 West Lafayette, OH 43812	06/30/16
Linda L. Smith, P. O. Box 536 New Lexington, OH 43764-0536	06/30/17
Judge Dean L. Wilson, P. O. Box 207 New Lexington, OH 43702-0207	06/30/17

District 10

(Lost 1 member 2014 certification)

Counties: Ashland, Erie, Holmes, Lorain, Medina, Richland, Huron and Wayne

Board of Governors Representative:

Kevin W. Donovan, 5333 Meadow Lane Court Elyria, OH 44035-1469	06/30/17
---	----------

Council of Delegates (6):

Luke T. Brewer, 88 S. Monroe Street Millersburg, OH 44654-1436	06/30/16
Gowri V. Hampole, 401 Broad Street, Ste. 211 Elyria, OH 44035	06/30/16
Patricia A. Walker, 231 South Broadway Medina, OH 44256-2601	06/30/16
Christopher Lake Brown, 30 N. Diamond Street Mansfield, OH 44902	06/30/17
Andrew P. Lycans, P. O. Box 599 Wooster, OH 44691-0599	06/30/17
Richard R. Mellott, Jr., 5750 Cooper Foster Park Road, W., Ste. 102, Lorain, OH 44053-4132	06/30/17

District 11

Counties: Portage and Summit

Board of Governors Representative:

Judge Linda Tucci Teodosio, 650 Dan Street
Akron, OH 44310-1256 06/30/18

Council of Delegates (9):

Frank J. Cimino, 250 S. Chestnut Street, Ste. 18
Ravenna, OH 44266-3199 03/30/16

William D. Dowling, 3800 Embassy Parkway, Ste. 300
Akron, OH 44333-8332 06/30/16

Montrella S. Jackson, 217 S. High Street, Ste. 713
Akron, OH 44308-1689 06/30/16

Maura E. Scanlon, 50 S. Main Street, Ste. 504
Akron, OH 44308-1830 06/30/16

Cheri B. Cunningham, 784 Hampton Ridge Drive
Akron, OH 44313 06/30/17

Stephen A. Fallis, 1321 Village Drive
Akron, OH 44313 06/30/17

Melissa A. Graham-Hurd, 333 S. Main Street, Ste. 301
Akron, OH 44308-1225 06/30/17

Jessica A. Lopez, 222 S. Main Street, Ste. 400
Akron, OH 44308-1500 06/30/17

Bruce H. Wilson, 120 E. Mill Street, Ste. 416
Akron, OH 44308 06/30/17

District 12
(Lost 1 member 2014 certification)

Counties: Cuyahoga

Board of Governors Representative:

Ronald V. Johnson, 127 Public Square, OH-01-27-0200 Cleveland, OH 44114-1306	06/30/16
---	----------

Robin G. Weaver, 127 Public Square, Ste. 4900 Cleveland, OH 44114-1284	06/30/16
---	----------

Council of Delegates (30):

David Arnold, 1301 E. Ninth Street, Ste. 1900 Cleveland, OH 44114-1862	06/30/16
---	----------

Britney A. Bennett, 1980 Stanwood Road Cleveland, OH 44112	06/30/16
---	----------

Matthew D. Besser, 5885 Landerbrook Drive, Ste. 302 Cleveland, OH 44124	06/30/16
--	----------

Darrell A. Clay, 1301 E. 9 th Street, Ste. 3500 Cleveland, OH 44114-1821	06/30/16
--	----------

Joel D. Eagle, 127 Public Square, Ste. 3900 Cleveland, OH 44114-1291	06/30/16
---	----------

Christa A.G. Heckman, 950 Main Avenue, 4 th Floor Cleveland, OH 44113-7201	06/30/16
--	----------

Jacob A. H. Kronenberg, 635 W. Lakeside Avenue, Ste. 605 Cleveland, OH 44113-1093	06/30/16
--	----------

Kelly Summers Lawrence, 200 Public Square, Ste. 3000 Cleveland, OH 44114-2316	06/30/16
--	----------

William J. Price, 6105 Parkland Boulevard Mayfield Heights, OH 44124-4188	06/30/16
--	----------

Adam J. Russ, 200 Public Square, Ste. 3000 Cleveland, OH 44114-2316	06/30/16
--	----------

Michael S. Tucker, 1660 W. 2 nd Street, Ste. 1100 Cleveland, OH 44113-1448	06/30/16
Donald E. Worthing, 11500 Somerset Drive, Apt. 222 North Royalton, OH 44133-2671	06/30/16
Barbara Friedman Yaksic, 25550 Chagrin Boulevard, Ste. 406 Beachwood, OH 44122-4640	06/30/16
Keith A. Ashmus, 200 Public Square, Ste. 3000 Cleveland, OH 44114-2316	06/30/17
Howard R. Besser, 4917 Highland Place Court Cleveland, OH 44143-2786	06/30/17
Eileen M. Bitterman, 323 W. Lakeside Avenue, Ste. 200 Cleveland, OH 44113-1099	06/30/17
Jeffrey A. Brauer, 200 Public Square, Ste. 2800 Cleveland, OH 44114-2303	06/30/17
Michael C. Brink, 950 Main Avenue, Ste. 1100 Cleveland, OH 44113-7213	06/30/17
Anne Owings Ford, 12211 Chestnut Circle Brecksville, OH 44141-3608	06/30/17
Michael J. Frantz, Jr., 200 Public Square, Ste. 3000 Cleveland, OH 44114-2316	06/30/17
Stacy C. Hinnners, 101 W. Prospect Avenue Cleveland, OH 44115-1075	06/30/17
Donald N. Jaffe, 1301 E. 9th Street, Ste. 1900 Cleveland, OH 44114-1862	06/30/17
Alexandra B. Jeanblanc, 5247 Wilson Mills Road, Ste. 582 Cleveland, OH 44143-3016	06/30/17
Fredric E. Kramer, 123 West Prospect Avenue, Ste. 250 Cleveland, OH 44115-1027	06/30/17
David A. Kutik, 901 Lakeside Avenue Cleveland, OH 44114-1190	06/30/17

Theodore M. Mann, Jr., 925 Euclid Avenue, Ste. 644 Cleveland, OH 44115-1493	06/30/17
Marlon A. Primes, 801 W. Superior Avenue Ste. 400, Cleveland, OH 44113-1852	06/30/17
William L.S. Ross, 1405 E. 6th Street Cleveland, OH 44114-1601	06/30/17
Daniel K. Ryan, 55 Public Square, Ste. 2121 Cleveland, OH 44113-1967	06/30/17
Nancy C. Schuster, 2913 Clinton Avenue Cleveland, OH 44113-2940	06/30/17

District 13

Counties: **Columbiana and Mahoning**

Board of Governors Representative:

Stephen T. Bolton, 201 E. Commerce Street, Ste. 200 Youngstown, OH 44503-1657	06/30/17
--	----------

Council of Delegates (3):

Don W. Humphrey, 28849 State Route 172 Kensington, OH 44427	06/30/16
--	----------

J. Michael Thompson, 6 Federal Plaza Central, Ste., 1300 Youngstown, OH 44503-1508	06/30/16
---	----------

Ronald E. Slipski, P. O. Box 849 Youngstown, OH 44501-0849	06/30/17
---	----------

District 14

Counties: **Carroll, Stark and Tuscarawas**

Board of Governors Representative:

Paul B. Hervey, P. O. Box 1014 New Philadelphia, OH 44663-1014	06/30/18
---	----------

Council of Delegates (5)

Erick L. Bauer, 204 W. High Street New Philadelphia, OH 44663	06/30/16
Daniel R. Griffith, 211 Woodrow Street, NW Canton, OH 44720-1935	06/30/16
Thomas P. Moushey, 1844 W. State Street, Ste. A Alliance, OH 44601-5713	06/30/17
D. Stephen Stone, Jr., 981 W. State Street Alliance, OH 44601-4676	06/30/17
Jennifer L. Thomas, P. O. Box 235 Carrollton, OH 44615-0235	06/30/17

District 15

Counties: Belmont, Guernsey, Harrison, Jefferson and Monroe

Board of Governors Representative:

Costa D. Mastros, P.O. Box 608 Steubenville, OH 43952	06/30/18
--	----------

Council of Delegate (1):

Charles H. Bean, P. O. Box 96 St. Clairsville, OH 43950-0096	06/30/17
---	----------

District 16

Counties: Allen, Auglaize, Hardin and Mercer

Board of Governors Representative:

Judge Glenn H. Derryberry, P. O. Box 419 Lima, OH 45802-0419	06/30/18
---	----------

Council of Delegates (2):

Judge Jeffrey Reed, P. O. Box 1243 Lima, OH 45802-1243	06/30/16
---	----------

Patrick J. Potts, 218 W. Columbus Street
Kenton, OH 43326

06/30/17

District 17

Counties: Athens, Hocking, Meigs, Morgan, Noble and Washington

Board of Governors Representative:

Thomas H. Gerken, 14640 Bradford Drive
Logan, OH 43138-8367

06/30/16

Council of Delegates (1):

Michael L. Barr, P. O. Box 686
Pomeroy, OH 45769-0686

06/30/17

District 18

Counties: Ashtabula, Geauga, Lake and Trumbull

Board of Governors Representative:

David J. Sternberg, 7547 Mentor Avenue, Ste. 301
Mentor, OH 44060-5466

06/30/16

Council of Delegates (4):

Thomas G. Carey, Jr., 108 Main Avenue, SW., Ste. 500
Warren, OH 44481-1010

06/30/16

Todd C. Hicks, 100 7th Avenue, Ste. 150
Chardon, OH 44024-1079

06/30/16

Stuart W. Cordell, P. O. Box 2300
Ashtabula, OH 44005-2300

06/30/17

Lora Lynne Krider, P. O. Box 490
Painesville, OH 44077-0490

06/30/17

At-Large Delegates

Jeffrey T. Heintz, 388 S. Main Street, Ste. 500 Akron, OH 44311-4407	06/30/16
Carmen V. Roberto, 23 South Main Street, 3 rd Floor Akron, OH 44308-1822	06/30/16
John S. Stith, 250 E. 5 th Street, Ste. 2200 Cincinnati, OH 45202-5118	06/30/16
Joseph S. Gallagher, 41 N. Perry Street Dayton, OH 45402-1431	06/30/18
Carol Seubert Marx, 106 Starrit Street, Ste. 210 Lancaster, OH 43130-3993	06/30/18
Melissa A. Schiffel, 150 E. Gay Street, 16 th Floor Columbus, OH 43215-3130	06/30/18

Parliamentarian

Gus J. Lazares, 121 W. High Street Oxford, OH 45056	06/30/16
--	----------

At-Large Board of Governors Appointees

Robin G. Weaver, 127 Public Square, Ste. 4900 Cleveland, OH 44114-1284	06/30/16
Kristen J. Long, 373 S. High Street, 25 th Floor Columbus, OH 43215	06/30/17
Eleni A. Drakatos, 1243 S. High Street Columbus, OH 43206-3445	06/30/18

OSBA Elected Officers and Past Officers

John D. Holschuh, Jr., President, 600 Vine Street, Ste. 2700 Cincinnati, OH 45202-2409	06/30/16
Ronald S. Kopp, President-elect, 222 S. Main Street, Ste. 400 Akron, OH 44308-1500	06/30/17

Martin E. Mohler, Immediate Past President,
405 Madison Avenue, Ste. 1000, Toledo, OH 43604

06/30/16

[PAGE INTENTIONALLY LEFT BLANK]

OHIO STATE BAR ASSOCIATION

BYLAWS OF THE COUNCIL OF DELEGATES

Section I

In the absence or disability of both the president and president-elect of the Association, the meetings of this Council shall be presided over by a chairperson pro tempore, elected by a majority vote of the Council members present, which chairperson, when elected, shall serve in that capacity only during the sessions of the meeting at which he or she is elected. The secretary shall convene the first session of any meeting from or at which both the president and president-elect are absent or unable to preside, and preside during the election of such chairperson pro tempore.

Section II

No action shall be taken upon reports of committees or sections of the Association unless they are submitted in writing; and no such committee or section report, which has been published in the *Ohio State Bar Association Report* or other publication of the Association that is distributed to all regular members, as directed by the Board of Governors, prior to the date of the meeting of the Council, shall be read orally to the meeting unless, by motion adopted by two-thirds vote of the delegates present, such a reading be ordered.

Section III

No person shall, without the consent of two-thirds of the delegates present, be entitled to speak more than once or for more than five minutes on any issue before the Council. Reports presented by committees and sections shall be limited to ten minutes, provided, however, that the ten-minute restriction shall not apply to the discussion of a proposal subsequent to its initial presentation. A member of the council or person presenting a report or resolution shall be entitled to open and close the discussion on the matter under consideration.

Section IV

Voting on all matters shall be by voice vote unless the presiding officer is in doubt concerning the result, or a division of the house is requested by any member, in either of which events a standing vote shall be taken.

Section V

The president of the Association shall, with the advice and consent of the Board of Governors, appoint a parliamentarian to aid and assist him or her or the chairperson at all meetings of the Council of Delegates. Said parliamentarian, whose term of office shall be concurrent with that of the president, shall not be a member of the current Board of Governors or the Council of Delegates.

Section VI

The order of business of all meetings of the Council of Delegates shall be the following:

- i. Roll call.
- ii. Action of minutes of previous meetings.
- iii. Unfinished business from preceding day, if any.
- iv. Special order of business for the day, as previously prepared by the president, president-elect and secretary of the Association.
- v. New business.

Section VII

Roberts' Rules of Order shall govern the Council of Delegates in all its proceedings, except to the extent to which these bylaws are, or the constitution of the Association is, inconsistent therewith.

Section VIII

These bylaws may be amended by the majority vote of the delegates present at any meetings, provided the proposed amendment has been published in the *Ohio State Bar Association Report* or other publication of the Association that is distributed to all regular members as directed by the Board of Governors at least once, not less than one week prior to the date of the meeting at which action on said amendment is taken.

As amended by the Council of Delegates November 7, 2003

1 **REPORT OF THE BANKING, COMMERCIAL AND BANKRUPTCY LAW**
2 **COMMITTEE**

3
4 *To the Council of Delegates:*

5
6 The Banking, Commercial and Bankruptcy Law Committee requests your favorable consideration
7 of the following legislative proposal:
8

9 To amend sections 1303.01, 1303.05, 1303.14, 1303.18, 1303.35, 1303.38, 1303.401,
10 1303.56, 1303.57, 1303.59, 1303.67, 1303.69, 1304.01, 1304.17, 1304.18, 1304.22,
11 1304.27, 1304.32, and 1304.35, to enact new section 1303.70, and to repeal section 1303.70
12 of the Revised Code to make changes to the laws on commercial paper and bank deposits
13 and collections in the Ohio Uniform Commercial Code, pertaining to the enforcement of
14 lost instruments, elimination of double payment obligation, unsigned and telephonically
15 authorized checks, electronic records and signatures, modernized suretyship rules, and
16 others.
17

18 Respectfully submitted,
19
20

21 Tyson A, Crist, Columbus
22 Chairman, Banking, Commercial, and
23 Bankruptcy Law Committee
24
25

26 **Summary and Rationale of the Proposal**
27

28 These proposed changes were promulgated by the ULC in 2002 and have the support of the
29 American Bar Association and the American Law Institute. They have now been adopted in 11
30 states and the District of Columbia. Among the states adopting the changes are 3 of our
31 neighboring states: Indiana, Kentucky, and Michigan. The 2002 Amendments are currently
32 pending in Massachusetts.
33

34 The changes proposed by the Uniform Law Commission's 2002 revision of UCC Articles 3 & 4
35 cover six main areas. The discrete changes address current problems or help keep pace with
36 developments of legal rules in other areas.
37

38 The amendments provide for the following:
39

- 40 i. **Lost Instrument Enforcement.** Amendments establish that a purchaser of a
41 negotiable instrument may enforce the instrument even though the instrument
42 was lost while it was in the possession of a previous holder. This solves adverse
43 case law that hinders FDIC purchase and assumption transactions when the
44 actual note cannot be located.
45

- 46 ii. **No Double Payment Obligation.** Amendments clarify that a maker of a
47 negotiable promissory note that has been sold may continue to make payments
48 to the seller of the note, and obtain a discharge for those payments, until notified
49 to direct payments to the note's buyer. This Amendment protects innocent
50 makers of negotiable notes that are sold and also conforms Article 3 to common
51 practice and to the general law of contracts.
52
- 53 iii. **Unsigned, Telephonically Authorized Checks.** The amendments ultimately
54 shift the burden of payment to the bank where such checks are deposited rather
55 than the bank of the drawer when such a check is not authorized, on the theory
56 that the bank of the telemarketer soliciting such checks is in a better position to
57 police its customer's practices.
58
- 59 iv. **Effect of FTC Legend.** Amendments provide that a holder of a consumer
60 promissory note that is required by the Federal Trade Commission to contain a
61 legend that the note is subject to claims and defenses of the maker is subject to
62 the same claims and defenses even if the required legend is omitted. This
63 Amendment further implements the relevant Federal Trade Commission rule to
64 prevent inappropriate conduct by sellers or lenders.
65
- 66 v. **Electronic Records and Signatures.** Amendments provide that various
67 notices may be given electronically as well as in writing. These Amendments
68 further the goal of removing barriers to electronic commerce.
69
- 70 vi. **Modernized Suretyship Rules.** The amendments update the legal rules
71 relating to guarantors and other parties secondarily liable as signatories to
72 negotiable instruments in order to conform generally to the modern law of
73 suretyship and guaranty. This reduces the burdens of guarantors or
74 accommodation signers when there is payment of an instrument signed or
75 guaranteed.
76
- 77 vii. **Correct the typo in Ohio's enactment of UCC § 1304.35(f) that appears in**
78 **ORC § 1304.36[F].** This is a technical correction to Ohio's enactment of UCC
79 Article 4 that is not affected by the Uniform Law Commission's 2002
80 amendments. It goes back to 1994 when Article 4 was substantially amended
81 by 1994 S 147 pursuant to recommendations by the Uniform Law Commission.
82

83 **Text of the Proposal**

84 **Section 1.** That sections 1303.01, 1303.05, 1303.14, 1303.18, 1303.35, 1303.38, 1303.401,
85 1303.56, 1303.57, 1303.59, 1303.67, 1303.69, 1304.01, 1304.17, 1304.18, 1304.22, 1304.27,
86 1304.32, and 1304.35 be amended and new section 1303.70 of the Revised Code be enacted to
87 read as follows:
88

89 **Sec. 1303.01.** (A) As used in this chapter, unless the context otherwise requires:

- 90 a. "Acceptor" means a drawee who has accepted a draft.
91

92
93 (2) "Consumer account" means an account established by an individual primarily for
94 personal, family, or household purposes.
95

96 b. "Consumer transaction" means a transaction in which an individual incurs an obligation
97 primarily for personal, family, or household purposes.
98

99 c. "Drawee" means a person ordered in a draft to make payment.
100

101 d. (5) "Drawer" means a person who signs or is identified in a draft as a person ordering
102 payment.
103

104 e. (6) "Good faith" has the same meaning as in section 1301.201 of the Revised Code.
105

106 f. (7) "Issue" means the first delivery of an instrument by the maker or drawer to a holder
107 or nonholder for the purpose of giving rights of the instrument to any person.
108

109 g. (8) "Issuer" means a maker or drawer of an issued or unissued instrument.
110

111 h. (9) "Maker" means a person who signs or is identified in a note as a person undertaking
112 to pay.
113

114 i. (10) "Order" means a written instruction to pay money signed by the person giving the
115 instruction. The instruction may be addressed to any person, including the person
116 giving the instruction, or to one or more persons jointly or in the alternative but not in
117 succession. "Order" does not mean an authorization to pay unless the person authorized
118 to pay also is instructed to pay.
119

120 j. (12) "Party" means a party to an instrument.
121

122 (13) "Principal obligor," with respect to an instrument, means the accommodated party or
123 any other party to the instrument against whom a secondary obligor has recourse under this chapter.
124

125 k. (14) "Promise" means a written undertaking to pay money that is signed by the person
126 undertaking to pay. "Promise" does not include an acknowledgment of an obligation
127 by the obligor unless the obligor also undertakes to pay the obligation.
128

129 l. (15) "Prove," with respect to a fact, means to meet the burden of establishing the fact.
130

131 m. (16) "Remitter" means a person who purchases an instrument from its issuer if the
132 instrument is payable to an identified person other than the purchaser.
133

134 (17) "Remotely-created consumer item" means an item drawn on a consumer account,
135 which is not created by the payor bank and does not bear a handwritten signature purporting to be
136 the signature of the drawer.
137

(18) "Secondary obligor," with respect to an instrument, means any of the following:

(B) An indorser or an accommodation party;

(C) A drawer having the obligation described in division (D) of section 1303.54 of the Revised Code;

(D) Any other party to the instrument that has recourse against another party to the instrument pursuant to division (B) of section 1303.14 of the Revised Code.

