



OHIO STATE BAR
ASSOCIATION

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Council of Delegates Meeting

May 10, 2019

9:00 AM

Grand Events Center

Columbus

Council of Delegates Meeting

**Friday, May 10, 2019
9:00 AM**

President Robin G. Weaver presiding

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COUNCIL OF DELEGATES MEETING AGENDA
Friday, May 10, 2019
9:00 a.m.

President Robin G. Weaver presiding

I. Roll Call of the Council, Mary Amos Augsburger

II. Committee and Section Reports

A. Report of the Traffic Law Committee

A proposal to amend §§4511.19(D), 37011.143 and 4511.19 (A) to address medical marijuana users regarding OVI charges and address how the next round of breath testing machines should be subject to challenge in OVI litigation.

B. Report of the Access to Justice Committee

A proposal to enact Section 4510.023 of the Revised Code to make the Fee Reduction & Amnesty Pilot Program permanent, expand the definition of indigent to allow more low income Ohioans to take advantage of the program and to create a requirement for the BMV to notify an applicant of the reason their application for the program was denied and to establish an appeals process.

C. Report of the Corporation Law Committee

1. A resolution calling for the adoption of a commercial docket or a similar procedure designed for the resolution of business disputes by judges experienced with or trained to handle such matters throughout Ohio pursuant to such rules, laws or regulations as determined by the state legislature in conjunction with the Supreme Court of the State of Ohio. The Ohio State Bar Association is authorized to work with the Supreme Court of Ohio, the state legislature and other interested parties to recommend and seek implementation of a system meeting the criteria established above.
2. A proposal to adopt proposed Chapter 1706 of the Revised Code to restate the Ohio Limited Liability Company Act.

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

1. A proposal to amend RC 2111.50 to broaden guardians' authority to create estate plans for their wards, with the approval of the probate court.

2. A proposal to add Section 2131.14 to Chapter 21 of the Revised Code to allow transfer on death beneficiary designations for tangible personal property.
3. A proposal to amend Ohio Revised Code Section 2106.13(A) to clarify that a surviving spouse is entitled to receive the spousal share of the allowance of support and one automobile without reducing the value of the allowance, consistent with Ohio law since 1990.
4. A proposal to repeal division (B)(2) of RC 5805.06 in its entirety to terminate a creditor's rights to trust assets after the lapse of powers of withdrawal held by the trust beneficiary.
5. A proposal to amend RC 5804.11(B) to clarify that the nomination of an individual or corporate entity in a trust agreement as a future or successor trustee may be changed by the court or by a private settlement agreement.

E. Report of the Real Property Law Section Council

A proposal to modify the Ohio Standards of Title Examination by amending Standards 3.18, 3.19, 4.2, 4.4, 4.7, and 4.8, to clarify when a trust is a "disclosed trust," to attempt to provide further clarification as to circumstances under which a deed containing errors may be corrected and re-recorded, to update the standard regarding the encumbrance of estate tax to reflect current statutes, to specifically address oil and gas leases separately from other types of recorded leases, to revise the standard regarding use restrictions or restrictions which entail the forfeiture of title and to reflect the effect of failure of a lienholder to join the statutory dedication of a subdivision plat. New Standard 4.12 is proposed to address whether an assignment of rents and/or leases may be treated as having been released, if the contemporaneously-filed mortgage is canceled or released of record. Amendments are further proposed with respect to Standards 5.3, 5.5, 6.2, and 7.1 to simplify the standard with respect to certificates of transfer, to provide more detail as to when and what documents should be admitted to record in the county where the real property is situated if title is dependent upon out-of-county probate proceedings, to clarify identification of real property in service of process by publication, and to clarify wording with respect to verification of a pleading. Finally, new Standard 7.2 is proposed to address conditions affecting reliance upon a final order in court proceedings.

F. Report of the Senior Lawyers Section Council

A proposal to amend sections 2305.11(A) and 2305.113 of the Revised Code to provide for the adoption in Ohio of a Legal Malpractice Statute of Repose.