(B) As used in this chapter:

(A) "Acceptance" has the same meaning as in section 1303.46 of the Revised Code.

(B) "Accommodation party" and "accommodated party" have the same meanings as in section 1303.59 of the Revised Code.

(C) "Account" has the same meaning as in section 1304.01 of the Revised Code.

(D) "Alteration" has the same meaning as in section 1303.50 of the Revised Code.

~~(4)~~(5) "Anomalous indorsement," "blank indorsement," and "special indorsement" have the same meanings as in section 1303.25 of the Revised Code.

~~(5)~~(6) "Certificate of deposit," "cashier's check," "check," "draft," "instrument," "negotiable instrument," "note," "teller's check," and "traveler's check" have the same meanings as in section 1303.03 of the Revised Code.

~~(6)~~(7) "Certified check" has the same meaning as in section 1303.46 of the Revised Code.

~~(7)~~(8) "Consideration" and "value" have the same meanings as in section 1303.33 of the Revised Code.

~~(8)~~(9) "Holder in due course" has the same meaning as in section 1303.32 of the Revised Code.

~~(9)~~(10) "Incomplete instrument" has the same meaning as in section 1303.11 of the Revised Code.

~~(10)~~(11) "Indorsement" and "indorser" have the same meanings as in section 1303.24 of the Revised Code.

~~(11)~~(12) "Negotiation" has the same meaning as in section 1303.21 of the Revised Code.

~~(12)~~(13) "Payable at a definite time" and "payable on demand" have the same meanings as in section 1303.07 of the Revised Code.

~~(13)-(14)~~ "Payable to bearer" and "payable to order" have the same meanings as in section 1303.10 of the Revised Code.

~~(14)-(15)~~ "Payment" has the same meaning as in section 1303.67 of the Revised Code.

~~(15)-(16)~~ "Person entitled to enforce" has the same meaning as in section 1303.31 of the Revised Code.

~~(16)-(17)~~ "Presentment" has the same meaning as in ~~in~~ section ~~1303.59-1303.61~~ of the Revised Code.

~~(17)-(18)~~ "Reacquisition" has the same meaning as in section 1303.27 of the Revised Code.

~~(18)-(19)~~ "Transfer of instrument" has the same meaning as in section 1303.22 of the Revised Code.

(C) As used in this chapter, ~~"account," "bank,"~~ "banking day," "clearing house," "collecting bank," "customer," "depository bank," "documentary draft," "intermediary bank," "item," "midnight deadline," "payor bank," and "suspends payments" have the same meanings as in section 1304.01 of the Revised Code.

(D) In addition, Chapter 1301. of the Revised Code contains general definitions and general principles of construction and interpretation applicable throughout this chapter.

Sec. 1303.05. (A) Except as provided in this section, for the purposes of division (A) of section 1303.03 of the Revised Code, a promise or order is unconditional unless it states any of the following:

(1) An express condition to payment;

(2) That the promise or order is subject to or governed by another ~~writing~~ record;

(3) That rights or obligations with respect to the promise or order are stated in another ~~writing~~ record. A reference to another ~~writing~~ record does not of itself make the promise or order conditional.

(B) A promise or order is not made conditional by a reference to another ~~writing~~ record for a statement of rights with respect to collateral, prepayment, or acceleration or because payment is limited to resort to a particular fund or source.

(C) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of division (A) of section 1303.03 of the Revised Code. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(D) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not made conditional by that statement for the purposes of division (A) of section 1303.03 of the Revised Code, but, if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Sec. 1303.14. (A) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(B) Except as provided in division ~~(E)~~ (F) of section 1303.59 of the Revised Code or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

~~(C) The discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under division (B) of this section of a party having the same joint and several liability to receive contribution from the party discharged.~~

Sec. 1303.18. In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or sections 1304.01 to 1304.40 of the Revised Code, the defendant may give the third person ~~written~~ notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

Sec. 1303.35. (A) Except as otherwise stated in ~~division (B)~~ of this section, the right to enforce the obligation of a party to pay an instrument is subject to all of the following:

(E) A defense of the obligor based on any of the following:

(a) Infancy of the obligor to the extent it is a defense to a simple contract;

(b) Duress, lack of legal capacity, or illegality of the transaction that, under other law, nullifies the obligation of the obligor;

(c) Fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms;

(d) Discharge of the obligor in insolvency proceedings.

276 (F) A defense of the obligor set forth in a section of this chapter or a defense of the obligor
277 that would be available if the person entitled to enforce the instrument were enforcing a right to
278 payment under a simple contract;

279
280 (G) A claim in recoupment of the obligor against the original payee of the instrument if the
281 claim arose from the transaction that gave rise to the instrument, but the claim of the obligor may
282 be asserted against a transferee of the instrument only to reduce the amount owing on the
283 instrument at the time the action is brought.

284
285 (B) The right of a holder in due course to enforce the obligation of a party to pay the
286 instrument is subject to the defenses of the obligor stated in division (A)(1) of this section but is
287 not subject to defenses of the obligor stated in division (A)(2) of this section or to claims in
288 recoupment stated in division (A)(3) of this section against a person other than the holder.

289
290 (C) Except as stated in division (D) of this section, in an action to enforce the obligation of
291 a party to pay the instrument, the obligor may not assert against the person entitled to enforce the
292 instrument a defense, a claim in recoupment, or a claim of another person to the instrument under
293 division (C) of section 1303.36 of the Revised Code, but the other person's claim to the instrument
294 may be asserted by the obligor if the other person is joined in the action and personally asserts the
295 claim against the person entitled to enforce the instrument. An obligor is not required to pay the
296 instrument if the person seeking enforcement of the instrument does not have rights of a holder in
297 due course and the obligor proves that the instrument is a lost or stolen instrument.

298
299 (D) In an action to enforce the obligation of an accommodation party to pay an instrument,
300 the accommodation party may assert against the person entitled to enforce the instrument any
301 defense or claim in recoupment under division (A) of this section that the accommodated party
302 could assert against the person entitled to enforce the instrument, except the defenses of discharge
303 in insolvency proceedings, infancy, and lack of legal capacity.

304
305 (E) In a consumer transaction, if any law other than this chapter requires that an instrument
306 include a statement to the effect that the rights of a holder or transferee are subject to a claim or
307 defense that the issuer could assert against the original payee, and the instrument does not include
308 such a statement, all of the following apply:

309
310 (A) The instrument has the same effect as if the instrument included such a statement.

311
312 (B) The issuer may assert against the holder or transferee all claims and defenses that would
313 have been available if the instrument included such a statement.

314
315 (C) The extent to which claims may be asserted against the holder or transferee is
316 determined as if the instrument included such a statement.

317
318 (F) This section is subject to any law, other than this chapter, that establishes a different
319 rule for consumer transactions.

320
321 **Sec. 1303.38.** (A) A person not in possession of an instrument is entitled to enforce the

instrument if all of the following apply:

(1) ~~The~~ Either of the following applies to the person seeking to enforce the instrument:

(1) ~~The person was in possession of the instrument and entitled to enforce it~~ the instrument
when loss of possession occurred.

(2) The person has directly or indirectly acquired ownership of the instrument from a person
who was entitled to enforce the instrument when loss of possession occurred.

(2) The loss of possession was not the result of a transfer by the person or a lawful seizure.

(3) The person cannot reasonably obtain ~~possession~~ possession of the instrument because
the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful
possession of an unknown person or a person that cannot be found or is not amenable to service
of process.

(B) A person seeking enforcement of an instrument under division (A) of this section must
prove the terms of the instrument and the person's right to enforce the instrument. If that proof is
made, divisions (A) and (B) of section 1303.36 of the Revised Code ~~applies~~ apply to the case as if
the person seeking enforcement had produced the instrument. The court may not enter judgment
in favor of the person seeking enforcement unless it finds that the person required to pay the
instrument is adequately protected against loss that might occur by reason of a claim by another
person to enforce the instrument. Adequate protection for the person required to pay the instrument
may be provided by any reasonable means.

Sec. 1303.401. (A) As used in this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a check that
was lost, destroyed, or stolen.

(3) "Declaration of loss" means a ~~written~~ statement, made in a record, under penalty of
perjury, to the effect that all of the following are true:

a. The declarant lost possession of a check;

b. The declarant is the drawer or payee of the check, in the case of a check that is a
certified check, or the remitter or payee of the check, in the case of a check that is a cashier's check
or teller's check;

c. The declarant's loss of possession of the check was not the result of a transfer by the
declarant or a lawful seizure;

d. The declarant reasonably cannot obtain possession of the check because the check was

368 destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown
369 person or a person that cannot be found or is not amenable to service of process.

370
371 (4) "Obligated bank" means the issuer of a check that is a cashier's check or teller's check
372 or the acceptor of a check that is a certified check.

373
374 (B)(1) A claimant may assert a claim to the amount of a check by making a communication
375 to the obligated bank that describes the check with reasonable certainty and that requests payment
376 of the amount of the check, if all of the following apply:

377
378 1. If the check is a certified check, the claimant is the drawer or payee of the check, or, if
379 the check is a cashier's check or teller's check, the claimant is the remitter or payee of the check;

380
381 2. The communication contains or is accompanied by a declaration of loss of the claimant
382 with respect to the check;

383
384 3. The obligated bank receives the communication at a time and in a manner that affords
385 the bank a reasonable time to act upon it before the check is paid;

386
387 4. The claimant provides reasonable identification if requested by the obligated bank.

388
389 (2) Delivery of a declaration of loss under division (B)(1) of this section is a warranty of
390 the truth of the statements made in the declaration. If a claim is asserted in ~~compliance~~ compliance
391 with division (B)(1) of this section, all of the following rules apply:

392
393 1. The claim becomes enforceable at the later of the following times:

394
395 (A) The time the claim is so asserted;

396
397 (B) If the check is a cashier's check or teller's check, the ninetieth day following the date of
398 the check, or, if the check is a certified check, the ninetieth day following the date of the
399 acceptance.

400
401 2. Until the claim becomes enforceable, it has no legal effect, and the obligated bank may
402 pay the check or, if the check is a teller's check, may permit the drawee to pay the check. Payment
403 to a person entitled to enforce the check discharges all liability of the obligated bank with respect
404 to the check.

405
406 3. If the claim becomes enforceable before the check is presented for payment, the
407 obligated bank is not obligated to pay the check.

408
409 4. When the claim becomes enforceable, the obligated bank becomes obligated to pay the
410 amount of the check to the claimant if payment of the check has not been made to a person entitled
411 to enforce the check. Subject to division (A)(1) of section 1304.28 of the Revised Code, payment
412 to the claimant discharges all liability of the obligated bank with respect to the check.

414 (C) If the obligated bank pays the amount of a check to a claimant pursuant to division
415 (B)(2)(d) of this section, and the check is presented for payment by a person with rights of a holder
416 in due course, the claimant is obligated to do whichever of the following is applicable:

417
418 2. If the check is paid, refund the payment to the obligated bank;

419
420 3. If the check is dishonored, pay the amount of the check to the person with rights of a
421 holder in due course.

422
423 (D) If a claimant has the right to assert a claim under division (B) of this section and if the
424 claimant also is a person entitled to enforce a cashier's check, teller's check, or certified check that
425 is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under either
426 this section or section 1303.38 of the Revised Code.

427
428 **Sec. 1303.56.** (A) A person who transfers an instrument for consideration warrants all of
429 the following to the transferee and, if the transfer is by indorsement, to any subsequent transferee:

430
431 (a) The warrantor is a person entitled to enforce the instrument.

432
433 (b) All signatures on the instrument are ~~authentic~~ authentic and authorized.

434
435 (c) The instrument has not been altered.

436
437 (d) The instrument is not subject to a defense or claim in recoupment of any party which
438 can be asserted against the warrantor.

439
440 (e) The warrantor has no knowledge of any insolvency proceeding commenced with respect
441 to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

442
443 (f) With respect to a remotely created consumer item, the person on whose account the item
444 is drawn authorized the issuance of the item in the amount for which the item is drawn.

445
446 (B) A person to whom the warranties set forth in division (A) of this section are made and
447 who took the instrument in good faith may recover from the warrantor as damages for breach of
448 warranty an amount equal to the loss suffered as a result of the breach, but not more than the
449 amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

450
451 (C) The warranties set forth in division (A) of this section cannot be disclaimed with respect
452 to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty
453 days after the claimant has reason to know of the breach and the identity of the warrantor, the
454 liability of the warrantor under division (B) of this section is discharged to the extent of any loss
455 caused by the delay in giving notice of the claim.

456
457 (D) A cause of action for breach of warranty under this section accrues when the claimant
458 has reason to know of the breach.

460 **Sec. 1303.57.** (A) If an unaccepted draft is presented to the drawee for payment or
461 acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance,
462 at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to
463 the drawee making payment or accepting the draft in good faith all of the following:

464
465 (1) That the warrantor is, or was, at the time the warrantor transferred the draft, a person
466 entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf
467 of a person entitled to enforce the draft;

468
469 (2) That the draft has not been altered;

470
471 (3) That the warrantor has no knowledge that the signature of the drawer of the draft is
472 unauthorized;

473
474 (4) With respect to a remotely created consumer item, that the person on whose account the
475 item is drawn authorized the issuance of the item in the amount for which the item is drawn.

476
477 (B) A drawee making payment may recover from any warrantor damages for breach of
478 warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled
479 to receive from the drawer because of the payment. In addition, the drawee is entitled to
480 compensation for expenses and loss of interest resulting from the breach. The right of the drawee
481 to recover damages under this division is not affected by any failure of the drawee to exercise
482 ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense
483 to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the
484 acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this
485 division.

486
487 (C) If a drawee asserts a claim for breach of warranty under division (A) of this section
488 based upon an unauthorized indorsement of the draft or an alteration of the draft, the warrantor
489 may defend against the claim by proving that the indorsement is effective under section 1303.44
490 or 1303.47 of the Revised Code or that the drawer is precluded under section 1303.49 or 1304.35
491 of the Revised Code from asserting against the drawee the unauthorized indorsement or alteration.

492
493 (D) If a dishonored draft is presented for payment to the drawer or an indorser or any other
494 instrument is presented for payment to a party obliged to pay the instrument and if payment is
495 received, both of the following rules apply:

496
497 (4) The person obtaining payment and a prior transferor of the instrument warrant to the
498 person making payment in good faith that the warrantor is, or, at the time the warrantor transferred
499 the instrument, was, a person entitled to enforce the instrument or authorized to obtain payment
500 on behalf of a person entitled to enforce the instrument.

501
502 (5) The person making payment may recover from any warrantor for breach of warranty an
503 amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

504
505 (E) The warranties set forth in divisions (A) and (D) of this section cannot be disclaimed

with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and of the identity of the warrantor, the liability of the warrantor under division (B) or (D) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(F) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Sec. 1303.59. (A) If an instrument is issued for value given for the benefit of a party to the instrument and another party to the instrument signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(B) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to division (D) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(C) A person signing an instrument is presumed to be an accommodation party, and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 1303.70 of the Revised Code, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(D) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if one of the following applies:

- (1) Execution of judgment against the other party has been returned unsatisfied.
- (2) The other party is insolvent or in an insolvency proceeding.
- (3) The other party cannot be served with process.
- (4) It is otherwise apparent that payment cannot be obtained from the other party.

(E) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(F) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

~~(F)~~ (G) As used in this ~~section~~ chapter:

(1) "Accommodated party" means the party to an instrument for the benefit of which the instrument is issued for value.

(2) "Accommodation party" means a party to an instrument other than the accommodated party.

Sec. 1303.67. (A) Subject to division ~~(B)~~ (E) of this section, an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. ~~To~~

(B)(1) Subject to division (E) of this section, a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if all of the following apply:

(a) It is signed by the transferor or the transferee.

(b) It reasonably identifies the transferred note.

(c) It provides an address at which payments subsequently are to be made.

(2) Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of division (C) of this section even if the party obliged to pay the note has received a notification under division (B)(1) of this section.

(C) Subject to division (E) of this section, to the extent of the a payment under divisions (A) and (B) of this section, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under section 1303.36 of the Revised Code by another person.

(D) Subject to division (E) of this section, a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under division (B)

of this section after the date that the note is transferred to the transferee but before the party obliged to pay the note received adequate notification of the transfer.

~~(B)-(E)~~ The obligation of a party to pay the instrument is not discharged under division (A), (B), (C), or (D) of this section under either of the following circumstances:

(1) A claim to the instrument under section 1303.36 of the Revised Code is enforceable against the party receiving payment and either of the following applies:

(1) Payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction.

(2) In the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument.

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(F) As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

Sec. 1303.69. (A) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument in either of the following ways:

(1) By surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, the addition of words to the instrument indicating discharge, or any other intentional voluntary act;

(2) By agreeing not to sue or otherwise renouncing rights against the party by a signed writing record.

(B) Cancellation or striking out of an indorsement pursuant to division (A) does not affect the status and rights of a party derived from the indorsement

(C) As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

Sec. 1303.70. (A) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from

any other duties to the secondary obligor under this chapter.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under division (A)(2) of this section, the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(B) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this chapter.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under division (B)(2) of this section, the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(C) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this chapter.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

690 (3) To the extent that the secondary obligor is not discharged under division (C)(2) of this
691 section, the secondary obligor may satisfy its obligation on the instrument as if the modification
692 had not occurred, or treat its obligation on the instrument as having been modified
693 correspondingly.

694
695 (D) If the obligation of a principal obligor is secured by an interest in collateral, another
696 party to the instrument is a secondary obligor with respect to that obligation, and a person entitled
697 to enforce the instrument impairs the value of the interest in collateral, the obligation of the
698 secondary obligor is discharged to the extent of the impairment. The value of an interest in
699 collateral is impaired to the extent the value of the interest is reduced to an amount less than the
700 amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an
701 increase in the amount by which the amount of the recourse exceeds the value of the interest. For
702 purposes of this division, impairing the value of an interest in collateral includes any of the
703 following:

704
705 (1) The failure to obtain or maintain perfection or recordation of the interest in collateral;

706
707 (2) The release of collateral without substitution of collateral of equal value or equivalent
708 reduction of the underlying obligation;

709
710 (3) The failure to perform a duty to preserve the value of collateral owed, under Chapter
711 1309. of the Revised Code or other law, to a debtor or other person secondarily liable;

712
713 (4) The failure to comply with applicable law in disposing of or otherwise enforcing the
714 interest in collateral.

715
716 (E) A secondary obligor is not discharged under division (A)(3), (B), (C), or (D) of this
717 section unless the person entitled to enforce the instrument knows that the person is a secondary
718 obligor or has notice under division (C) of section 1303.59 of the Revised Code that the instrument
719 was signed for accommodation.

720
721 (F) A secondary obligor is not discharged under this section if the secondary obligor
722 consents to the event or conduct that is the basis of the discharge, or the instrument or a separate
723 agreement of the party provides for a waiver of discharge under this section specifically or by
724 general language indicating that parties waive defenses based on suretyship or impairment of
725 collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act
726 that would lead to a discharge under this section constitutes consent to that act by the secondary
727 obligor if the secondary obligor controls the principal obligor or deals with the person entitled to
728 enforce the instrument on behalf of the principal obligor.

729
730 (G) A release or extension preserves a secondary obligor's recourse if the terms of the
731 release or extension provide both of the following:

732
733 (1) The person entitled to enforce the instrument retains the right to enforce the instrument
734 against the secondary obligor.

736 (2) The recourse of the secondary obligor continues as if the release or extension had not
737 been granted.

738
739 (H) Except as otherwise provided in division (I) of this section, a secondary obligor
740 asserting a discharge under this section has the burden of persuasion both with respect to the
741 occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those
742 acts.

743
744 (I) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse,
745 and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of
746 calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing
747 recourse caused a loss or impairment equal to the liability of the secondary obligor on the
748 instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the
749 person entitled to enforce the instrument.

750
751 **Sec. 1304.01.** (A) As used in sections 1304.01 to 1304.40 of the Revised Code, unless the
752 context requires otherwise:

753
754 (1) "Account" means any deposit or credit account with a bank, including a demand, time,
755 savings, passbook, share draft, or similar account, other than an account evidenced by a certificate
756 of deposit.