III. Adjournment

**Ohio State Bar Association
2018 - 2019 Council of Delegates
Robin G. Weaver, President**

District 1

(Lost 1 member per certification for 2018-2019)

Counties: Butler, Clermont, Clinton, Hamilton and Warren

Board of Governors Representative:

David H. Lefton, 3074 Madison Road, Cincinnati, OH 45209-1723	06/30/20
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Council of Delegates (19):

Terrence M. Donnellon, 9079 Montgomery Road, Cincinnati, OH 45242-7711	06/30/19
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Richard I. Fleischer, 810 Sycamore Street, 2 nd Floor, Cincinnati, OH 45202	06/30/19
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Gregory S. French, 1244 Padlock Hills Avenue, Cincinnati, OH 45229-1218	06/30/19
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Michael L. Gay, 201 E. Fifth Street, Ste. 900, Cincinnati, OH 45202	06/30/19
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Barbara J. Howard, 120 E. Fourth Street, Ste. 960, Cincinnati, OH 45202-4096	06/30/19
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Stephen C. Lane, 7419 Kingsgate Way, Ste. A, West Chester, OH 45069-6517	06/30/19
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Lauren E. Raizk, 145 N. South Street, Wilmington, OH 45177-1646	06/30/19
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Charles F. Strain, 4030 Mt. Carmel-Tobasco Road #103, Cincinnati, OH 45255-3454	06/30/19
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John J. Williams, 600 Vine Street, Ste. 1400, Cincinnati, OH 45202-2474	06/30/19
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Edward P. Brueggeman, 312 Kings Mills Road, Mason, OH 45040-1853	06/30/20
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Eric K. Combs, 255 E. 5 th Street, Ste. 1900, Cincinnati, OH 45202-1971	06/30/20
Kendra L. Daugherty, 4529 Aicholtz Road, Cincinnati, OH 45245-1001	06/30/20
Stephanie M. Day, 600 Vine Street, Ste. 2700, Cincinnati, OH 45202-2409	06/30/20
Timothy A. Garry, Jr., 4645 Montgomery Road, Ste. 203, Norwood, OH 45212	06/30/20
John D. Holschuh, Jr., 600 Vine Street, Ste. 2700, Cincinnati, OH 45202-2409	06/30/20
Doloris F. Learmonth, 3498 Forest Oak Court, Cincinnati, OH 45208-1842	06/30/20
Theresa L. Nelson, 150 E. 4 th Street, Cincinnati, OH 45202-4018	06/30/20
Zachary D. Prendergast, 250 E. 5 th Street, Ste. 310, Cincinnati, OH 45202-4150	06/30/20
James C. Shew, 16 N. Main Street, Middletown, OH 45042-1905	06/30/20

District 2

(Lost 1 member per certification for 2018-2019)

Counties: Darke, Miami, Montgomery, Preble and Shelby

Board of Governors Representative:

Magistrate Kathleen S. Lenski, 380 W. 2 nd Street, Dayton, OH 45422-4240	06/30/21
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Council of Delegates (7):

Magistrate Stephen R. Bruns, 123 W. Main Street, Eaton, OH 45320	06/30/19
Jared B. Chamberlain, 215 W. Water Street, Troy, OH 45373	06/30/19

Thomas L. Guillozet, 9265 Brush Creek Drive, Piqua, OH 45356-9589	06/30/19
Michael W. Sandner, 75 Trevor Lane, Springboro, OH 45066-8306	06/30/19
Andrew C. Storar, 40 N. Main Street, Ste. 2700, Dayton, OH 45423-2700	06/30/19
Danyelle S. Wright, 11067 Cold Spring Drive, Dayton, OH 45458	06/30/19
Magistrate Gary J. Carter, P. O. Box 947, Sidney, OH 45365-0947	06/30/20

District 3

(One vacancy for term ending 06/30/21)

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

Board of Governors Representative:

R. Benjamin Franz, 539 S. Main Street, Findlay, OH 45840-3295	06/30/19
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Council of Delegates (3):

Harvey D. Hyman, 123 N. Main Street, Paulding, OH 45879-1237	06/30/20
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Lee R. Schroeder, 100 S. High Street, Ste. A, Columbus Grove, OH 45830-1241	06/30/20
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<i>Vacancy</i>	06/30/21
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District 4

(One vacancy, term ending 6/30/20)

Counties: Lucas, Ottawa and Sandusky

Board of Governors Representative:

Michelle L. Kranz, 6620 W. Central Avenue, Ste. 100, Toledo, OH 43617	06/30/20
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Council of Delegates (7):