757
758 (2) "Afternoon" means the period of day between noon and midnight.

759
760 (3) "Banking day" means the part of a day on which a bank is open to the public for carrying
761 on substantially all of its banking functions.

762
763 (4) "Clearing house" means an association of banks or other payors regularly clearing items.

764
765 (5) "Customer" means a person having an account with a bank or for whom a bank has
766 agreed to collect items, including a bank that maintains an account at another bank.

767
768 (6) "Documentary draft" means a draft to be presented for acceptance or payment if
769 specified documents, certified securities or instructions for uncertificated securities as defined in
770 section 1308.01 of the Revised Code, or other certificates, statements, or similar documents are to
771 be received by the drawee or other payor before acceptance or payment of the draft.

772
773 (7) "Draft" means a draft as defined in section 1303.03 of the Revised Code or an item,
774 other than an instrument, that is an order.

775
776 (8) "Drawee" means a person ordered in a draft to make payment.

777
778 (9) "Item" means an instrument or a promise or order to pay money handled by a bank for
779 collection or payment. "Item" does not include a payment order governed by sections 1304.51 to
780 1304.85 of the Revised Code, a credit slip, or a debit card slip.

(10) "Midnight deadline," with respect to a bank, is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(B) As used in sections 1304.01 to 1304.40 of the Revised Code:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, a savings and loan association, a credit union, or a trust company.

(2) "Depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(3) "Payor bank" means a bank that is a drawee of a draft.

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank.

(5) "Collecting bank" means a bank handling an item for collection except the payor bank.

(6) "Presenting bank" means a bank presenting an item except a payor bank.

(C) As used in sections 1304.01 to 1304.40 of the Revised Code:

(1) "Acceptance" and "certified check" have the same meanings as in section 1303.46 of the Revised Code.

(2) "Alteration" has the same meaning as in section 1303.50 of the Revised Code.

(3) "Cashier's check," "certificate of deposit," "check," "instrument," and "teller's check" have the same meanings as in section 1303.03 of the Revised Code.

(4) "Control" has the same meaning as in section 1307.106 of the Revised Code.

(5) "Good faith" has the same meaning as in section 1301.201 of the Revised Code.

(6) "Order," "ordinary care," "promise," and "prove" have the same meanings as in section 1303.01 of the Revised Code.

(7) "Holder in due course" has the same meaning as in section 1303.32 of the Revised Code.

(8) "Notice of dishonor" has the same meaning as in section 1303.63 of the Revised Code.

(9) "Person entitled to enforce" has the same meaning as in section 1303.31 of the Revised Code.

(10) "Presentment" has the same meaning as in section 1303.61 of the Revised Code.

(11) "Remotely created consumer item" has the same meaning as in section 1303.01 of the Revised Code.

(12) "Unauthorized signature" has the same meaning as in section 1303.43 of the Revised Code.

(D) In addition, Chapter 1301. of the Revised Code contains general definitions and principles of construction and interpretation applicable throughout sections 1304.01 to 1304.40 of the Revised Code.

Sec. 1304.17. (A) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants all of the following to the transferee and to any subsequent collecting bank:

(1) The warrantor is a person entitled to enforce the item.

(2) All signatures on the item are authentic and authorized.

(3) The item has not been altered.

(4) The item is not subject to a defense or claim in recoupment of any party that can be asserted against the warrantor.

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker, acceptor, or, in the case of an unaccepted draft, the drawer.

(6) With respect to a remotely created consumer item, the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(B) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item according to the terms of the item at the time it was transferred or, if the transfer was of an incomplete item, according to its terms when completed pursuant to sections 1303.11 and 1303.50 of the Revised Code. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this division by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(C) A person to whom the warranties under division (A) of this section are made and who

took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(D) The warranties set forth in division (A) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(E) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Sec. 1304.18. (A) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant all of the following to the drawee that pays or accepts the draft in good faith:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.

(2) The draft has not been altered.

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(4) With respect to a remotely created consumer item, the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(B) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this division is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor, and, if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this division.

(C) If a drawee asserts a claim for breach of warranty under division (A) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 1303.44 or 1303.47 of the Revised Code or the drawer is precluded under section 1303.49 or 1304.35 of the Revised Code from asserting against the drawee the unauthorized indorsement or alteration.

(D) If a dishonored draft is presented for payment to the drawer or an indorser or any other

item is presented for payment to a party obliged to pay the item and if the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(E) The warranties stated in divisions (A) and (D) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(F) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Sec. 1304.22. (A) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a ~~written record-providing~~ notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 1303.61 of the Revised Code by the close of the bank's next banking day after it knows of the requirement.

(B) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under section 1303.61 of the Revised Code is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending ~~him~~ the drawer or indorser notice of the facts.

Sec. 1304.27. (A) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if before it has made final payment and before its midnight deadline it does ~~either~~ any of the following:

(1) It returns the item.

(2) It returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement.

(3) It sends ~~written~~ a record-providing notice of dishonor or nonpayment if the item is unavailable for return.

(B) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount of any credit withdrawn by its customer, if it acts within the time limit and in the manner specified in

division (A) of this section.

(C) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(D) An item is ~~return~~returned at either of the following times:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules;

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to ~~his~~ the customer's or transferor's instructions.

Sec. 1304.32. (A) A customer, or any person authorized to draw on the account if there is more than one person, may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in section 1304.29 of the Revised Code. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(B) A stop payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in ~~writing a record~~ writing a record within that period. A stop payment order may be renewed for additional six-month periods by a ~~writing record~~ writing record given to the bank within a period during which the stop payment order is effective.

(C) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop payment order may include damages for dishonor of subsequent items under section 1304.31 of the Revised Code.

Sec. 1304.35. (A) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(B) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(C) If a bank sends or makes available a statement of account or items pursuant to division (A) of this section, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an

1012 item or because a purported signature by or on behalf of the customer was not authorized. If, based
1013 on the statement or items provided, the customer should reasonably have discovered the
1014 unauthorized payment, the customer must promptly notify the bank of the relevant facts.

1015
1016 (D) If the bank proves that the customer failed with respect to an item to comply with the
1017 duties imposed on the customer by division (C) of this section, the customer is precluded from
1018 asserting either of the following against the bank:

1019
1020 (1) The customer's unauthorized signature or any alteration on the item if the bank also
1021 proves that it suffered a loss by reason of that failure;

1022
1023 (2) The customer's unauthorized signature or alteration by the same wrongdoer on any other
1024 item paid in good faith by the bank if the payment was made before the bank received notice from
1025 the customer of the unauthorized signature or alteration and after the customer had been afforded
1026 a reasonable period of time, not exceeding thirty days, in which to examine the item or statement
1027 of account and notify the bank.

1028
1029 (E) If division (D) of this section applies and the customer proves that the bank failed to
1030 exercise ordinary care in paying the item and that the bank's failure substantially contributed to the
1031 loss, the loss is allocated between the customer who is precluded and the bank asserting the
1032 preclusion according to the extent to which the failure of the customer to comply with division (C)
1033 of this section and the failure of the bank to exercise ordinary care contributed to the loss. If the
1034 customer proves that the bank did not pay the item in good faith, the preclusion under division (D)
1035 of this section does not apply.

1036
1037 (F) Without regard to care or lack of care of either the customer or the bank, a customer
1038 who does not within one year after the statement or items are made available to the customer
1039 discover and report ~~his~~ the customer's unauthorized signature on or any alteration on the item is
1040 precluded from asserting against the bank the unauthorized signature or alteration ~~if~~. If there is a
1041 preclusion under this division, the payor bank may not recover for breach of warranty under section
1042 1304.28 of the Revised Code with respect to the unauthorized signature or alteration to which the
1043 preclusion applies.

1044
1045 **Section 2.** That existing sections 1303.01, 1303.05, 1303.14, 1303.18, 1303.35, 1303.38,
1046 1303.401, 1303.56, 1303.57, 1303.59, 1303.67, 1303.69, 1304.01, 1304.17, 1304.18, 1304.22,
1047 1304.27, 1304.32, and 1304.35 and section 1303.70 of the Revised Code are hereby repealed.

1049
1050

[PAGE INTENTIONALLY LEFT BLANK]

REPORT OF THE CORPORATION LAW COMMITTEE

To the Council of Delegates

The Corporation Law Committee respectfully requests your favorable consideration of the following proposed amendments to Chapter 1705 of the Revised Code:

1. Amending Sections 1705.43(A)(4) and 1705.43(C) and adding new Section 1705.43(A)(6) to provide a default "rule" that an LLC is not automatically dissolved upon the death of the Member in a single member LLC or the death of the last remaining Member of an LLC.
2. Amending Sections 1705.43(B), 1705.44, 1705.46 and 1705.48 and adding new Sections 1705.43(D)-(H), 1705.431, 1705.432 and 1705.441 to provide for a "statute of repose" in Chapter 1705 similar to Sections 1701.88(B)(2) and 1701.883(C).

Respectfully submitted,

Jeffrey R. Wahl, Columbus
Chair, Corporation Law Committee

Summary and Rationale for Proposals

Proposal 1. The amendments proposed to Section 1705.43 are to provide a "default" rule so that a limited liability company is not unintentionally dissolved upon the death of the only or last member of the limited liability company. Proposed Section 1705.43(6)(b) provides ninety (90) days for a new substituted Member.

Proposal 2. The proposed changes with regard to providing for a "statute of repose" in Chapter 1705 is that a limited liability company should be treated the same as a corporation formed under Chapter 1701.

Text of Proposals

Proposal 1

Sec. 1705.43. Dissolution of Company

- (A) A limited liability company organized under this chapter shall be dissolved upon the occurrence of any of the following events:
- (1) The expiration of the period, if any, fixed by the operating agreement or articles of organization for the duration of the company;

- 1097 (2) One or more events specified in writing in the operating agreement as
1098 causing the dissolution of the company;
1099
- 1100 (3) The unanimous written agreement of all members to dissolve the company;
1101
- 1102 (4) Except as provided in divisions (A)(6) and (C) of this section, the
1103 withdrawal of a member of the company, unless the business of the
1104 company is continued by the consent of all of the remaining members or
1105 under a right to continue the company that is stated in writing in the
1106 operating agreement;
1107
- 1108 (5) Upon entry of a decree of judicial dissolution under section 1705.47 of the
1109 Revised Code.
1110
- 1111 (6) When there are no remaining members, provided that upon the death of the
1112 last remaining member, the company is not required to be dissolved where:
1113
- 1114 (a) the operating agreement provides for the admission of a
1115 substitute member effective as of the date of the deceased
1116 member's death; or
1117
- 1118 (b) the personal representative of the deceased member
1119 completes the admission of a substitute member, in writing,
1120 within ninety days after the deceased member's death, which
1121 admission will be deemed effective as of the date of the
1122 deceased member's death.
1123

1124 *Proposal 2*
1125

1126 Following the occurrence of any of the events of dissolution specified in this section, the limited
1127 liability company shall deliver to the secretary of state for filing a certificate of dissolution on a
1128 form that is prescribed by the secretary of state and that includes all of the following:
1129

- 1130 (1) The name of the company;
1131
- 1132 (2) The place in this state where its principal office is or is to be located;
1133
- 1134 (3) The internet address of each domain name held or maintained by or on
1135 behalf of the company;
1136
- 1137 (4) The name and address of its statutory agent;
1138
- 1139 ~~(B)~~ (5) The date of the effective date of its dissolution, if other than the
1140 filing date. The date of dissolution shall not be more than ninety days after
1141 the filing of the certificate of dissolution.
1142

1143 *Resume Proposal 1*

- 1144
- 1145 (C) Subject to division (A)(6) hereof, if If the company was formed on or after the effective
1146 date of this amendment, or the company was formed prior to the effective date of this
1147 amendment and its articles or operating agreement are amended to specifically state that
1148 this division applies to the company, the withdrawal of a member of the company shall not
1149 cause the dissolution of the company except as may be provided in the operating
1150 agreement.

1151

1152 *Resume Proposal 2*

- 1153
- 1154 (D) When a limited liability company is dissolved, or when the period of existence of the
1155 limited liability company specified in its articles of organization has expired, the limited
1156 liability company shall, except as provided in division (A)(1) of section 1705.45 of the
1157 Revised Code, cease to carry on business and shall do only such acts as are required to
1158 wind up its affairs, and for such purposes it shall continue as a limited liability company
1159 for a period of five years from the dissolution or expiration. A court acting pursuant to
1160 section 1705.44 of the Revised Code may extend the five-year period allowed under this
1161 division.

- 1162
- 1163 (E) The dissolution of a limited liability company, expiration of the period of existence of a
1164 limited liability company, appointment of a receiver to wind up the affairs of a limited
1165 liability company, or other action to dissolve a limited liability company under this chapter
1166 shall not eliminate or impair any remedy available to or against the limited liability
1167 company or its members or managers for any right or claim existing, or liability incurred,
1168 prior to the dissolution, if either of the following brings such an action:

1169

1170 (1) The limited liability company within the time limits otherwise permitted by
1171 law;

1172

1173 (2) Any other person before five years after the date of the dissolution or within
1174 the time limits otherwise required by section 1705.432 of the Revised Code
1175 or any other provision of law, whichever is less.

- 1176
- 1177 (F) Any claim existing or action or proceeding pending by or against the limited liability
1178 company or which would have accrued against it may be prosecuted to judgment, with
1179 right of appeal as in other cases, but any proceeding, execution, or process or the
1180 satisfaction or performance of any order, judgment or decree, may be stayed as provided
1181 in section 1705.44 of the Revised Code Any action, suit, or proceeding begun by or against
1182 the limited liability company within the time limits established in division (E) of this
1183 section shall not abate, and the limited liability company shall, solely for the purpose of
1184 such action, suit, or proceeding, be continued as a limited liability company beyond the
1185 five-year period and until any judgments, orders, or decrees are fully executed, without the
1186 necessity for any court order required under division (D) of this section.

(G) If any property right of a limited liability company is discovered after the winding up of the limited liability company, any member, manager or liquidating trustee that wound up the affairs of the limited liability company, or a receiver appointed by the court, may enforce the property right, collect and divide the assets discovered among the persons entitled to those assets, and prosecute actions or proceedings in the name of the limited liability company. Any assets collected under this division shall be distributed and disposed of in accordance with any applicable court order or, in the absence of a court order, in accordance with section 1705.46 of the Revised Code.

(H) In the event a receiver is appointed to wind up the affairs of a limited liability company, or an action is commenced under section 1705.47 of the Revised Code to dissolve the limited liability company, the five-year period specified in divisions (D) and (E)(2) of this section shall not commence until the date of filing of a certificate of dissolution in the office of the secretary of state under division (B) of section 1705.43 of the Revised Code.

Committee Comment (2016)

New division (A)(6) allows for the continuation of a limited liability company after the death of its last remaining member(s) where the operating agreement is silent on the issue. It makes express the requirement that a limited liability company must be dissolved when there are no remaining members. An exception is made, however, for situations where the last remaining member(s) are individual(s) who had died. In these circumstances, a limited liability company's existence may be continued by complying with the requirements set out in subdivisions (A)(6) (a) or (A)(6) (b).

Existing divisions (A)(4) and (C) allow for the continuation of certain LLCs upon the withdrawal of a member. Since the death of a member is technically a withdrawal event, and different requirements apply to limited liability continuations under such circumstances by virtue of new subsection (A)(6), it is intended that new division (A)(6) be applicable to these situations.

Committee Comment (2016)

The dissolution provisions were substantially revised and new provisions were added to: (1) set out a process for a dissolved limited liability company to give notice to known claimants and to pay or provide for the payment of known claims, (2) clarify the right of the limited liability company to pursue its claims and collect its assets, (3) set out with specificity the time periods in which claimants must make any claims against the dissolved limited liability company, (4) clarify the limits on a member's obligation to pay any claims that were not paid by the limited liability company.

Division (B) is revised to specify additional information that must be included in a certificate of dissolution and that the effective date of dissolution be not more than ninety (90) days after the filing of the certificate. Division (B) is similar to division (F) of section 1701.86 applicable to corporations. Division (D) is similar to section 1701.88(A) applicable to corporations and establishes an outside date of five (5) years for a limited liability company to complete its winding up. The time period can be extended by a court that is overseeing dissolution under

section 1701.44. Divisions (E) and (F) are similar, respectively, to divisions (B) and (C) of section 1701.88 applicable to corporations and clarify the right of the limited liability company to pursue claims and establishes an outside date of five (5) years after the dissolution for claimants to bring claims against the limited liability company. Division (G) is similar to section 1701.88(F) applicable to corporations and clarifies the authority to act to wind up its affairs after dissolution. Division (H) is similar to section 1701.88(G) applicable to corporations and specifies that the five year period for completion of winding up does not commence until a certificate has been filed with the secretary of state.

1705.431 Notice of Dissolution to Creditors and Claimants Against Company.

(A) A limited liability company shall give notice of a dissolution by certified or registered mail, return receipt requested, to each known creditor and to each person that has a claim against the limited liability company, including claims that are conditional, unmatured, or contingent upon the occurrence or nonoccurrence of future events.

(B) The notice shall state all of the following:

(1) That all claims shall be presented in writing and shall identify the claimant and contain sufficient information to reasonably inform the limited liability company of the substance of the claim;

(2) The mailing address to which the person must send the claim;

(3) The deadline, which shall be not less than sixty days after the date the notice is given, by which the limited liability company must receive the claim;

(4) That the claim will be barred if the limited liability company does not receive the claim by the deadline;

(5) That the limited liability company may make distributions to other creditors or claimants, including distributions to members of the limited liability company, without further notice to the claimant.

(C) Giving any notice or making any offer under this chapter shall not revive any claim then barred or constitute acknowledgment by the limited liability company that any person to whom the limited liability company sent notice under this section is a proper claimant and shall not operate as a waiver of any defense or counterclaim.

(D) A claim is barred if a claimant that was given written notice under division (A) of this section does not deliver the claim to the dissolved limited liability company by the deadline stated in the notice.

(E) The limited liability company shall post the notice described in division (B) of this section on any web site the limited liability company maintains in the limited liability company's

name and shall provide a copy of the notice to the secretary of state to be posted on the web site maintained by the secretary of state in accordance with division (F) of this section.

(F)

(1) Except as provided in division (F)(2) of this section, the secretary of state shall make both of the following available to the public in a format that is searchable, viewable, and accessible through the internet:

(a) A list of all domestic limited liability companies that have filed a certificate of dissolution;

(b) For each dissolved limited liability company on the list described in division (F)(1)(a) of this section, a copy of both the certificate of dissolution and the notice delivered under division (B) of this section.

(2) After the materials relating to any dissolved limited liability company have been posted for five years, the secretary of state may remove from the web site the information that the secretary posted pursuant to division (F)(1) of this section that relates to that limited liability company.

Committee Comment (2016)

This section is similar to section 1701.87 applicable to corporations and sets out a statutory process for actual notice to known claimants and a mechanism to establish a bar date for claims against the dissolved limited liability company. This section should be read in conjunction with section 1705.46 and new section 1705.432 that set out procedures to settle and pay or make other provision for claims. *See* comment to section 1701.43.

Division (E) requires that the notice sent to known claimants be posted on any website the limited liability company maintains in its name. Division (F) requires that the Secretary of State make available on the internet for a five year period certain information about limited liability companies that are in dissolution.

1705.432 Notice of Rejection of Claim; Offer of Security.

(A) A limited liability company that has given notice under division (A) of section 1705.431 of the Revised Code may reject, in whole or in part, any matured claim made by a claimant by sending notice of the rejection by certified or registered mail, return receipt requested, to the claimant within ninety days after receipt of the claim and at least thirty days before the expiration of the five-year period specified in division (D) of section 1705.43 of the Revised Code. A notice sent pursuant to this section shall include or be accompanied by a copy of this division and of section 1705.44 of the Revised Code. A claim against a corporation is barred if a claimant whose claim is rejected by the limited liability company does not commence an action to enforce the claim within thirty days after the limited liability company mails the rejection notice.

(B) A limited liability company that has given notice under division (A) of section 1705.431 of the Revised Code may offer security to any claimant whose claim is contingent, conditional, or unmatured as the limited liability company determines is sufficient to provide compensation to the claimant if the claim matures. The limited liability company shall send the limited liability company's offer to the claimant by certified or registered mail, return receipt requested, within ninety days after receipt of the claim and at least thirty days before the expiration of the five-year period specified in division (D) of section 1705.43 of the Revised Code. A notice sent pursuant to this section shall include or be accompanied by a copy of this division and of section 1705.44 of the Revised Code. If the claimant offered the security does not deliver to the limited liability company a written notice rejecting the offer within thirty days after the limited liability company mails the offer for security, the claimant shall be deemed to have accepted the security as the sole source from which to satisfy claimant's claim against the limited liability company.

(C) A limited liability company that has given notice under division (A) of section 1705.431 of the Revised Code may file an application with the court having jurisdiction under section 1705.44 of the Revised Code for a determination of the amount and form of insurance or other security that satisfies both of the following requirements:

(1) The insurance or other security will be sufficient to provide compensation to any claimant who has rejected the offer for security made pursuant to this section.

(2) The insurance or other security will be reasonably likely to be sufficient to provide compensation for claims that have not been made known to the limited liability company or that have not arisen but that, based on the facts known to the limited liability company, are likely to arise or to become known to the limited liability company within five years after the date of dissolution or such longer period of time as the members, or the managers if management has not been reserved to the members, or a court acting under section 1705.44 of the Revised Code, may determine, not to exceed ten years after the date of dissolution.

Committee Comment (2016)

This new section is similar to section 1701.881 applicable to corporations and establishes a process for satisfying claims. A claimant can initiate court proceedings to determine what the claimant is entitled to receive. The limited liability company also has the right to seek a court determination of the amount and form of insurance or other security to be provided to a claimant that has rejected the limited liability company's offer, or what should be provided for claims that have not been made known to the limited liability company or have not arisen but that, based on facts then known to the limited liability company, are likely to arise. *See* comment to section 1705.43.

1705.44 Winding up of Affairs.

(A) Except as otherwise provided in the operating agreement, the members of a dissolved limited liability company who have not wrongfully dissolved the company, a liquidating

trustee selected by those members, or, if the management of the company has not been reserved to its members, its managers may wind up the affairs of the company. ~~Upon application of any member of a dissolved limited liability company or his legal representative or assignee, the court of common pleas may wind up the affairs of the company or may cause its affairs to be wound up by a liquidating trustee appointed by the court.~~ Subject to division (A)(1) of section 1705.45, the members, liquidating trustee, or managers with authority to wind up a limited liability company shall promptly proceed as speedily as is practicable to complete the winding up of a dissolved limited liability company. The winding up must be completed within five years of the dissolution of the limited liability company under division (A) of section 1705.43 of the Revised Code unless otherwise ordered by a court acting pursuant to division (B) of this section.

(B) Without limiting the generality of its authority, the court of common pleas of the county in this state in which the principal office of a voluntarily dissolved limited liability company is located, in which the principal office was to be located, or in which the principal office of a limited liability company whose period of existence has expired is located, upon application of any member of a dissolved limited liability company or his legal representative or assignee, a majority of its managers if management of the company is not reserved to members, or a creditor or claimant, including a creditor or claimant who is a member or manager, and upon such notice to all the members, managers and such other interested persons as the court considers proper, may wind up the affairs of the company or may cause its affairs to be wound up by a liquidating trustee appointed by the court, and it may order and adjudge in respect of all of the following matters:

(1) Any proceedings or actions under division (C) of section 1705.432 of the Revised Code;

(2) The presentation and proof of all claims and demands against the limited liability company and of all rights, interests, or liens in or on any of its property including property described in division (G) of section 1705.43 of the Revised Code; the fixing of the time within which and the manner in which such proof shall be made and the person to whom such presentation shall be made; and the barring from participation in any distribution of assets of all persons failing to make and present proofs as required by the order of the court;

(3) The stay of the prosecution of any proceeding against the limited liability company or involving any of its property, and the requirement that the parties to it present and prove their claims, demands, rights, interests, or liens at the time and in the manner required of creditors or others; or the grant of leave to bring or maintain an independent proceeding to enforce liens;

(4) The settlement or determination of all claims of every nature against the limited liability company or any of its property; the determination of the assets required to be retained or insurance to be obtained to pay or provide for the payment of such claims or any claim; the determination of the assets available for distribution among

- 1416 members; and the making of new parties to the proceeding so far as the court
1417 considers proper for the determination of all matters;
1418
- 1419 (5) The determination of the rights of members in and to the assets of the limited
1420 liability company;
1421
- 1422 (6) The presentation and filing of intermediate and final accounts of the members,
1423 managers or the liquidating trustee and hearings on them; the allowance,
1424 disallowance, or settlement of such accounts; and the discharge of the members,
1425 managers, the liquidating trustee, or any of them from their duties and liabilities;
1426
- 1427 (7) The appointment of a special master commissioner or guardian ad litem to hear and
1428 determine any such matters with such authority as the court considers proper. The
1429 applicant in the proceeding shall pay the reasonable fees and expenses of the special
1430 master commissioner or guardian ad litem, including all reasonable expert witness
1431 fees, unless otherwise ordered by the court.
1432
- 1433 (8) The filling of any vacancies in the number of managers or liquidating trustees when
1434 the members are unable to act on the vacancies for want of a quorum or for any
1435 other reason;
1436
- 1437 (9) The appointment of a receiver, in accordance with the usages of a court in equitable
1438 matters, to wind up the affairs of the limited liability company, to take custody of
1439 any of its property, or for any other purpose;
1440
- 1441 (10) The issuance or entry of any injunction or any other order which the court considers
1442 proper in the administration of the trust involved in the winding up of the affairs of
1443 the limited liability company and the giving of notice of it;
1444
- 1445 (11) The allowance and payment of compensation to the members, managers,
1446 liquidating trustee, or any of them or to any person rendering services beneficial to
1447 the limited liability company or to those interested in it;
1448
- 1449 (12) The entry of a judgment or decree which, if it so provides, may operate as the deed
1450 or other instrument ordered to be executed, or the appointment of a master or
1451 guardian ad litem to execute such deed or instrument in the name of the limited
1452 liability company with the same effect as if executed by an authorized member or
1453 manager pursuant to authority conferred by members or managers, whenever there
1454 is no agent competent to execute such deed or instrument, whenever the limited
1455 liability company or its members or managers do not perform or comply with a
1456 judgment or decree of court, or whenever the court considers it proper.
1457
- 1458 (C) A judicial proceeding under this section concerning the winding up of the affairs of a
1459 limited liability company is a special proceeding, and final orders in the proceeding may
1460 be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure
1461 and, to the extent not in conflict with those rules, Chapter 2505 of the Revised Code.

1462
1463 **Committee Comment (2016)**
1464

1465 Section 1705.44 was changed to require winding-up to be completed as soon as possible
1466 and division (A) is similar to section 1701.88(A) and (D) applicable to corporations. New
1467 divisions (B) and (C) are similar to section 1701.89 applicable to corporations and specify the
1468 jurisdiction of the applicable court of common pleas over winding up of a limited liability
1469 company. New division (B) is not intended to preclude a manager from also being a creditor or
1470 claimant of the limited liability company.

1471
1472 **1705.441 Receiver for Winding up Affairs of a Limited Liability Company.**
1473

1474 (A) Whenever, after a limited liability company is dissolved or the period of existence of a
1475 limited liability company has expired, a receiver is appointed to wind up the affairs of the
1476 limited liability company, all the claims, demands, rights, interests, or liens of creditors,
1477 claimants, and members shall be determined as of the day on which the receiver was
1478 appointed unless those claims, demands, rights, interests, or liens have already been
1479 determined under section 1705.432 of the Revised Code. Unless it is otherwise ordered,
1480 such appointment vests in the receiver and the receiver's successors the right to the
1481 immediate possession of all the property of the limited liability company, which shall, if
1482 so ordered, execute and deliver conveyances of such property to the receiver or the
1483 receiver's nominee.

1484
1485 (B) Any member, manager or other person, whether a resident of the state or a non-resident
1486 and however interested, may be appointed as receiver.

1487
1488 (C) Unless otherwise ordered, the receiver shall have all the authority vested in the members,
1489 or managers if management is not reserved to the members, of the limited liability
1490 company, shall exercise such authority subject to such orders as are made by the court, and
1491 may be required to qualify by giving bond to the state in such amount as the court fixes,
1492 with surety to the satisfaction of the clerk of the court, conditioned for the faithful discharge
1493 of the receiver's duties and for a due accounting for all money or property received by the
1494 receiver.

1495 **Committee Comment (2016)**
1496

1497 New section 1705.441 specifies the authority of and procedures relating to receivers.
1498 Section 1705.441 is similar to section 1701.90 applicable to corporations.
1499

1500 **1705.46 Distributing Assets - Paying Claims and Obligations.**
1501

1502 (A) Upon the winding up of a limited liability company and the liquidation of its assets, the
1503 assets shall be distributed in the following order:

- 1504
1505 (1) To the extent permitted by law, to members who are creditors and other creditors
1506 in satisfaction of liabilities of the company other than liabilities for distributions to
1507 members;

(2) Except as otherwise provided in the operating agreement, to members and former members in satisfaction of liabilities for distributions to members;

(3) Except as otherwise provided in the operating agreement, to members as follows:

(a) First, for the return of their contributions;

(b) Second, with respect to their membership interests.

(B) A limited liability company that is winding up its affairs and liquidating its assets shall pay in full any claims and liabilities or make reasonable provision ~~to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations that are known to the company and all claims and obligations that are known to the company but with respect to which the claimant or obligee is unknown. If there are sufficient assets, the claims and obligations shall be paid in full or any provision to pay them shall be made in full. If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority, and claims and obligations for those payments in full by insurance or otherwise if the corporation has sufficient assets. If the limited liability company does not have sufficient assets, the limited liability company shall pay claims and liabilities or provide for those payments by insurance or otherwise in order of their priority. Among claims of equal priority shall be paid ratably, the limited liability company shall apportion those payments to the extent of the assets funds legally available for their payment. Unless otherwise provided in the operating agreement, any the payment of those claims. Any remaining assets shall be distributed as provided in division (AD) of this section.~~

(C) A dissolved limited liability company shall do all of the following:

(1) Pay the claims made and not rejected under division (A) of section 1705.432 of the Revised Code;

(2) Post the security offered and not rejected under division (B) of section 1705.432 of the Revised Code;

(3) Post security ordered by the court in any proceeding under division (C) of section 1705.432 of the Revised Code;

(4) Make any payment required by a court acting under section 1705.44 of the Revised Code;

(5) Pay or make provision by insurance or otherwise for all other claims that are mature, known, and uncontested or that have been finally determined to be owing by the corporation and any other claims described in division (C)(2) of section 1705.432 of the Revised Code.

(D) In the absence of fraud, the judgment of the members, or managers if management is not reserved to the members, of the dissolved limited liability company as to the provision the limited liability company made for the payment of all claims under division (C)(5) of this section shall be conclusive.

Committee Comment (2016)

New division (C) of this section is similar to division (A) of section 1701.882 applicable to corporations and it enumerates the obligations of a dissolved limited liability company to satisfy or make provision for claims against the company. New division (D) is similar to section 1701.882(C) applicable to corporate directors and defines the discretion of members or managers to make provision for unknown claims.

1705.48 Personal Liability.

Except as otherwise provided by this chapter or any other provision of the Revised Code, including, but not limited to, sections 3734.908, 5739.33, 5743.57, 5747.07, and 5753.02 of the Revised Code, all of the following apply:

(A) The debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the limited liability company.

(B) Neither the members of the limited liability company nor any managers of the limited liability company are personally liable to satisfy any judgment, decree, or order of a court for, or are personally liable to satisfy in any other manner, a debt, obligation, or liability of the company solely by reason of being a member or manager of the limited liability company.

(C) Nothing in this chapter affects any personal liability of a member of a limited liability company or any manager of a limited liability company for the member's or manager's own actions or omissions.

(D) This chapter does not affect any statutory or common law of this or another state that pertains to the relationship between an individual who renders a professional service and a recipient of that service, including, but not limited to, any contract or tort liability arising out of acts or omissions committed or omitted during the course of rendering the professional service.

(E) The dissolution of a limited liability company shall not affect the limited liability of a member with respect to transactions occurring or acts or omissions done or omitted in the name of or by the limited liability company.

(F) A member who receives a distribution of assets from a dissolved limited liability company shall not be liable for any claim against the limited liability company in an amount in excess of the amount of the member's pro rata share of the claim or the amount distributed to the member, whichever is less. The aggregate liability of any member for claims against a

dissolved limited liability company shall not exceed the amount distributed to that member after the dissolution.

(G) A member of a dissolved limited liability company, the assets of which were distributed pursuant to this chapter, may be liable for a claim against the limited liability company only if an action on that claim is commenced before expiration of the period specified in division (E)(2) of section 1705.43 of the Revised Code.

Committee Comment (2016)

New divisions (E), (F), and (G) are similar to divisions (A), (B), and (C) of section 1701.883, applicable to corporations. New division (E) confirms that dissolution of a limited liability company does not alter the limited liability of its members. New division (F) confirms the limit on the amount for which a member may be liable after dissolution. New division (G) makes clear that a member is only liable if the claim against the limited liability company is brought within the five year time limit of section 1705.43(E)(2).

1615

1616

1617

[PAGE INTENTIONALLY LEFT BLANK]

1618 **REPORT OF THE CRIMINAL JUSTICE COMMITTEE**

1621 *To the Council of Delegates:*

1623 The Criminal Justice Committee requests your favorable consideration of the following legislative
1624 proposal:

1626 To add a new Section 3715.055 to the ORC establishing a foundation for admission of
1627 records to create a rebuttable presumption as to the identity of a purchaser of
1628 pseudoephedrine products.

1630 Respectfully submitted,

1633 Judge David A. Trimmer, Lancaster
1634 Criminal Justice Committee, Chair

1636 **Summary and Rationale of the Proposal**

1638 There are a high number of illegal assembly of chemicals for the manufacture of methamphetamine
1639 throughout Ohio. Our committee is aware of the importance of NPLEX (National Precursor Log
1640 Exchange) records used by law enforcement to determine individuals likely to be contributing to
1641 the assembly of chemicals for the manufacture of methamphetamine. NPLEX records, at least in
1642 part, track the sale of pseudoephedrine purchases. Pseudoephedrine is a key ingredient in the
1643 manufacture of methamphetamine and is typically found in prescription or over-the-counter
1644 allergy relief medicine. One of the suppression issues in a recent case involved the admissibility
1645 of over-the-counter pseudoephedrine product purchase records of an individual. The defense
1646 objected to the admission of those records on the grounds of Hearsay. While, in theory, the
1647 admission of NPLEX records may fall under a listed "Hearsay Exception" under Evidence Rule
1648 803 (an official public record or business record), and therefore be admissible, part of the argument
1649 is that NPLEX is a non-profit entity and documents associated with NPLEX must be authenticated
1650 by an NPLEX representative. Some other states, such as Missouri, have addressed this issue. In
1651 Missouri, Section 195.017.21, "Establishes Foundation for Admission of Records to Create
1652 Rebuttable Presumption as to the Identity of Purchaser of Pseudoephedrine Products." In allowing
1653 the rebuttable presumption for NPLEX records (in addition to the log records) see **State v. Cady**
1654 (April 2, 2014), No. SD 32636. Ohio has no such rebuttable presumption provision.

1656 **Summary and Rationale for the Proposal**

1658 While a trial court has broad discretion to admit or exclude evidence at trial, fundamentally, an
1659 appellate court reviews the admissibility of evidence to determine if a trial court has abused its
1660 discretion. Practically speaking, if a rebuttable presumption is not created in the State of Ohio
1661 then it is possible that a representative from the organization that has created NPLEX could be
1662 required to testify in criminal cases where the State of Ohio is attempting to show that a person is
1663 attempting to acquire and abuse pseudoephedrine products and thus likely to be contributing to the

1664 manufacture of methamphetamine. Certainly, the frequent purchasing of pseudoephedrine
1665 products may be determined by a trial court or jury to be factually important when considering
1666 crimes like illegal assembly of chemicals for the manufacture of methamphetamine.
1667

1668 **Proposed Text of the New Law**
1669

1670 **“Section 3715.055. Establishes Foundation for Admission of Records to Create Rebuttable**
1671 **Presumption as to the Identity of Purchaser of Pseudoephedrine Products.**
1672

1673 Logs of transactions and NPLEX records that are required to be kept and maintained under Ohio
1674 Revised Code Chapters 3715.05, 3715.051, or 3715.052 shall create a rebuttable presumption that
1675 the person whose name appears in the logs or records is the person whose transactions are recorded
1676 in the logs or records. This evidentiary presumption is established by the logs of transactions
1677 required to be kept, maintained, or submitted by Ohio Revised Code Section 3715.05. The Court
1678 shall hold a pretrial hearing in the event the defense presents a basis for challenging the
1679 presumption.”
1680

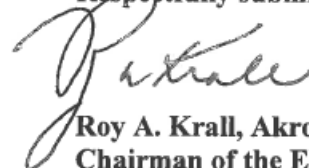
REPORT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION

To the Council of Delegates:

The Estate Planning, Trust and Probate Law (“EPTPL”) Section hereby respectfully requests your favorable consideration of 4 legislative proposals, which may be summarized as follows:

1. To add a new Chapter to the Ohio Revised Code to adopt the “Revised Uniform Fiduciary Access to Digital Assets Act” as recommended by the National Conference of Commissioners on Uniform State Laws.
2. To add a new Section 1337.571 and to amend Section 1337.60 of the Ohio Revised Code to define the breadth of an agent’s power over digital assets when conferred by a principal in a power of attorney and to add provisions to the statutory general power of attorney with regard to digital assets and access to the content of electronic communications, both toward conformity with the Revised Uniform Fiduciary Access to Digital Assets Act.
3. To amend Sections 2107.52 and 5808.19 of the Ohio Revised Code to clarify that the exception to the antilapse statutes preventing the creation of a substitute gift in the descendants of a deceased class member only applies if the defined class is multi-generational.
4. To add a new Chapter 5817 and delete Sections 2107.081 to 2107.085 of the Ohio Revised Code to allow a living settlor to determine the validity of his or her trust, just as a living testator may determine the validity of his or her will under current law, to make some modifications to the provisions for testators, and to coordinate the two sets of provisions into a single chapter.

Respectfully submitted,



Roy A. Krall, Akron

Chairman of the EPTPL Section Council

PROPOSAL 1: TO AMEND OHIO LAW TO ADD THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT AS RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

Summary and Rationale for Proposal:

Use of the internet has dramatically changed how people communicate, store documents and transact business. Many have access to the internet and use internet service providers and software to deal with banking, investing, emailing, document storage and purchasing. State and federal laws restrict access to these “digital assets” by fiduciaries and state laws differ greatly. Some states have enacted laws that touch on some of the issues fiduciaries face when dealing with digital assets

and electronic communications but many states, including Ohio, have no statutory authority. Moreover, the terms-of-service agreements of internet service providers generally govern how digital assets are dealt with. The inability to access these digital assets by executors or administrators, trustees, guardians and agents acting under a power of attorney can range from frustrating to devastating.

The EPTPL Section Council formed a Committee to study issues relating to fiduciary access to digital assets several years ago. The Committee soon realized that the nature of these assets requires a uniform approach across the entire country and concluded that Ohioans would be best served if action was postponed until a uniform law was available for review.

In late 2015, the Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA) was approved and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The Committee has made local terminology changes for Ohio but has not changed the act substantively in order to safeguard pre-existing approval by various internet service providers, including Google and Facebook. Both of these companies have expressed written approval of and adherence to statutes not materially different from Revised UFADAA. Facebook indicated specifically that uniformity among states was quite important to it.

Revised UFADAA modifies the original Uniform Fiduciary Access to Digital Assets Act (2014) which was immediately opposed by privacy advocates and many internet service providers and technology companies. In fact, a competing Act was proposed by technology companies called the Privacy Expectations Afterlife and Choices Act (PEAC ACT). PEAC failed to deal with many of the problems fiduciaries have in dealing with digital assets and electronic communications. In order to resolve these differences and draft suitable legislation, NCCUSL included many opponents of UFADAA in the discussions to arrive at Revised UFADAA. It is believed that Revised UFADAA alleviates most of the concerns of the opponents to UFADAA while still giving fiduciaries appropriate access to digital assets.

Revised UFADAA deals with four common types of fiduciaries:

- (1) Executors or Administrators of deceased persons' estates;
- (2) Court appointed Guardians or Conservators of Wards;
- (3) Agents under a power of attorney;
- (4) Trustees.

Under the Act, internet users have several options: If the custodian (the company that stores the user's digital assets on their servers) provides for an online tool, the user may use the online tool to designate who may access the user's digital assets. If a custodian does not provide an online tool option or if the user declines to use an online tool, the user may give enforceable directions for access to their digital assets in traditional estate planning documents such as a will, trust or power of attorney. If there are no directions given by a user with an online tool or in the user's

estate planning documents, the terms-of-service agreements of the user's accounts will determine fiduciary access; and if the terms-of-service agreements are silent regarding fiduciary access, the default rules of Revised UFADAA will apply.