Vallie T. Bowman-English, 555 N. Erie Street, Toledo, OH 43604-1391	06/30/19
Mary Elizabeth Fiser, P. O. Box 372, Clyde, OH 43410	06/30/19
Kevin M. Peters, 132 Madison Street, Port Clinton, OH 43452-1195	06/30/19
Sarah K. Skow, 900 Adams Street, Toledo, OH 43604-5505	06/30/19
Joseph K. Cole, 300 Madison Avenue, Ste. 1000 Toledo, OH 43604-1550	06/30/20
Shelly R. Musshel-Kennedy, 725 W. Broadway Street, Maumee, OH 43537-1902	06/30/20
Linde H. Webb, 2630 Edgehill Road, Ottawa Hills, OH 43615	06/30/20

District 5**Counties: Crawford, Delaware, Marion, Morrow, Seneca and Wyandot****Board of Governors Representative:**

Victor H. Perez, P. O. Box 101, Tiffin, OH 44883-0101	06/30/20
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Council of Delegates (3):

Grant B. Garverick, 126 S. Market Street, Galion, OH 44833	06/30/19
Sean A. Martin, 102 E. Findlay Street, Carey, OH 43316-1248	06/30/20
Robert J. Rice, 140 N. Sandusky Street, Delaware, OH 43015-1733	06/30/20

District 6

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

Board of Governors Representative:

Gregory R. Flax, 500 N. Fountain Avenue
Springfield, OH 45501-1488 06/30/22

William R. Groves, 900 Dayton Street,
Yellow Springs, OH 45387 06/30/20

Council of Delegates (3):

R. Michael Osborn, 33 W. 1st Street, Suite 600,
Dayton, OH 45402-1289 06/30/19

Douglas M. Smith, 112 N. Main Street,
Bellefontaine, OH 43311-2089 06/30/19

William C. Hicks, P. O. Box 1687,
Springfield, OH 45501-1687 06/30/20

District 7

(Lost 2 members per certification for 2018-2019)

Counties: Franklin

Board of Governors Representative:

David S. Bloomfield, Jr., 41 S. High Street, Ste. 3100,
Columbus, OH 43215-6101 06/30/20

Council of Delegates (27):

Jennifer A. Adair, 4200 Surface Road,
Columbus, OH 43228 06/30/19

David C. Barrett, 7259 Sawmill Road, Ste. 150,
Dublin, OH 43016 06/30/19

Thomas J. Bonasera, 191 W. Nationwide Boulevard,
Ste. 300, Columbus, OH 43215-2569 06/30/19

Katherine S. Chappellear, 373 S. High Street, 14 th Floor, Columbus, OH 43215-4591	06/30/19
Stephen E. Chappellear, 10 W. Broad Street, Ste. 2300, Columbus, OH 43215-3467	06/30/19
Christopher T. Curry, 7179 Hollandia Drive, Westerville, OH 43081-9380	06/30/19
Hilary R. Damaser, 30 E. Broad Street, 26 th Floor, Columbus, OH 43215	06/30/19
Donald B. Leach, Jr., 191 W. Nationwide Boulevard, Ste. 300, Columbus, OH 43215-2569	06/30/19
Judge Stephen L. McIntosh, 345 S. High Street, Courtroom 4B, Columbus, OH 43215-4516	06/30/19
Scott R. Mote, 1650 Lake Shore Drive, Ste. 375, Columbus, OH 43204-4991	06/30/19
Andrea M. Salimbene, 167 W. Winter Street, Delaware, OH 43015-2451	06/30/19
Carl D. Smallwood, P. O. Box 1008, Columbus, OH 43216-1008	06/30/19
Beatrice K. Sowald, 125 Eastmoor Boulevard, Columbus, OH 43209-2017	06/30/19
E. Jane Taylor, 318 E. Beck Street, Columbus, OH 43206-1278	06/30/19
Levi J. Tkach, 604 E. Rich Street, Columbus, OH 43215-5341	06/30/19
Audrey E. Varwig, 2020 Concord Road, Upper Arlington, OH 43212-1948	06/30/19
Thomas W. Weeks, 1108 City Park Avenue, Ste. 200, Columbus, OH 43206-3583	06/30/19
Belinda S. Barnes, 471 E. Broad Street, 19th Floor, Columbus, OH 43215-3872	06/30/20