The Act has several purposes:

- (1) It gives Ohio internet users the ability to plan for the management of their digital assets and electronic communications by fiduciaries.
- (2) It creates a system to deal with conflicting instructions regarding access to these digital assets.
- (3) It provides fiduciaries the legal authority to access and manage electronic communications and digital assets while still respecting an owner's reasonable expectations to privacy.
- (4) It gives internet service providers (custodians under the Act) legal authority to deal with fiduciaries of their customers.

Accordingly, the Section Council recommends adoption of NCCUSL's 2015 Revised Uniform Fiduciary Access to Digital Assets Act.

Text of the Proposal (all language new – symbolic section numbers in [], NCCUSL's suggested title in { }):

[1] {Short Title}

This Act may be cited as the Ohio Revised Uniform Fiduciary Access to Digital Assets Act (2015).

[2] {Definitions}

In this Act:

- (A) "Account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (B) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney in fact, or otherwise.
- (C) "Carries" means engages in the transmission of an electronic communication.
- (D) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

- (E) “Content of an electronic communication” means information concerning the substance or meaning of the communication which:
- (1) has been sent or received by a user;
 - (2) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and
 - (3) is not readily accessible to the public.
- (F) “Court” means the probate court for all matters in which such court has exclusive jurisdiction under section 2101.24 of the Revised Code. “Court” also means the probate court or the general division of the court of common pleas for matters where such courts have concurrent jurisdiction under section 2101.24 of the Revised Code.
- (G) “Custodian” means a person that carries, maintains, processes, receives, or stores a digital asset of a user.
- (H) “Designated recipient” means a person chosen by a user using an online tool to administer digital assets of the user.
- (I) “Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- (J) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (K) “Electronic communication” has the meaning set forth in 18 U.S.C. Section 2510(12), as amended.
- (L) “Electronic-communication service” means a custodian that provides to a user the ability to send or receive an electronic communication.
- (M) “Fiduciary” means an original, additional, or successor agent, guardian, personal representative, or trustee.
- (N) “Guardian,” other than a guardian under sections 5905.01 to 5905.19 of the Revised Code, means any person, association, or corporation appointed by the probate court to have the care and management of the person, the estate, or both of an incompetent or minor. When applicable, “guardian” includes, but is not limited to, a limited guardian, an interim guardian, a standby guardian, and an emergency guardian appointed pursuant to division (B) of section 2111.02 of the Revised Code. “Guardian” also includes an agency under contract with the department of developmental disabilities for the provision of protective

1860 service under sections 5123.55 to 5123.59 of the Revised Code when appointed by the
1861 probate court to have the care and management of the person of an incompetent. For
1862 purposes of this Act, “Guardian” shall include “Conservator”. “Conservator” means a
1863 conservator appointed by the probate court in an order of conservatorship issued pursuant
1864 to section 2111.021 of the Revised Code.

1865
1866 (O) “Information” means data, text, images, videos, sounds, codes, computer programs,
1867 software, databases, or the like.

1868
1869 (P) “Online tool” means an electronic service provided by a custodian that allows the user, in
1870 an agreement distinct from the terms-of-service agreement between the custodian and user,
1871 to provide directions for disclosure or nondisclosure of digital assets to a third person.

1872
1873 (Q) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited
1874 liability company, association, joint venture, government, governmental agency or
1875 instrumentality, public corporation, or any other legal or commercial entity.

1876
1877 (R) “Personal representative” means an executor, administrator, special administrator, or other
1878 person acting under the authority of the probate court to perform substantially the same
1879 function under law of this state. Personal representative also includes a commissioner in a
1880 release of assets from administration under 2113.03 of the Revised Code and an applicant
1881 for summary release from administration under section 2113.031 of the Revised Code.

1882
1883 (S) “Power of attorney” means a writing or other record that grants authority to an agent to act
1884 in the place of the principal.

1885
1886 (T) “Principal” means an individual who grants authority to an agent in a power of attorney.

1887
1888 (U) “Record” means information that is inscribed on a tangible medium or that is stored in an
1889 electronic or other medium and is retrievable in perceivable form.

1890
1891 (V) “Remote-computing service” means a custodian that provides to a user computer-
1892 processing services or the storage of digital assets by means of an electronic
1893 communications system, as defined in 18 U.S.C. Section 2510(14), as amended.

1894
1895 (W) “Terms-of-service agreement” means an agreement that controls the relationship between
1896 a user and a custodian.

1897
1898 (X) “Trustee” means a fiduciary with legal title to property pursuant to an agreement or
1899 declaration that creates a beneficial interest in another. “Trustee” includes an original,
1900 additional, and successor trustee and a cotrustee.

1901 (Y) “User” means a person that has an account with a custodian.

1902
1903 (Z) “Ward” means any person for whom a guardian is actin or for whom the probate court is
1904 acting pursuant to section 2111.50 of the Revised Code. For purposes of this Act, “Ward”
1905 shall include a person for whom a conservator has been appointed by the probate court in

- an order of conservatorship issued pursuant to section 2111.021 of the Revised Code.
- (AA) "Will" includes codicils to wills admitted to probate, lost, spoliated, or destroyed wills, and instruments admitted to probate under section 2107.081 of the Revised Code, but "will" does not include inter vivos trusts or other instruments that have not been admitted to probate.
- [3] {Applicability}
- (A) This act applies to:
- (1) an agent acting under a power of attorney executed before, on, or after the effective date of this act;
- (2) a personal representative acting for a decedent who died before, on, or after the effective date of this act;
- (3) a guardianship proceeding commenced before, on, or after the effective date of this act; and
- (4) a trustee acting under a trust created before, on, or after the effective date of this act.
- (B) This act applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.
- (C) This act does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.
- [4] {User Direction for Disclosure of Digital Assets}
- (A) A user may use an online tool to direct the custodian to disclose or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.
- (B) If a user has not used an online tool to give direction under division (A) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.
- (C) A user's direction under division (A) or (B) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

1952 [5] {Terms-of-Service Agreement}

1953
1954 (A) This act does not change or impair a right of a custodian or a user under a terms-of-service
1955 agreement to access and use digital assets of the user.

1956
1957 (B) This act does not give a fiduciary any new or expanded rights other than those held by the
1958 user for whom, or for whose estate, the fiduciary acts or represents.

1959
1960 (C) A fiduciary's access to digital assets may be modified or eliminated by a user, by federal
1961 law, or by a terms-of-service agreement if the user has not provided direction under Section
1962 [4].

1963
1964 [6] {Procedure for Disclosing Digital Assets}

1965
1966 (A) When disclosing digital assets of a user under this act, the custodian may at its sole
1967 discretion:

1968
1969 (1) grant a fiduciary or designated recipient full access to the user's account;

1970
1971 (2) grant a fiduciary or designated recipient partial access to the user's account
1972 sufficient to perform the tasks with which the fiduciary or designated recipient is
1973 charged; or

1974
1975 (3) provide a fiduciary or designated recipient a copy in a record of any digital asset
1976 that, on the date the custodian received the request for disclosure, the user could
1977 have accessed if the user were alive and had full capacity and access to the account.

1978
1979 (B) A custodian may assess a reasonable administrative charge for the cost of disclosing digital
1980 assets under this act.

1981
1982 (C) A custodian need not disclose under this act a digital asset deleted by a user.

1983
1984 (D) If a user directs or a fiduciary requests a custodian to disclose under this act some, but not
1985 all, of the user's digital assets, the custodian need not disclose the assets if segregation of
1986 the assets would impose an undue burden on the custodian. If the custodian believes the
1987 direction or request imposes an undue burden, the custodian or fiduciary may seek an order
1988 from the court to disclose:

1989
1990 (1) a subset limited by date of the user's digital assets;

1991
1992 (2) all of the user's digital assets to the fiduciary or designated recipient;

1993
1994 (3) none of the user's digital assets; or

1995
1996 (4) all of the user's digital assets to the court for review in camera.

[7] {Disclosure of Content of Electronic Communications of Deceased User}

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian:

(A) a written request for disclosure in physical or electronic form;

(B) a copy of the death certificate of the user;

(C) a copy of the letter of appointment of the personal representative, the entry appointing a commissioner under section 2113.03(E) of the Revised Code, or the entry granting summary release from administration under section 2113.03(E) of the Revised Code;

(D) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(E) if requested by the custodian:

(1) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) evidence linking the account to the user; or

(3) a finding by the court that:

(a) the user had a specific account with the custodian, identifiable by the information specified in subdivision (1);

(b) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable law;

(c) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(d) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

[8] {Disclosure of Other Digital Assets of Deceased User}

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content

of electronic communications, of the user, if the personal representative gives the custodian:

(A) a written request for disclosure in physical or electronic form;

(B) a copy of the death certificate of the user;

(C) a copy of the letter of appointment of the personal representative, the entry appointing a commissioner under section 2113.03(E) of the Revised Code, or the entry granting summary release from administration under section 2113.031(E) of the Revised Code; and

(D) if requested by the custodian:

(1) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) evidence linking the account to the user;

(3) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(4) a finding by the court that:

(a) the user had a specific account with the custodian, identifiable by the information specified in subdivision (1); or

(b) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

[9] {Disclosure of Content of Electronic Communications of Principal}

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(A) a written request for disclosure in physical or electronic form;

(B) a copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(C) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(D) if requested by the custodian:

(1) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

2090
2091 (2) evidence linking the account to the principal.

2092
2093 [10] {Disclosure of Other Digital Assets of Principal}

2094
2095 Unless otherwise ordered by the court, directed by the principal, or provided by a power of
2096 attorney, a custodian shall disclose to an agent with specific authority over digital assets or general
2097 authority to act on behalf of a principal a catalogue of electronic communications sent or received
2098 by the principal and digital assets, other than the content of electronic communications, of the
2099 principal if the agent gives the custodian:

2100
2101 (A) a written request for disclosure in physical or electronic form;

2102
2103 (B) a copy of the power of attorney that gives the agent specific authority over digital assets or
2104 general authority to act on behalf of the principal;

2105
2106 (C) a certification by the agent, under penalty of perjury, that the power of attorney is in effect;
2107 and

2108
2109 (D) if requested by the custodian:

2110
2111 (1) a number, username, address, or other unique subscriber or account identifier
2112 assigned by the custodian to identify the principal's account; or

2113
2114 (2) evidence linking the account to the principal.

2115
2116 [11] {Disclosure of Digital Assets Held in Trust when Trustee is Original User}

2117
2118 Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee
2119 that is an original user of an account any digital asset of the account held in trust, including a
2120 catalogue of electronic communications of the trustee and the content of electronic
2121 communications.

2122
2123 [12] {Disclosure of Contents of Electronic Communications Held in Trust when Trustee Not
2124 Original User}

2125
2126 Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall
2127 disclose to a trustee that is not an original user of an account the content of an electronic
2128 communication sent or received by an original or successor user and carried, maintained,
2129 processed, received, or stored by the custodian in the account of the trust if the trustee gives the
2130 custodian:

2131 (A) a written request for disclosure in physical or electronic form;

2132
2133 (B) either a copy of the trust instrument that includes consent to disclosure of the content of
2134 electronic communications to the trustee and a certification by the trustee, under penalty of
2135 perjury, that the trust exists and the trustee is a currently acting trustee of the trust or a

certification of the trust under section 5810.13 of the Revised Code that includes a statement that the trust authorizes disclosure of the content of electronic communications to the trustee; and

(C) if requested by the custodian:

(1) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

[13] {Disclosure of Other Digital Assets Held in Trust When Trustee Not Original User}

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(A) a written request for disclosure in physical or electronic form;

(B) either a copy of the trust instrument and a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust or a certification of the trust under section 5810.13 of the Revised Code; and

(C) if requested by the custodian:

(1) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

[14] {Disclosure of Digital Assets to Guardian of Ward}

(A) After an opportunity for a hearing the court may grant a guardian access to the digital assets of a ward.

(C) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by a ward and any digital assets, other than the content of electronic communications, in which the ward has a right or interest if the guardian gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a copy of the court order that gives the guardian authority over the digital assets of the ward; and

(3) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward; or

(b) evidence linking the account to the ward.

(C) A guardian of the ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this section must be accompanied by a copy of the court order giving the guardian authority over the ward.

[15] {Fiduciary Duty and Authority}

(A) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) the duty of care;

(2) the duty of loyalty; and

(3) the duty of confidentiality.

(B) A fiduciary's authority with respect to a digital asset of a user:

(1) except as otherwise provided in Section [4], is subject to the applicable terms of service;

(2) is subject to other applicable law, including copyright law;

(3) is limited by the scope of the fiduciary's duties; and

(4) may not be used to impersonate the user.

(C) A fiduciary with authority over the property of a decedent, ward, principal, or settlor has the right to access any digital asset in which the decedent, ward, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(D) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including section 2913.04 of the Revised Code.

(E) A fiduciary with authority over the tangible, personal property of a decedent, ward,

principal, or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including section 2913.04 of the Revised Code.

(F) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(G) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a copy of the death certificate of the user;

(2) a copy of the instrument giving the fiduciary authority over the account:

(a) for a personal representative, a copy of the letter of appointment of the personal representative, the entry appointing a commissioner under section 2113.03(E) of the Revised Code, or the entry granting summary release from administration under section 2113.031(E) of the Revised Code;

(b) for an agent, a copy of the power of attorney;

(c) for a trustee, either a copy of the trust instrument and a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust or a certification of the trust under section 5810.13 of the Revised Code; or

(d) for a guardian, a copy of the court order giving the guardian authority over the ward; and

(e) if requested by the custodian:

(i) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) evidence linking the account to the user; or

(iii) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (i).

2273 [16] {Custodian Compliance and Immunity}

2274
2275 (A) Not later than 60 days after receipt of the information required under Sections [7] through
2276 [14], a custodian shall comply with a request under this act from a fiduciary or designated
2277 recipient to disclose digital assets or terminate an account. If the custodian fails to comply,
2278 the fiduciary or designated recipient may apply to the court for an order directing
2279 compliance.

2280
2281 (B) An order under division (A) directing compliance must contain a finding that compliance
2282 is not in violation of 18 U.S.C. Section 2702, as amended.

2283
2284 (C) A custodian may notify the user that a request for disclosure or to terminate an account was
2285 made under this act.

2286
2287 (D) A custodian may deny a request under this act from a fiduciary or designated recipient for
2288 disclosure of digital assets or to terminate an account if the custodian is aware of any lawful
2289 access to the account following the receipt of the fiduciary's request.

2290
2291 (E) This act does not limit a custodian's ability to obtain or require a fiduciary or designated
2292 recipient requesting disclosure or termination under this Act to obtain a court order which:

2293
2294 (1) specifies that an account belongs to the ward or principal;

2295
2296 (2) specifies that there is sufficient consent from the ward or principal to support the
2297 requested disclosure; and

2298
2299 (3) contains a finding required by law other than this Act.

2300
2301 (F) A custodian and its officers, employees, and agents are immune from liability for an act or
2302 omission done in good faith in compliance with this Act.

2303
2304 [17] {Uniformity of Application and Construction}

2305
2306 In applying and construing this uniform act, consideration must be given to the need to promote
2307 uniformity of the law with respect to its subject matter among states that enact it.

2308
2309 [18] {Relation to Electronic Signatures in Global and National Commerce Act}

2310
2311 This act modifies, limits, or supersedes the Electronic Signatures in Global and National
2312 Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede
2313 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the
2314 notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

2315
2316 [19] {Severability}

2317
2318 If any provision of this act or its application to any person or circumstance is held invalid, the

invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

PROPOSAL 2: TO AMEND OHIO LAW TO SPECIFY WHICH POWERS ARE GRANTED TO AN AGENT OVER DIGITAL ASSETS UNDER THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT AND TO ADD CORRESPONDING PROVISIONS TO THE PRE-EXISTING STATUTORY POWER OF ATTORNEY FORM.

Summary and Rationale for Proposal:

This proposal is contingent on the adoption of the Revised Uniform Fiduciary Access to Digital Assets Act (UFADAA). Sections 1337.45-1337.58 of the Revised Code list statutory powers that can be granted to an agent under a power of attorney. While Revised UFADAA allows a principal in a power of attorney to grant an agent various powers with regard to the principal's digital assets, agents only have those powers to the extent that the principal grants them. In order to facilitate the granting of these powers, the Section Council proposes adding to Ohio's enactment of the Uniform Power of Attorney Act a statutory definition of digital asset powers. This incorporates the Revised UFADAA powers that a principal can grant to the agent so that a granting of power with respect to digital assets will constitute a grant of all of those things that can be granted by a principal under Revised UFADAA.

The statutory power of attorney form, found in Section 1337.60 of the Ohio Revised Code, allows a principal to grant powers with respect to given subjects (e.g. real property or banking) by initialing a line immediately preceding that subject. Revised UFADAA permits a principal to grant an agent various powers with regard to digital assets, which are all listed in the above proposed definition. The statutory power of attorney form must be updated to allow the principal to grant the new powers with respect to the subject of digital assets. The Section Council therefore proposes to add the following provisions to Section 1337.60 of the Ohio Revised Code. The issue of fiduciary access to digital assets is further complicated by two current federal laws, the Electronic Communications Privacy Act (the "ECPA") and the Computer Fraud and Abuse Act (the "CFAA"), which criminalize the unauthorized release of the content of electronic communications. In order to divulge the contents of a communication, federal law requires that there be an express grant of such authority. While the above statutory definition of digital assets includes access to the content of electronic communications, there is no way of knowing whether or not the inclusion of that authority in a statutory definition meets the threshold authorization mandated by federal law. Accordingly, the Section Council also recommends that Ohio's statutory form include a means by which this required express authority can be granted.

Text of the Proposal:

1337.571

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to digital assets causes the agent to be an authorized user for the purpose of applicable computer fraud and unauthorized computer access laws and authorizes the agent to do

all of the following:

(A) have access to any catalogue of electronic communications sent or received by the principal;

(B) have access to any other digital asset in which the principal has a right or interest;

(C) have the right to access any of the principal's tangible personal property capable of receiving, storing, processing, or sending a digital asset;

(D) take any action concerning the asset to the extent of the account holder's authority;

(E) have access to the content of electronic communications sent or received by the principal.

1337.60

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by sections 1337.21 to 1337.64 of the Revised Code.

[INSERT NAME OF JURISDICTION]

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code).

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have

2411 named a successor agent. You may also name a second successor agent.
2412
2413 This power of attorney becomes effective immediately unless you state otherwise in the Special
2414 Instructions.

2415
2416 ACTIONS REQUIRING EXPRESS AUTHORITY

2417
2418 Unless expressly authorized and initialed by me in the Special Instructions, this power of attorney
2419 does not grant authority to my agent to do any of the following:

- 2420
2421 (1) Create a trust;
2422
2423 (2) Amend, revoke, or terminate an inter vivos trust, even if specific authority to do so is granted
2424 to the agent in the trust agreement;
2425
2426 (3) Make a gift;
2427
2428 (4) Create or change rights of survivorship;
2429
2430 (5) Create or change a beneficiary designation;
2431
2432 (6) Delegate authority granted under the power of attorney;
2433
2434 (7) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a
2435 survivor benefit under a retirement plan;
2436 (8) Exercise fiduciary powers that the principal has authority to delegate.

2437
2438 CAUTION: Granting any of the above eight powers will give your agent the authority to take
2439 actions that could significantly reduce your property or change how your property is distributed at
2440 your death.

2441
2442 If you have questions about the power of attorney or the authority you are granting to your agent,
2443 you should seek legal advice before signing this form.

2444
2445 DESIGNATION OF AGENT

2446
2447 I, (Name of Principal) name the following person as my agent:

2448
2449 Name of Agent:

2450
2451 Agent's Address:

2452
2453 Agent's Telephone Number:

2454
2455 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

2456

2457 If my agent is unable or unwilling to act for me, I name as my successor agent:
2458
2459 Name of Successor Agent:
2460
2461 Successor Agent's Address:
2462
2463 Successor Agent's Telephone Number:
2464
2465 If my successor agent is unable or unwilling to act for me, I name as my second successor agent:
2466
2467 Name of Second Successor Agent:
2468
2469 Second Successor Agent's Address:
2470
2471 Second Successor Agent's Telephone Number:
2472
2473 GRANT OF GENERAL AUTHORITY
2474
2475 I grant my agent and any successor agent general authority to act for me with respect to the
2476 following subjects as defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64
2477 of the Revised Code):
2478
2479 (INITIAL each subject you want to include in the agent's general authority. If you wish to grant
2480 general authority over all of the subjects you may initial "All Preceding Subjects" instead of
2481 initialing each subject.)
2482
2483 (...) Real Property
2484
2485 (...) Tangible Personal Property
2486
2487 (...) Stocks and Bonds
2488
2489 (...) Commodities and Options
2490
2491 (...) Banks and Other Financial Institutions
2492
2493 (...) Operation of Entity or Business
2494
2495 (...) Insurance and Annuities
2496
2497 (...) Estates, Trusts, and Other Beneficial Interests
2498
2499 (...) Claims and Litigation
2500
2501 (...) Personal and Family Maintenance
2502

2503 (...) Benefits from Governmental Programs or Civil or Military Service
 2504
 2505 (...) Retirement Plans
 2506
 2507 (...) Taxes
 2508
 2509 (...) Digital Assets
 2510
 2511 (...) All Preceding Subjects
 2512
 2513 (...) My agent shall have access to the content of electronic communications sent or received by
 2514 me.
 2515
 2516 LIMITATION ON AGENT'S AUTHORITY
 2517
 2518 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the
 2519 agent or a person to whom the agent owes an obligation of support unless I have included that
 2520 authority in the Special Instructions.
 2521
 2522 SPECIAL INSTRUCTIONS (OPTIONAL)
 2523
 2524 You may give special instructions on the following lines:
 2525
 2526 EFFECTIVE DATE
 2527 This power of attorney is effective immediately unless I have stated otherwise in the Special
 2528 Instructions.
 2529
 2530 NOMINATION OF GUARDIAN (OPTIONAL)
 2531
 2532 If it becomes necessary for a court to appoint a guardian of my estate or my person, I nominate the
 2533 following person(s) for appointment:
 2534
 2535 Name of Nominee for guardian of my estate:
 2536
 2537 Nominee's Address:
 2538
 2539 Nominee's Telephone Number:
 2540
 2541 Name of Nominee for guardian of my person:
 2542
 2543 Nominee's Address:
 2544
 2545 Nominee's Telephone Number:
 2546
 2547 RELIANCE ON THIS POWER OF ATTORNEY
 2548

2549 Any person, including my agent, may rely upon the validity of this power of attorney or a copy of
2550 it unless that person knows it has terminated or is invalid.

2551
2552 SIGNATURE AND ACKNOWLEDGMENT

2553
2554 Your Signature Date

2555
2556 Your Name Printed

2557
2558 Your Address

2559
2560 Your Telephone Number

2561
2562 State of Ohio

2563
2564 County of

2565
2566 This document was acknowledged before me on (Date), by (Name
2567 of Principal).

2568
2569

2570
2571 Signature of Notary

2572
2573 My commission expires:
2574 This document prepared by:

2575
2576 IMPORTANT INFORMATION FOR AGENT

2577
2578 Agent's Duties

2579
2580 When you accept the authority granted under this power of attorney, a special legal relationship is
2581 created between you and the principal. This relationship imposes upon you legal duties that
2582 continue until you resign or the power of attorney is terminated or revoked. You must:

2583
2584 (1) Do what you know the principal reasonably expects you to do with the principal's property or,
2585 if you do not know the principal's expectations, act in the principal's best interest;

2586
2587 (2) Act in good faith;

2588
2589 (3) Do nothing beyond the authority granted in this power of attorney;

2590
2591 (4) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is
2592 consistent with the principal's best interest;

2593
2594 (5) Disclose your identity as an agent whenever you act for the principal by writing or printing the

name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) Act loyally for the principal's benefit;

(2) Avoid conflicts that would impair your ability to act in the principal's best interest;

(3) Act with care, competence, and diligence;

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) Cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

(1) The death of the principal;

(2) The principal's revocation of the power of attorney or your authority;

(3) The occurrence of a termination event stated in the power of attorney;

(4) The purpose of the power of attorney is fully accomplished;

(5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Revised Code). If you violate the Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

PROPOSAL 3: TO AMEND OHIO LAW TO CLARIFY THAT THE EXCEPTION TO THE ANTILAPSE STATUTES ONLY APPLIES TO MULTI-GENERATIONAL CLASS GIFTS.

Summary and Rationale for Proposal:

Section 2107.52 of the Ohio Revised Code provides that when a will makes a gift to a class and a member of the class predeceases the testator that a substitute gift will be made to the descendants of the deceased class member. Section 2107.52(B)(2)(b) provides an exception to the general rule when the class is defined as “issue,” “descendants,” “heirs of the body,” “heirs,” “next of kin,” “relatives,” or “family,” or a class described by language of similar import. Comparable language relating to class gifts under a trust is found in Section 5808.19(B)(2)(b)(ii) of the Ohio Revised Code.

This language derives from Section 2-603(b)(2) of the Uniform Probate Code, the official comment to which provides:

Class Gifts. In line with modern policy, subsection (b)(2) continues the pre-1990 Code’s approach of expressly extending the antilapse protection to these gifts. Subsection (b)(2) applies to single-generation class gifts ... in which one or more class members fail to survive the testator (by 120 hours) leaving descendants who survive the testator (by 120 hours); in order for the section to apply, it is not necessary that any of the class members survive the testator (by 120 hours). Multiple-generation class gifts, i.e., class gifts to “issue,” “descendants,” “heirs of the body,” “heirs,” “next of kin,” “relatives,” “family,” or a class described by language of similar import are excluded, however, because antilapse protection is unnecessary in class gifts of these types. They already contain within themselves the idea of representation, under which a deceased class member’s descendants are substituted for him or her. (Emphasis added.)

The court in *Castillo v. Ott*, 2015-Ohio-905 (6th Dist.) held that “children” was a class described by “language of similar import” to “issue,” “descendants,” “heirs of the body,” “heirs,” “next of kin,” “relatives,” or “family.” The court then held that this prevented a substitute gift for the descendants of a deceased child. The Castillo decision is contrary to the policy of the statute and comments to the Uniform Probate Code, upon which this section is based, because “children” is a single-generation gift and each of the other classes described in Section 2107.52(B)(2)(b) are multi-generational.

Section 5808.19 is the analogous antilapse provision for trusts. For consistency, it is necessary to amend Section 5808.19 comparably.

Accordingly, the Section Council proposes to clarify that the exception to the antilapse protection applicable to class gifts in wills and trusts only applies to gifts to multi-generational classes.

Text of the Proposal:

2107.52

* * *

(B)

* * *

(2) Unless a contrary intent appears in the will, if a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, either of the following applies:

* * *

(b) If the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import that includes more than one generation, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the surviving devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take, per stirpes, the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of division (B)(2)(b) of this section, "deceased devisee" means a class member who failed to survive the testator by at least one hundred twenty hours and left one or more surviving descendants.

5808.19

* * *

(B)

* * *

(2) Unless a contrary intent appears in the instrument creating a future interest under the terms of a trust, each of the following applies:

* * *

- (b) If a beneficiary of a future interest under the terms of a trust does not survive the distribution date by at least one hundred twenty hours and if the beneficiary is a grandparent of the transferor, a descendant of a grandparent of the transferor, or a stepchild of the transferor, either of the following applies:

* * *

- (ii) If the future interest is in the form of a class gift, other than a future interest to "issue," "descendants," "heirs of the body," "heirs," "next of kin," "relatives," or "family," or a class described by language of similar import that includes more than one generation, a substitute gift is created in the surviving descendants of the deceased beneficiary or beneficiaries. The property to which the beneficiaries would have been entitled had all of them survived the distribution date by at least one hundred twenty hours passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date by at least one hundred twenty hours. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take, per stirpes, the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date by at least one hundred twenty hours. For purposes of division (B)(2)(b)(ii) of this section, "deceased beneficiary" means a class member who failed to survive the distribution date by at least one hundred twenty hours and left one or more surviving descendants.

PROPOSAL 4: TO AMEND OHIO LAW TO ALLOW A LIVING SETTLOR TO DETERMINE THE VALIDITY OF HIS OR HER TRUST, JUST AS A LIVING TESTATOR MAY DETERMINE THE VALIDITY OF HIS OR HER WILL UNDER CURRENT LAW, TO MAKE SOME MODIFICATIONS TO THE PROVISIONS FOR TESTATORS, AND TO COORDINATE THE TWO SETS OF PROVISIONS INTO A SINGLE CHAPTER.

Summary and Rationale for Proposal:

Ohio statutory law currently allows a living testator to file a declaratory judgment action in probate court seeking a determination that the will is valid. Except to the extent that the will is amended after a favorable determination, the procedure gives a testator an effective means of protecting his or her will from a post-mortem challenge based on allegations that the testator was influenced unduly or lacked testamentary capacity.

Without such a procedure, Professor John Langbien claims that "Our probate procedure [would] follow[] a "worst evidence" rule. We insist that the testator be dead before we investigate the

question whether he had capacity when he was alive.”¹ In other words, because the testator is living, he or she is available as a witness, which improves the evidence available to the fact-finder and thus the chance that a correct determination as to validity is made as compared with a post-mortem contest.

Ohio enacted the “antemortem probate” proceeding for wills in 1979 when a will was the primary instrument to dispose of one’s assets at death. Estate planning has evolved so that the inter vivos, or living, trust is now commonly used in estate planning. The proposal updates Ohio statutory law to allow a living settlor to likewise seek the same determination with respect to his or her trust. Accordingly, the Section Council recommends adoption of its proposal.

Text of the Proposal (all language new):

Chapter 5817. ESTABLISHMENT OF WILL AND TRUST VALIDITY BEFORE DEATH

5817.01

As used in this Chapter:

(A) “Beneficiary under a Trust” 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, but does not include the class of permitted appointees among whom the power holder may appoint. “Beneficiary under a trust” includes a charitable organization that is expressly designated in the terms of the trust to receive distributions, but 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.

(B) “Beneficiary under a will” means any person designated in a will to receive a testamentary disposition of real or personal property. “Beneficiary under a will” includes one that, in a capacity other than that of executor, holds a power of appointment over estate assets, but does not include the class of permitted appointees among whom the power holder may appoint. “Beneficiary under a will” includes a charitable organization that is expressly designated in the terms of the will to receive testamentary distributions, but does not include any charitable organization that is not expressly designated in the terms of the will to receive distributions, but to whom the executor may in its discretion make distributions.

(C) “Court” means the probate court of the county in which the complaint under section 5817.02 or 5817.03 of the Revised Code is filed.

(D) “Related Trust” means, for purposes of this Chapter, a trust for which:

(1) the testator is the settlor of the trust, and

¹ Langbien, *Undue Influence: The Epic Battle for the Johnson and Johnson Fortune*, 103 Yale L. J. 2039-2048, 2044 (1994).

(2) the trust is named as a beneficiary in the will in accordance with section 2107.63 of the Revised Code.

(E) “Related Will” means, for purposes of this Chapter, a will for which:

(1) the testator is the settlor of a trust, and

(2) the will names the trust as a beneficiary in accordance with section 2107.63 of the Revised Code.

(F) “Trust” means, for purposes of this Chapter, an inter vivos revocable or irrevocable trust instrument which, at the time the complaint for declaration of validity is filed under section 5817.03 of the Revised Code, either of the following applies:

(1) the settlor resides in, or is domiciled in this state; or

(2) the trust’s principal place of administration is in this state.

5817.02

(A) A testator may file a complaint with the probate court to determine before the testator's death that the will is a valid will subject only to subsequent revocation or modification. The right to file a complaint for a determination of the testator’s will under this Chapter, or to voluntarily dismiss a complaint once filed, is personal to the testator and may not be exercised by the testator’s guardian or an agent under the testator’s power of attorney.

(B) A testator who desires to obtain a validity determination, as to testator’s will, shall file a complaint to determine the validity of both the will and any related trust.

(C) The failure of a testator to file a complaint for a judgment declaring the validity of a will shall not be construed as evidence or an admission that the will is not valid.

(D) A complaint for a determination of the validity of testator’s will shall be accompanied by an express written waiver of the testator’s physician-patient privilege provided in section 2317.02(B) of the Revised Code.

5817.03

(A) A settlor may file a complaint with the probate court to determine before the settlor's death that the trust is valid and enforceable under its terms, subject only to a subsequent revocation or modification of the trust. The right to file a complaint for a determination of the settlor’s trust under this Chapter, or to voluntarily dismiss a complaint once filed, is personal to the settlor and may not be exercised by the settlor’s guardian or an agent under the settlor’s power of attorney.

(B) A settlor who desires to obtain a validity determination, as to settlor's trust, shall file a complaint to determine the validity of both the trust and the related will.

(C) The failure of a settlor to file a complaint for a judgment declaring the validity of a trust shall not be construed as evidence or an admission that the trust is not valid.

(D) A complaint for a determination of the validity of settlor's trust shall be accompanied by an express written waiver of the settlor's physician-patient privilege provided in section 2317.02(B) of the Revised Code.

5817.04

(A) A complaint to determine the validity of a will or trust shall be filed with the probate court. The probate judge, upon the motion of a party or the judge's own motion, may transfer the proceeding to the general division of the common pleas court.

(B) The venue for a complaint under section 5817.02 of the Revised Code is:

(1) the probate court of the county of this state where the testator is domiciled; or

(2) if the testator is not domiciled in this state, the probate court of any county of this state where any real property or personal property of the testator is located and, if none, the probate court of any county of this state.

(C) The venue for a complaint under section 5817.03 of the Revised Code is:

(1) the probate court of the county of this state where the settlor resides or is domiciled;
or

(2) if the settlor is not domiciled in this state, and does not reside in this state, the probate court of the county of this state in which is located the trust's principal place of administration.

5817.05

(A) A complaint under section 5817.02 of the Revised Code must name as party defendants:

(1) the testator's spouse;

(2) the testator's children;

(3) testator's heirs who would take property pursuant to section 2105.06 of the Revised Code had the testator died intestate at the time the complaint is filed;

(4) the beneficiaries under the will; and

(5) any beneficiary under the most recent prior will.

(B) A complaint under section 5817.02 of the Revised Code may name as party defendants any other person the testator believes may have a pecuniary interest in the determination of the validity of testator's will.

(C) A complaint under 5817.02 of the Revised Code may contain all or any of the following:

(1) a statement that a copy of the will has been filed with the court;

(2) a statement that the will is in writing;

(3) a statement that the will was signed by the testator, or was signed in the testator's name by another person in the testator's conscious presence and at the testator's direction;

(4) a statement that the will was signed in the conscious presence of the testator by two or more competent individuals, each of whom either witnessed the testator sign the will, or heard the testator acknowledge signing the will;

(5) a statement that the will was executed with testamentary intent;

(6) a statement that the testator had testamentary capacity;

(7) a statement that the testator was free from undue influence, was not under restraint or duress, and executed the will in the exercise of the testator's free will;

(8) a statement that the execution of the will was not the result of fraud or mistake;

(9) the names and addresses of the testator and all of the defendants and, if minors, the ages of the defendants;

(10) a statement that the will has not been revoked or modified; and

(11) a statement that the testator is familiar with the contents of the will.

5817.06

(A) A complaint under section 5817.03 of the Revised Code must name as party defendants:

(1) the settlor's spouse;

(2) the settlor's children;

(3) settlor's heirs who would take property pursuant to section 2105.06 of the Revised Code had the settlor died intestate at the time the complaint is filed;

(4) the trustees,

(5) the beneficiaries under the trust; and

(6) if the trust amends, amends and restates, or replaces a prior trust, any beneficiary under the most recent prior trust.

(B) A complaint under section 5817.03 of the Revised Code may name as party defendants any other person the settlor believes may have a pecuniary interest in the determination of the validity of settlor's trust.

(C) A complaint under section 5817.03 of the Revised Code may contain all or any of the following:

(1) a statement that a copy of the trust has been filed with the court;

(2) a statement that the trust is in writing and was signed by the settlor;

(3) a statement that the trust was executed with the intent to create a trust;

(4) a statement that the settlor had the legal capacity to enter into and establish the trust;

(5) a statement that 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, or c) a trust for a noncharitable purpose, as provided in section 5804.09 of the Revised Code;

(6) a statement that the trustee has duties to perform;

(7) a statement that the same person is not the sole trustee and sole beneficiary;

(8) a statement that the settlor was free from undue influence, was not under restraint or duress, and executed the trust in the exercise of the settlor's free will;

(9) a statement that execution of the trust was not the result of fraud or mistake;

(10) the names and addresses of the settlor and all of the defendants and, if minors, the ages of the defendants;

(11) a statement that the trust has not been revoked or modified; and

(12) a statement that the settlor is familiar with the contents of the trust.

3000 5817.07

3001
3002 (A) Service of process, with a copy of the complaint and will, or will and related trust, if
3003 applicable, shall be made on every party defendant named in the complaint filed under
3004 section 5817.02 of the Revised Code, as provided in the applicable rules of civil procedure.

3005
3006 (B) Service of process, with a copy of the complaint and trust, or trust and related will, if
3007 applicable, shall be made on every party defendant named in the complaint filed under
3008 section 5817.03 of the Revised Code, as provided in the applicable rules of civil procedure.

3009
3010 5817.08

3011
3012 (A) After a complaint is filed under section 5817.02 or 5817.03 of the Revised Code, the court
3013 shall fix a time and place for a hearing.

3014
3015 (B) Notice of the hearing shall be given to the testator or settlor and to all party defendants, as
3016 provided in the applicable rules of civil procedure.

3017
3018 (C) The hearing shall be adversarial in nature and shall be conducted pursuant to sections
3019 2721.10 and 2101.31 of the Revised Code, except as otherwise provided in this Chapter.

3020
3021 5817.09

3022
3023 The testator or settlor has the burden of establishing prima facie proof of the execution of the will
3024 or trust. A person who opposes the complaint has the burden of establishing one or more of the
3025 following: the lack of testamentary intent, lack of capacity, undue influence, fraud, duress,
3026 mistake, or revocation. A party to the proceeding has the ultimate burden of persuasion as to the
3027 matters for which the party has the initial burden of proof.

3028
3029 5817.10

3030
3031 (A) The court shall declare the will valid if it finds that the will was properly executed pursuant
3032 to section 2107.03 of the Revised Code or under any prior law of this state that was in
3033 effect at the time of execution and that the testator had the requisite testamentary capacity,
3034 was free from undue influence, mistake, or fraud, and that testator was not under restraint
3035 or duress. After the testator's death, unless the will is modified or revoked after the
3036 declaration, the will has full legal effect as the instrument of the disposition of the testator's
3037 estate and shall be admitted to probate upon request.

3038
3039 (B) The court shall declare the trust valid if it finds that the trust meets the requirements of
3040 section 5804.02 of the Revised Code, that the settlor had legal capacity to enter into and
3041 establish the trust, and that the settlor was free from undue influence, mistake, or fraud,
3042 and that settlor was not under restraint or duress. Unless the trust is modified or revoked
3043 after the declaration, the trust has full legal effect.

(C) The court may, if it finds the will or trust to be valid, attach a copy of the valid document to the court's judgment entry but, failure to do so shall not affect the determination of validity.

5817.11

(A) Unless the will or trust is modified or revoked, and except as otherwise provided in this section, no person may contest the validity of a will or trust declared valid in a proceeding pursuant to this Chapter.

(B) The failure to name a necessary defendant under section 5817.05(A) of the Revised Code is not jurisdictional and a determination of a will's validity shall be binding upon all defendants who were named, or represented, and properly served notwithstanding the failure to name a necessary defendant. However, if a person is one who should have been named a party defendant in the action in which the will was declared valid, and if the person was not named a defendant and properly served in that action, that person may, after the testator's death, contest the validity of a will declared valid.

(C) The failure to name a necessary defendant under section 5817.06(A) of the Revised Code is not jurisdictional and a determination of a trust's validity shall be binding upon all defendants who were named, or represented, and properly served notwithstanding the failure to name a necessary defendant. However, if a person is one who should have been named a party defendant in the action in which the trust was declared valid, and if the person was not named a defendant and properly served in that action, that person may contest the validity of a trust declared valid.

(D) In determining whether a person was a party defendant and properly served in an action to declare a will or trust valid under this Chapter, the representation rules of Chapter 5803 shall be applied, and a person represented in the action under such rules is bound by the declaration of validity even if, by the time of the testator's death, or the challenge to the trust, the representing person has died or would no longer be able to represent the person represented in the proceeding under this Chapter.

5817.12

(A) After a declaration of validity under section 5817.07(A) of the Revised Code, a will may be modified by a later will or codicil executed according to the laws of this state or another state, and the will may be revoked under section 2107.33, or other applicable law.

(B) Revocation by a later will, or other document, by section 2107.33 of the Revised Code, of a will that has been declared valid under section 5817.10(A) of the Revised Code, does not affect the will or the prior declaration of its validity if the later will or other document is found to be invalid due to testator's lack of capacity, undue influence, or otherwise, by a court of competent jurisdiction.

(C) Amendment by a later codicil of a will that has been declared valid under section 5817.10(A) of the Revised Code does not affect the will or the prior declaration of its validity except as provided by the codicil. However, the codicil is not also validated under this chapter of the Revised Code unless its validity is also declared under this chapter.

5817.13

(A) After a declaration of validity under section 5817.07(B) of the Revised Code, a trust may be modified, terminated, revoked, or reformed under section 5804.04 of the Revised Code, or other applicable law.

(B) Revocation by a new trust, or other document, of a trust that has been declared valid under section §5817.10(B) of the Revised Code does not affect the trust or the prior declaration of its validity if the later trust or other document is found to be invalid due to settlor's lack of a capacity, undue influence, or otherwise, by a court of competent jurisdiction.

(C) An amendment of a trust that has been declared valid under section 5817.10(B) of the Revised Code does not affect the trust or the prior declaration of its validity except as provided by the amendment. However, the amendment is not also validated under this chapter of the Revised Code unless its validity is also declared under this chapter.

5817.14

(A) The finding of facts by a probate court in a proceeding brought under this Chapter is not admissible as evidence in any proceeding other than one brought to determine the validity of a will or trust.

(B) The determination or judgment rendered in a proceeding under this Chapter is not binding upon the parties to that proceeding in any action not brought to determine the validity of a will or trust.

(C) The failure of a testator to file a complaint for a judgment declaring the validity of a will the testator has executed is not admissible as evidence in any proceeding to determine the validity of that will or any other will executed by the testator.

(D) The failure of a settlor to file a complaint for a judgment declaring the validity of a trust the settlor has executed is not admissible as evidence in any proceeding to determine the validity of that trust or any other trust executed by the settlor.

3129 **REPORT OF THE FAMILY LAW COMMITTEE**

3130
3131 *To the Council of Delegates:*

3132
3133 The Family Law Committee requests your favorable consideration of the following proposal to
3134 amend the Ohio Rules of Juvenile Procedure:

3135
3136 To amend Ohio Rule of Juvenile Procedure 13 to add a procedure for establishing
3137 temporary parenting time and child support orders in private allocation of parental rights
3138 and responsibilities cases. The new provision mirrors the Ohio Rule of Civil Procedure
3139 75(N) procedure for divorcing parents.

3140
3141 Respectfully submitted,

3142
3143
3144 Susan S. Donofrio, Columbus
3145 Chair, Family Law Committee

3146
3147 **Summary and Rationale for the Proposal**

3148
3149 Juvenile Rule 13, in its current form, provides for the establishment of custody, visitation, support,
3150 and similar orders during the pendency of a juvenile abuse, neglect, or dependency case and
3151 mandates that these orders be made either ex parte or as a result of a hearing, for dependency,
3152 neglect, and abuse cases. While Section (B)(1) allows for temporary orders in any juvenile case,
3153 no process is set out for private custody matters. The new section B allows unmarried parents and
3154 other private custody litigants to request temporary orders based on submission of affidavits just
3155 as divorcing parents do under Civil Rule 75(N), which governs temporary orders during the
3156 pendency of a divorce. The reason for this additional provision is that Ohio counties are
3157 inconsistent in applying the present Rule 13(B) to private custody filings, and litigants must
3158 sometimes wait months to obtain a hearing to address temporary parenting time and child support,
3159 if their case does not warrant an application to the court for ex parte orders. Adding the streamlined
3160 affidavits process will serve the best interests of Ohio children by providing for a consistent
3161 schedule of time with both parents, as well as support, at the beginning of the case. Allocation of
3162 parental rights for unmarried parents and other private custody litigants, like grandparents and
3163 kinship caregivers, should proceed in the same way as these cases proceed in the context of
3164 divorce. This proposal would be inserted into Juvenile Rule 13 as a new section (B), with the
3165 current section (B) renumbered as (C) and the remaining sections renumbered accordingly. Thus
3166 the current section (B) (new section (C)) would preserve the current process for making temporary
3167 orders in dependency, neglect, and abuse cases.

3168
3169 **Text of the Proposal**

3170
3171 **Juvenile Rule 13(B)**

- 3172
3173 1. In cases involving the allocation of parental rights and responsibilities under Chapter 3111,
3174 and in other parenting actions regarding the allocation of parental rights and responsibilities

3175 in Juvenile Court, and when requested in the complaint, answer, or counterclaim, or by
3176 motion served with the pleading, upon satisfactory proof by affidavit duly filed with the
3177 clerk of the court, the court or magistrate, without oral hearing and for good cause shown,
3178 may make a temporary order regarding the support, maintenance, and allocation of
3179 parenting or companionship rights and responsibilities for the care of children, whether
3180 natural or adopted, during the pendency of the action.

3181
3182 (4) Counter affidavits may be filed by the other party within fourteen days from the service
3183 of the complaint, answer, counterclaim, or motion, and all affidavits shall be used by the
3184 court or magistrate in making a temporary child support order and order allocating
3185 parenting or companionship rights and responsibilities for the care of children. If there has
3186 been either no or limited contact between the child and a party, the court may make a
3187 provision for parenting or companionship time with the child pursuant to a limited or
3188 graduated schedule.
3189

3190 (5) Upon request, in writing, after any temporary child support order or order allocating
3191 parenting or companionship rights and responsibilities for the care of children is
3192 journalized, the court shall grant the party so requesting an oral hearing within twenty-eight
3193 days to modify the temporary order. A request for oral hearing shall not suspend or delay
3194 the commencement of child support payments previously ordered or change the allocation
3195 of parenting or companionship rights and responsibilities until the order is modified by
3196 journal entry after the oral hearing.
3197
3198

3199 **REPORT OF THE FAMILY LAW COMMITTEE**

3200
3201 *To the Council of Delegates:*

3202
3203 The Family Law Committee requests your favorable consideration of the following legislative
3204 proposal:

3205
3206 To amend the Ohio Revised Code (“ORC”) to comply with the United States Supreme
3207 Court decision in Obergefell v. Hodges by changing words such as “husband and wife”
3208 and “male and female” to “married couple” and “persons” and eliminating gender bias.

3209
3210 Respectfully submitted,

3211
3212
3213 Susan S. Donofrio, Columbus
3214 Chair, Family Law Committee
3215 and

3216 Joshua R. Langdon, Cincinnati
3217 Chair, Family Law ORC Revisions Subcommittee
3218

3219 **Summary and Rationale for the Proposal**

3220
3221 At the present time the Ohio Revised Code is in direct conflict with the United States Constitution
3222 and changes are necessary to comply with the mandates of Obergefell v. Hodges. In Obergefell,
3223 the Court held that the Fourteenth Amendment requires a State to license a marriage between two
3224 people of the same sex and to recognize a marriage between two people of the same sex when their
3225 marriage was lawfully licensed and performed out-of-state. A State is therefore not allowed to
3226 offer the benefits of marriage to opposite-sex couples while withholding those same benefits from
3227 same-sex couples. The marriage statute should also be amended to eliminate the arbitrary gender
3228 bias in those who may be joined in marriage by making the age requirement eighteen years for
3229 both males and females absent the necessary consent.

3230
3231 **Text of the Proposal**

3232
3233 **R.C. §3101.01(A):**

3234
3235 ~~(A) Male persons of the age of eighteen years, and female persons of the age of sixteen years,~~
3236 Persons of the age of eighteen years not nearer of kin than second cousins, and not having a
3237 ~~husband or wife~~ spouse living, may be joined in marriage. A marriage may only be entered into
3238 ~~by one man and one woman~~ by two persons. A minor shall first obtain the consent of the minor's
3239 parents, surviving parent, parent who is designated the residential parent and legal custodian of the
3240 minor by a court of competent jurisdiction, guardian, or any one of the following who has been
3241 awarded permanent custody of the minor by a court exercising juvenile jurisdiction:

3242
3243 (1) An adult person;

(2) The department of job and family services or any child welfare organization certified by the department;

(3) A public children services agency.

R.C. §3101.01(C):

~~(1) Any marriage between persons of the same sex is against the strong public policy of this state. Any marriage between persons of the same sex shall have no legal force or effect in this state and, if attempted to be entered into in this state, is void ab initio and shall not be recognized by this state.~~

~~(2) Any marriage entered into by persons of the same sex in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state.~~

~~(3) The recognition or extension by the state of the specific statutory benefits of a legal marriage to nonmarital relationships between persons of the same sex or different sexes is against the strong public policy of this state. Any public act, record, or judicial proceeding of this state, as defined in section 9.82 of the Revised Code, that extends the specific statutory benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes is void ab initio. Nothing in division (C)(3) of this section shall be construed to do either of the following:~~

~~(a) Prohibit the extension of specific benefits otherwise enjoyed by all persons, married or unmarried, to nonmarital relationships between persons of the same sex or different sexes, including the extension of benefits conferred by any statute that is not expressly limited to married persons, which includes but is not limited to benefits available under Chapter 4117. of the Revised Code;~~

~~(b) Affect the validity of private agreements that are otherwise valid under the laws of this state.~~

~~(4) Any public act, record, or judicial proceeding of any other state, country, or other jurisdiction outside this state that extends the specific benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state.~~

R.C. §3107.03:

The following persons may adopt:

(A) A ~~husband and wife~~ married couple together, at least one of whom is an adult;

(B) An unmarried adult;

3291 (C) The unmarried minor parent of the person to be adopted;
3292
3293 (D) A married adult without the other spouse joining as a petitioner if any of the following apply:
3294
3295 (1) The other spouse is a parent of the person to be adopted and supports the adoption;
3296
3297 (2) The petitioner and the other spouse are separated under section 3103.06 or 3105.17 of the
3298 Revised Code;
3299
3300 (3) The failure of the other spouse to join in the petition or to support the adoption is found by the
3301 court to be by reason of prolonged unexplained absence, unavailability, incapacity, or
3302 circumstances that make it impossible or unreasonably difficult to obtain either the support or
3303 refusal of the other spouse.

[PAGE INTENTIONALLY LEFT BLANK]

COMMITTEE CONTACTS AND PRESENTERS

Banking, Commercial and Bankruptcy Law Committee

Tyson A. Crist, Esq.
Ice Miller
250 West Street, 7th Floor
Columbus, OH 43215-7513
(614) 462-2243
tyson.crist@icemiller.com

Professor Jeffrey T. Ferriell, Esq.
Capital University Law School
303 E. Broad Street
Columbus, OH 43215-3200
614-236-6683
jferriell@law.capital.edu

Corporation Law Committee

Jeffrey R. Wahl, Esq.
Squire Patton Boggs (US) LLP
41 S. High Street, Ste. 2000
Columbus, OH 43215-6106
(614) 365-2700
jeff.wahl@squirepb.com

Jack Kurant, Esq.
Wachter Kurant LLC
30195 Chagrin Boulevard, Ste. 300
Cleveland, OH 44124-5703
(216) 292-3300
jkurant@lawkkwt.com

Criminal Justice Committee

Judge David Trimmer
Fairfield County Common Pleas Court
224 E. Main Street
Lancaster, OH 43130-3863
(740) 652-7421
datrimmer@co.fairfield.oh.us

Estate Planning, Trust and Probate Law Section

Roy A. Krall, Esq.
Cavitch Familo & Durkin Co., LPA
1300 East Ninth Street, 20th Floor
Cleveland, OH 44114
(216) 472-4629
rkrall@cavitch.com

Patricia D. Laub, Esq.
Frost Brown Todd, LLC
301 E. 4th Street, Ste. 3300
Cincinnati, OH 45202-4257
(513) 651-6725
plaub@fbtlaw.com

Family Law Committee

Susan S. Donofrio, Esq.
The Legal Aid Society of Columbus
1108 City Park Avenue
Columbus, OH 43206-3583
(614) 737-0154
sdonofrio@columbuslegalaid.org

Eric W. Johnson, Esq.
Sowald Sowald Anderson Hawley & Johnson
400 S. 5th Street, Suite 101
Columbus, OH 43215-5430
(614) 464-1877
ejohnson@sowaldlaw.com

Joshua R. Langdon, Esq.
Scott Knox, Attorney at Law
13 E. Court Street, Ste. 300
Cincinnati, OH 45202
(513) 241-3800
josh@scottknox.com

**Ohio State Bar Association
General Assembly Meeting
April 27, 2016
3:30 PM
Duke Energy Center
Cincinnati, Ohio**

AGENDA

- I. Secretary's Report
 - OSBA Executive Director Mary Amos Augsburg
- II. Nomination of President-elect Candidates
 - Candidate Belinda S. Barnes of Columbus
 - Candidate Robin G. Weaver of Cleveland
 - Candidate Randall M. Comer of Springfield
- III. Executive Director's/Treasurer's Report
 - OSBA Executive Director Mary Amos Augsburg
- IV. State of the Bar Address
 - OSBA President John D. Holschuh, Jr.
- V. Consideration of Proposed Amendments to the Constitution of the Association as Recommended by the Board of Governors
 - Proposal 1 – Electronic Voting
 - Proposal 2 – Committee Name Change
- VI. New Business
- VII. Adjourn

Report of the Board of Governors

In accordance with Article XX of the Constitution of the Ohio State Bar Association, a majority of the members of the Board of Governors propose adoption of the following amendments to the Constitution.

Rationale for Proposal 1

To: Ohio State Bar Association General Assembly

From: Ron Kopp, OSBA President-Elect

Date: April 1, 2016

Re: Proposed amendments to implement electronic voting

I. Summary

In 2015, the Ohio State Bar Association Board of Governors convened a task force to study the election procedure utilized to select the OSBA president-elect. The mission of the task force was to design a voting procedure that ensured a transparent, efficient and convenient ballot experience for OSBA members. Through this effort, the task force members studied various voting methods utilized by other associations in Ohio and across the country, and returned a recommendation to create a pilot electronic voting system that will exist for a period of three election cycles. This recommendation was discussed thoroughly and approved unanimously by the Board of Governors at its February 2016 meeting. The recommendation requires amendments to provisions of the OSBA Constitution. These amendments will be considered by the General Assembly at the Association's annual meeting on April 27, 2016.

II. Proposed Constitutional Changes

If enacted, the pilot program will begin with the 2017 election of the OSBA president-elect and will automatically sunset on June 30, 2019 unless extended or made permanent prior to that date by the General Assembly. This election will be conducted through electronic vote, rather than in-person, with paper ballots being sent to all voting members who do not have a valid email address on file with the OSBA.

The election timeline will be altered. Under the pilot program, a candidate for election to the office of president-elect will need to declare his/her candidacy no later than August 15th of the year preceding the election. The election will take place in May of the next year via electronic ballot (and paper ballot as discussed above) rather than in-person at the OSBA annual meeting. The earlier announcement deadline will assure that members have sufficient opportunity at district meetings and otherwise to become acquainted with the candidates.

III. Elections Policy

The proposed amendments also require the Board of Governors to adopt a policy governing the conduct of elections. The contemplated policy (already approved provisionally by the Board)

implements procedures to ensure proper voter authentication, tamper-free balloting and accurate tabulation of election results. In addition, the policy incorporates the following:

- Procedure to govern the selection of an independent election vendor
- Creation of a Board of Elections to ensure the accurate handling/tabulation of all paper ballots
- Provision governing the process/rules for the conduct of campaigns.

Text of Proposal 1

CONSTITUTION of the OHIO STATE BAR ASSOCIATION

ARTICLE I

Name

§1.1 This association shall be known as the "Ohio State Bar Association."

ARTICLE II

Purposes of the Association

§2.1 The Association is formed to advance the philosophy of jurisprudence; to promote improvement of the law, our legal system and the administration of justice; to uphold and to emphasize within the legal profession the importance of integrity, honor, respect and civility toward the courts, fellow attorneys, and all who are touched by the legal process and to encourage and enforce among attorneys and judicial officers adherence to the highest standards of professional conduct; to take positions on matters of public interest as deemed advisable; to encourage and support all forms of education related to the law; to cultivate positive, courteous and cordial relations among members of the Bar; and to perpetuate the history of the profession in Ohio and of the Association.

§2.2 Membership in the Association shall be open to all persons without regard to race, color, religion, sex, national origin, disability, age or ancestry.

ARTICLE III

Membership

91 §3.1 Any person duly admitted to the practice of law, and not prohibited from being
92 admitted to the practice of law in Ohio, may become a regular member of the Association in the
93 manner hereinafter provided.

94
95 §3.2 The Board of Governors may provide for classes of associate memberships.
96 Associate members shall have all the rights and privileges of regular members, except that they
97 shall not have the right to vote or to hold office.

98
99 §3.3 Any regular member or associate member may be suspended or expelled from
100 membership in the Association by the Board of Governors pursuant to due process standards
101 adopted by the Board of Governors.

102
103 §3.4 Any person who has been admitted to the practice of law for fifty years and has
104 been a member of the Association in good standing for thirty years shall be a life member of the
105 Association, exempt from the payment of dues.

106 107 ARTICLE IV

108 109 Election of Members

110
111 §4.1 All applications for membership in the Association shall be in writing and
112 transmitted to the secretary and reported to the Board of Governors, which may elect persons to
113 membership from such applications by a two-thirds vote of said Board. Notice that such
114 applications are in the hands of the secretary shall be published at such times and in such
115 publications as the Board of Governors may direct.

116 117 ARTICLE V

118 119 Officers

120
121 §5.1 The officers of the Association shall be a president, a president-elect, a secretary,
122 and a treasurer. The president and the president-elect shall be members of the Association. The
123 regular terms of office of the president and the president-elect shall be one year, beginning on July
124 1 of each year. ~~The regular term of office of the president-elect shall begin upon election at the~~
125 ~~annual meeting and conclude June 30th of the following year.~~

126
127 §5.2 A person who has been installed as president for a full term shall not thereafter be
128 eligible for the presidency.

129
130 §5.3 The president-elect shall be elected by the regular members of the Association via
131 mail and electronic mail ballot in May of the year of the commencement of the term of office. ~~in~~
132 ~~attendance at the regular meeting of the Association next preceding the commencement of the term~~
133 ~~of office.~~ The Board of Governors shall adopt a policy governing the conduct of elections.
134 Candidates for president-elect shall declare their candidacy in writing, filed with the secretary of
135 the Association, not later than January 31/August 15th ~~of the year in which such election is to be~~
136 ~~held~~ preceding the election. Upon the expiration of the term of the president, the president-elect,

so elected, shall succeed to the office of president for a full term. (If the office of the president becomes vacant, the president-elect shall succeed to the office of president for the unexpired term, and shall thereafter serve a full term.)

§5.4 The president and the president-elect shall each continue to serve until the successor has qualified and has assumed office.

§5.5 In the event the office of president-elect becomes vacant, the Board of Governors shall elect a successor to serve for the remainder of the term. ~~Except as provided for in §5.3, In that event the regular members of the Association shall elect both a president and president-elect via mail and electronic mail ballot during the next election. at their next regular meeting shall elect both a president and a president-elect.~~

§5.6 In the event that the office of the president becomes vacant when there is no president-elect, the Board of Governors shall elect both a president and a president-elect, each to serve for the remainder of the term. In that event, the regular members of the Association shall elect both a president and president-elect via mail and electronic mail ballot during the next election. ~~In the event that the office of the president and the office of the president-elect become vacant simultaneously, the Board of Governors shall elect both a president and a president-elect, each to serve for the remainder of the term. In that event, the regular members of the Association at their next regular meeting shall elect both a president and a president-elect.~~

§5.7 The Board of Governors shall appoint an executive director of the Association, who shall also serve as secretary and treasurer. Upon recommendation of the executive director, the Board of Governors may appoint such assistant executive directors, as it may deem necessary. The compensation to be paid to the executive director shall be determined by the Board of Governors. No compensation shall be paid to any other officer of the Association.

§5.8 The Board of Governors may authorize the use by compensated officers or employees of such title or titles as may be deemed descriptive of their duties.

ARTICLE VI

President

§6.1 The president shall preside at all meetings of the Association, the Council of Delegates and the Board of Governors. The President shall appoint members of the Committees of the Board of Governors and their chairs and vice-chairs.

§6.2 The president shall deliver an address to the Association at its regular meeting next following the beginning of the term of office, and may make recommendations and suggestions to the Association, the Council of Delegates and the Board of Governors concerning methods of accomplishing the purposes of the Association.

181 §6.3 The president may call and conduct conferences of officers of the local bar
182 associations of the State for the discussion of matters of common interest and the making of
183 recommendations for action by this Association.

184
185 §6.4 The president shall perform such duties as are commonly performed by the chief
186 elected officer of a voluntary organization and such other duties as may be assigned from time to
187 time by the Board of Governors.

188 189 ARTICLE VII

190 191 President-elect

192
193 §7.1 The president-elect shall perform all the duties of the president during the latter's
194 absence or disability and shall succeed to the office of president in the event of death or resignation
195 of the president. The president-elect shall be a member of the Board of Governors, with full right
196 to vote.

197
198 §7.2 The president-elect shall perform such other duties as may be assigned from time
199 to time by the Board of Governors.

200 201 ARTICLE VIII

202 203 Secretary

204
205 §8.1 The secretary shall keep a record of the proceedings of the Association, the Council
206 of Delegates and the Board of Governors, and perform the usual duties of such office. The
207 secretary shall maintain an office in the City of Columbus, and shall be subject to the orders and
208 directions of the president and the Board of Governors of the Association.

209
210 §8.2 Reports, recommendations and resolutions filed with the secretary, or synopses
211 thereof, prepared by members, committees, and sections of the Association, for presentation to the
212 Council of Delegates, shall be published in the Ohio State Bar Association Report or other
213 publication of the Association that is distributed to all regular members, as directed by the Board
214 of Governors, at least one week before the meeting of the Council at which any such report,
215 recommendation or resolution is to be presented for consideration; and a report of the proceedings
216 of each meeting of the Council shall be published in the same publication within sixty days after
217 such meeting.

218 219 ARTICLE IX

220 221 Treasurer

222
223 §9.1 The treasurer shall collect and, by order of the Board of Governors, disburse all
224 funds of the Association and keep regular accounts which at all times shall be open to the
225 inspection of all members of the Board of Governors.

227 ARTICLE X

228
229 Board of Governors

230
231 §10.1 There shall be a Board of Governors consisting of the president, the president-elect,
232 and the immediate past president, all of whom shall be regular members of the Association, and
233 one member elected by regular members of the Association in each of the districts established
234 under authority of Article XII and in the manner set forth in Article XIII. The president-elect,
235 subject to approval by the Board of Governors, shall appoint one additional regular member of the
236 Association to serve a three-year term on the Board of Governors. The terms of office of elected
237 members of the Board of Governors and the member appointed by the president-elect shall be
238 three years beginning on July 1 next following their elections or appointment. The terms of the
239 elected members shall be alternated as provided by the Board of Governors.

240
241 §10.2 Except where this constitution requires that action be otherwise authorized or taken,
242 all authority of this Association shall be exercised by or under the direction of the Board of
243 Governors as the managers of the Association.

244
245 §10.3 The Board of Governors shall have authority to promulgate bylaws for the conduct
246 of its own meetings, meetings of the Association, and meetings of the committees and section of
247 the Association, which bylaws shall not be inconsistent with the provisions of this Constitution.
248 The Board of Governors shall create such committees of the Board of Governors as it deems
249 appropriate. The president, president-elect and immediate past president shall be non-voting
250 members of all Board of Governors standing committees.

251
252 §10.4 All property of the Association, real, personal, and mixed, shall be held in the name
253 of the Association. The Association is authorized to rent, lease, own, buy, sell, mortgage, or pledge
254 real or personal property. No lease, purchase, sale or mortgage of Association real estate or pledge
255 of personal property shall be completed without the express authorization of the Board of
256 Governors.

257
258 §10.5 Authority is vested in the Board of Governors to establish and collect a registration
259 fee from each member attending a regular meeting of the Association as a condition precedent to
260 registration and participation in any of the activities of such meeting other than participation in the
261 meeting of the Council of Delegates or the General Assembly. ~~other than participation in the~~
262 ~~election of the president-elect, the meeting of the Council of Delegates, or the General Assembly.~~

263
264 §10.6 No person who has been elected or appointed to a full term pursuant to §10.1 to the
265 Executive Committee or the Board of Governors shall thereafter be eligible to be elected or
266 appointed to the Board of Governors.

267
268 §10.7 Each member of the Board of Governors from a district shall be the representative
269 of the Association in that district. The Board of Governors member shall call and preside at all
270 district meetings; shall promote the purposes of and stimulate membership in the Association in
271 the district; shall seek to correlate the work and activities of this Association with the work and

activities of local bar associations within the district; and shall perform such other duties in the district as may be assigned by the president or the Board of Governors.

ARTICLE XI

Council of Delegates

§11.1 There shall be a Council of Delegates consisting of (1) the members of the Board of Governors; (2) one delegate for each of the districts established under Article XII in which there are not more than 225 Association regular members; (3) one delegate for each 150 Association regular members or major fraction thereof, for each of such districts in which there are more than 225 Association regular members; and (4) six at-large delegates, at least two of whom shall be past-presidents of the Association.

§11.2 Each member of the Council of Delegates representing a district shall be a member of that district as defined in §13.2 and shall be elected by the Association regular members in that district in the manner provided in Article XIII and shall take office on July 1 next following the election and shall hold office for two years. In any case in which a district is entitled to more than one delegate, the Board of Governors shall make appropriate provision for the adjustment and length of terms so that, as nearly as practicable, one-half of the elected delegates from such district shall be elected each year. At-large members of the Council of Delegates shall be appointed by the president with the approval of the Board of Governors and shall take office on July 1 next following their appointment and shall hold office for two years.

§11.3 The Council of Delegates shall regularly meet in April of each calendar year on a date, time and place fixed by the Board of Governors, and shall specially meet on call of the Board of Governors; or on call, in writing, filed by fifteen members of the Council from more than two districts, but not more than ten from any one district, with the secretary. All special meetings shall be held in the greater Columbus area at such dates and times as the Board of Governors shall determine.

§11.4 One-third of the members of the Council of Delegates shall constitute a quorum.

§11.5.1 Notice of the time and place of each meeting of the Council of Delegates shall be published in a publication of the Association, as directed by the Board of Governors, that is distributed to all regular members, not less than one week prior to the time fixed therefor, and shall contain an invitation to interested members to attend.

§11.5.2 The Council of Delegates shall receive and act upon reports and recommendations from all committees and sections of the Association; subject to the provisions of §11.6.

§11.5.3 The Council of Delegates shall consider and act upon any and all resolutions before it pursuant to §11.5.5 submitted to the Council by any of its members, by an Association member, or by any local bar association of the State, providing the same has been timely reported in writing to the secretary of the Association and published pursuant to the provisions of §8.2.

Nothing contained herein shall prevent the Council from considering amendments or substitute measures during the deliberative process.

§11.5.4 The Council of Delegates shall be the final judge of any disputed Association election or qualifications of its members.

§11.5.5 The Council of Delegates shall have the authority to recommend changes in the substantive law of Ohio, in the administration of justice, and to consider and act upon resolutions submitted pursuant to §11.5.3.

§11.5.6 Every meeting of the Council of Delegates shall be open to all members of the Association, who shall have the privilege of the floor on a parity with delegates, but shall not have a vote.

§11.5.7 Action by the Council of Delegates shall in all instances constitute the action of the Association and be binding upon it, except as otherwise provided by this Constitution.

§11.6 No action recommending changes in the substantive law of Ohio, in the administration of justice, or resolution submitted pursuant to §11.5.3 shall be taken by the Council of Delegates unless the matter shall have been reported, in writing, to the secretary of the Association and published pursuant to the provisions of §8.2. However, if such a matter has been referred to a committee or section by the Council of Delegates or by the Board of Governors, and such committee or section fails to report on the matter at the meeting of the Council of Delegates next following such referral, then such matter may be taken by the Council from such committee or section and considered by the Council for action.

§11.7 The Board of Governors is authorized to respond to needs for direction concerning changes in the substantive law or in the administration of justice in such manner as to it shall appear appropriate between regular meetings of the Council of Delegates, subject to the following limitations:

(A) A matter falling within the purview of one or more committees or sections of the Association shall first be referred to the respective chairpersons of the appropriate committees or sections for urgent review and response by a representative group thereof prior to the next meeting of the Board of Governors, if reasonably possible.

(B) If such reference to committee or section chairpersons is not reasonably possible or if, after being so referred, a timely response has not been received, the matter may be considered and acted upon by the Board of Governors, but in such case any action taken shall receive the favorable vote of at least two-thirds of the Board of Governors members present.

(C) If a matter has been referred for review and response to one or more committees or sections, the Board of Governors shall be authorized to act thereon by a simple majority of those members present, if a response to such reference has been received from any one or more of such committees or sections.

(D) No action taken by the Board of Governors pursuant to the foregoing provisions shall be suspended in its effect or revoked except by specific action of the Council of Delegates taken at a regular or special meeting pursuant to §11.6.

ARTICLE XII

Districts

§12.1 For the purpose of Articles X, XI and XIII, the districts of the State of Ohio shall embrace the following counties:

District 1 – Butler, Hamilton, Warren, Clermont and Clinton

District 2 – Darke, Shelby, Miami, Preble and Montgomery

District 3 – Williams, Fulton, Defiance, Henry, Wood, Paulding, Van Wert, Putnam and Hancock

District 4 – Lucas, Ottawa and Sandusky

District 5 – Seneca, Wyandot, Crawford, Marion, Morrow and Delaware

District 6 – Fayette, Logan, Union, Champaign, Clark, Madison and Greene

District 7 – Franklin

District 8 – Ross, Highland, Pike, Adams, Scioto, Vinton, Jackson, Gallia, Lawrence, Brown and Pickaway

District 9 – Knox, Coshocton, Licking, Muskingum, Fairfield and Perry

District 10 – Erie, Lorain, Huron, Medina, Richland, Ashland, Wayne and Holmes

District 11 – Summit and Portage

District 12 – Cuyahoga

District 13 – Mahoning and Columbiana

District 14 – Stark, Carroll and Tuscarawas

District 15 – Guernsey, Belmont, Monroe, Harrison and Jefferson

District 16 – Allen, Auglaize, Hardin and Mercer

District 17 – Athens, Hocking, Meigs, Morgan, Noble and Washington

District 18 – Lake, Geauga, Ashtabula and Trumbull

§12.2 The territories embraced by districts of this Association may be changed from time to time by the Board of Governors, subject to approval of the Council of Delegates.

ARTICLE XIII

District Meetings and Elections

§13.1 On or before September 15 of each year, the secretary shall transmit to the Board of Governors a certificate, as of September 1, stating: (1) the number of regular members of the Association in good standing in each district; (2) the number of members of the Council of Delegates to which each district shall be entitled under the provisions of Article XI; (3) the districts in which an election will be held during that Association year for a member or members of the Council of Delegates; and (4) the districts in which an election will be held during that Association year for a member of the Board of Governors. Upon receipt of such certificate, the Board of Governors shall determine and order the elections to be held during that Association year. Each such election shall take place between September 15 and April ~~15~~30 in the Association year. The member of the Board of Governors from the district in question shall determine whether such election shall be conducted at a meeting of the regular members of the Association in such district by personal ballot or by mail or electronic mail ballot. If there is to be ~~a mail ballot~~ a ballot by mail or electronic mail, then that fact shall be announced to the members of the Association in the district in question by means of a notice thereof published in the Ohio State Bar Association Report, or other publication of the Association, that is distributed to all regular members, as directed by the Board of Governors, no later than February 1 or by means of a letter from such member of the Board of Governors to regular members of that district, or both. Thereafter, but in no event later than March 1, a regular member of the Association of that district may declare candidacy for election to the Board of Governors or Council of Delegates by filing a declaration of such candidacy with the secretary. The members of the Board of Governors may, with the advance consent of the Board of Governors, adopt such further conditions and procedures relative to the conduct of elections as they think appropriate. Upon the filing of any declaration of candidacy with the secretary, the secretary shall conduct, before April ~~15~~30, a ballot by mail or electronic mail ~~mail ballot~~ among the members of a district, except that, in the case where the number of candidates does not exceed the number to be elected, then the declaration itself shall constitute election and no other ballot ~~mail ballot~~ shall be required. Rules for conducting ~~mail ballots~~ ballots by mail and electronic mail shall be prescribed by the Board of Governors, and the ballots cast shall be canvassed by the secretary and a committee appointed by the president. All elections (whether by mail or electronic mail ~~mail ballot~~ or by ballot cast at a meeting of the regular members of the Association held in the district in question) shall be announced by the secretary by means of an appropriate notice published in the Ohio State Bar Association Report, or a publication of the Association that is distributed to all regular members, as directed by the Board of Governors.

§13.2 Each regular member of the Association shall, for all Association purposes, be deemed a member of the district in which a member's principal office for the practice of law is maintained, except that if the member has no office, the member's district shall be that of the

member's residence. For the purpose of serving on the Council of Delegates pursuant to §11.2, the President may grant a waiver to a member as set forth by policy adopted by the Board of Governors.

ARTICLE XIV

Association Meetings (General Assembly)

§14.1 There shall be one regular meeting of the members of the Association which shall be held each year within the months of August or September. The date and place thereof shall be fixed by the Board of Governors, and all arrangements and programs shall be under its direction. Special meetings may be held on call by the Board of Governors. All special meetings shall be held in the greater Columbus area. All matters brought before the General Assembly of the Association shall be determined by a vote of the majority of the regular members in attendance at such regular or special meeting of the Association.

ARTICLE XV

Committees and Sections

§15.1 The president, subject to the approval and confirmation of the Board of Governors, shall appoint members of a committee on legal ethics and professional conduct, a committee on the unauthorized practice of law, and all section councils. For each committee and section the president of the Association shall designate a chairperson.

ARTICLE XVI

Professionalism Committee and Legal Ethics and Professional Conduct Committee

§16.1 The Professionalism Committee shall receive, consider and act upon all matters affecting legal ethics and professional conduct of the legal profession relating to the practice of law and the administration of justice and report the same with such recommendations as the Committee may deem advisable and may prepare and publish opinions dealing with the subject.

§16.2 The Committee on Legal Ethics and Professional Conduct shall process all allegations of misconduct coming to its attention and take appropriate action thereon.

ARTICLE XVII

Vacancies

§17.1 Vacancy in any office, other than the offices of president ~~and president-elect~~, but including Board of Governors members, shall be filled by the Board of Governors by the election of a successor for the unexpired term. A vacancy in the office of the president shall be filled as provided in §5.3. Vacancies occurring among members of the Council of Delegates elected from

the districts shall in each instance be filled by appointment for the remainder of the term by the Board of Governors member of the district concerned.

§17.2 The president of the Association, with the approval of the Board of Governors, may remove any chairperson or other member of any committee from office, and may appoint some other member of the Association to fill any vacancy caused by such removal or by the resignation or death of such member.

Article XVIII

Dues

§18.1 In this article "member" shall not include life members.

§18.2 Each regular member shall pay Association dues in advance, which payment shall include a subscription to the Ohio State Bar Association Report.

§18.3 Annual membership dues for each regular member shall be determined from time to time by the Board of Governors, subject to the approval of the Council of Delegates. Dues for other classes of members shall be determined by the Board of Governors.

§18.4 Regular members shall be elected only in accordance with the provisions of Article IV. Each applicant for membership shall pay, in advance, with an application for membership, (a) dues computed on a quarterly basis for the unexpired portion of the year in which the application is filed; and (b), if the application is filed within the last quarter of the year, then also annual dues for the next full year. If and when an application is rejected, dues so paid in advance shall be promptly returned to the applicant.

§18.5 No person shall continue to be a member who is determined by the Board of Governors to be in default of payment of dues or who has been suspended or disbarred or has resigned the right to practice law in Ohio.

§18.6 Notwithstanding any other provision of this article, the Board of Governors shall have the authority to remit in whole or in part or extend the time for payment of dues in any case or cases in which the Board of Governors shall deem it to be for the best interest of the Association.

§18.7 A member may at any time file a resignation in writing with the secretary and such resignation shall become effective as of the date it is filed, but there shall be no remission of dues for the remainder of the year in which such resignation was filed. The Board of Governors may reinstate any member who has resigned, provided that there is no complaint or charge pending as to such person, upon written request for reinstatement without re-election, if such request is accompanied by the dues required of an applicant for membership as provided in §18.4 and provided further that such written request is filed within two years after the filing of the resignation with the secretary.

ARTICLE XIX

548
549 Referenda
550

551 §19.1 The Council of Delegates or the Board of Governors may refer and submit to the
552 regular members of this Association, defined questions affecting the policy or recommendations
553 of this Association, which in the opinion of the Council of Delegates or the Board of Governors
554 are of immediate, practical consequence to the legal profession or the public. The Board of
555 Governors may, by resolution, make rules and regulations and establish suitable supervision for
556 the polling of regular members on the question so submitted. The result of such referendum, when
557 duly ascertained by such vote, shall be binding upon this Association and upon all officers,
558 sections, committees, agents and employees thereof.

559
560 ARTICLE XX
561

562 Amendments
563

564 §20.1 This Constitution may be amended only by the vote of a majority of the regular
565 members in attendance at a regular or special meeting of the Association. Any such amendment
566 shall be proposed by the filing with the secretary of the Association of a petition containing the
567 full text of the proposed amendment(s) either approved by a majority of the members of the Board
568 of Governors; or signed by (i) one-half of the members of the Council of Delegates; or (ii) as
569 many regular members of the Association in good standing as there are members of the Council
570 of Delegates at the time the proposed amendment(s) is filed, not more than two-thirds of such
571 signers being from any one district. Upon receipt of any such petition proposing an amendment,
572 the Board of Governors shall, at its next scheduled meeting, specify whether such proposed
573 amendment(s) shall be considered at the next regular meeting of the Association, or at a special
574 meeting called by the Board pursuant to Section 14.1; provided, however, that a special meeting
575 called for the purpose of considering any proposed amendment(s) of this Constitution shall only
576 be called for a date on which the Council of Delegates will also be meeting. Thereafter, the Board
577 of Governors shall publish the full text of said proposed amendment(s), and a notice of the meeting
578 at which the proposed amendment(s) will be considered, in a publication of the Association that is
579 distributed to all regular members, as directed by the Board of Governors, not less than four weeks
580 prior to the date of such meeting and reference to the proposed amendment(s) be published at least
581 three additional times in the same publication.

582
583 §20.2 The changes made on April 27, 2016 shall take effect on July 1, 2016 and shall
584 automatically terminate and be of no further force or effect as of June 30, 2019 unless extended or
585 made permanent prior to such expiration by a majority of the regular members of the Association
586 during a regular or special meeting.

587
588 EFFECTIVE DATE
589

590 This Constitution, as amended, shall be effective July 2, 1991.

591
592 Approved by the General Assembly on May 15, 1991.
593

594 As amended by the General Assembly on May 14, 2008.
595
596 As amended by the General Assembly on November 6, 2009.
597
598 As amended by the General Assembly on May 4, 2011.
599
600 As amended by the General Assembly on May 2, 2012.
601
602 As amended by the General Assembly on May 8, 2013.
603
604 As amended by the General Assembly on April 29, 2015
605

606 **Report of the Board of Governors**

607
608 In accordance with Article XX of the Constitution of the Ohio State Bar Association, a majority
609 of the members of the Board of Governors propose adoption of the following amendments to the
610 Constitution.

611
612 **Rationale for Proposal 2**

613
614 The Legal Ethics and Professional Conduct Committee and the Professionalism Committee jointly
615 approached the OSBA Board of Governors with a proposal to change the names of both
616 committees. The committees each carry out different functions. The current names are confusing
617 and inadequate to describe the distinct work of each committee. The Board of Governors voted to
618 approve this recommendation at its February 2016 board meeting. The proposed changes are as
619 follows:

- 620
621
 - Change the name of the Legal Ethics and Professional Conduct Committee to the
 - 622 Grievance Committee
 - 623
 - 624 • Change the name of the Professionalism Committee to the Ethics Committee
 - 625

626 **Text of Proposal 2**

627
628 **ARTICLE XVI**

629
630 **Professionalism-Ethics Committee and ~~Legal Ethics and Professional Conduct~~Grievance**
631 **Committee**
632

633 §16.1 The ~~Professionalism-Ethics~~ Committee shall receive, consider and act upon all
634 matters affecting legal ethics and professional conduct of the legal profession relating to the
635 practice of law and the administration of justice and report the same with such recommendations
636 as the Committee may deem advisable and may prepare and publish opinions dealing with the
637 subject.

638
639 §16.2 The ~~Grievance Committee on Legal Ethics and Professional Conduct~~ shall process
640 all allegations of misconduct coming to its attention and take appropriate action thereon.
641