Sally W. Bloomfield, 100 S. Third Street, Columbus, OH 43215-4291	06/30/20
Alphonse P. Cincione, 556 E. Town Street, Ste. 100, Columbus, OH 43215	06/30/20
Paul Giorgianni, 1538 Arlington Avenue, Columbus, OH 43212-2710	06/30/20
Eric W. Johnson, 400 S. Fifth Street, Ste. 101, Columbus, OH 43215-5430	06/30/20
Helen Mac Murray, 6530 West Campus Oval, Ste. 210, New Albany, OH 43054	06/30/20
Jane Higgins Marx, 366 E. Broad Street, Columbus, OH 43215-3876	06/30/20
Heather G. Sowald, 400 S. Fifth Street, Ste. 101, Columbus, OH 43215-5430	06/30/20
Magistrate Elizabeth J. Watters, 345 S. High Street, Room 5807, Columbus, OH 43215-4516	06/30/20
Bradley B. Wrightsel, 3300 Riverside Drive, Ste. 100, Columbus, OH 43221-1726	06/30/20

District 8

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

Board of Governors Representative:

Frederick C. Fisher, Jr., 311 Park Avenue, Ironton, OH 45638-1525	06/30/21
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Council of Delegates (2):

George L. Davis, III, 602 Chillicothe Street, Ste. 802, Portsmouth, OH 45662	06/30/19
Richard W. Clagg, 16 E. Broadway, Wellston, OH 45692	06/30/20

District 9

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

Board of Governors Representative:

Judge Dean L. Wilson, P. O. Box 207,
New Lexington, OH 43764-0207 06/30/19

Council of Delegates (3):

Janice A. Baughman, 111 N. 4th Street,
South Zanesville, OH 43701 06/30/19

Linda L. Smith, P. O. Box 536,
New Lexington, OH 43764-0536 06/30/19

Wendi Fowler, 2171 Eagle Pass,
Wooster, OH 44691 06/30/20

District 10

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

Board of Governors Representative:

Andrew P. Lycans, P. O. Box 599,
Wooster, OH 44691-0599 06/30/20

Council of Delegates (6):

Christopher Lake Brown, 30 N. Diamond Street,
Mansfield, OH 44902 06/30/19

Kevin W. Donovan, 5333 Meadow Lane Court,
Elyria, OH 44035-1469 06/30/19

Richard R. Mellott, Jr., 5750 Cooper Foster Park Road,
Ste. 102, Lorain, OH 44053-4132 06/30/19

Gowri V. Hampole, 124 Middle Avenue, 4th Floor,
Elyria, OH 44035 06/30/20

Robert J. Reynolds, P. O. Box 958,
Wooster, OH 44691-0958 06/30/20

Patricia A. Walker, 231 S. Broadway,
Medina, OH 44256-2601 06/30/20

District 11

Counties: Portage and Summit

Board of Governors Representative:

Lawrence J. Scanlon, 57 S. Broadway Street, 3rd Floor,
Akron, OH 44308 06/30/21

Amanda M. Leffler, 388 S. Main Street, Ste. 500,
Akron, OH 44311-4407 06/30/19

Council of Delegates (8):

Melissa A. Graham-Hurd, 333 S. Main Street, Ste. 301,
Akron, OH 44308-1225 06/30/19

Jessica A. Lopez, 222 S. Main Street, Ste. 400,
Akron, OH 44308-1500 06/30/19

Carmen V. Roberto, 23 South Main Street, 3rd Floor,
Akron, OH 44308 06/30/19

Bruce H. Wilson, 120 E. Mill Street, Ste. 416,
Akron, OH 44308 06/30/19

Montrella S. Jackson, 217 S. High Street, Ste. 713,
Akron, OH 44308-1689 06/30/20

Ronald S. Kopp, 222 S. Main Street, Ste. 400,
Akron, OH 44308-1500 06/30/20

Magistrate Diana J. Prehn, 10208 Spinnaker Run,
Reminderville, OH 44202 06/30/20

Maura E. Scanlon, 4040 Embassy Parkway, Ste. 240,
Akron, OH 44333-8354 06/30/20

District 12

(Two vacancies for terms ending 06/30/19)

(Four vacancies for term ending 06/30/20)

Counties: Cuyahoga

Board of Governors Representative:

Michael J. Frantz, Jr., 200 Public Square, Ste. 3000,
Cleveland, OH 44114-2316 06/30/19

Council of Delegates (27):

Keith A. Ashmus, 200 Public Square, Ste. 3000,
Cleveland, OH 44114-2316 06/30/19

Eileen M. Bitterman, 323 W. Lakeside Avenue, Ste. 200,
Cleveland, OH 44113-1099 06/30/19

Jeffrey A. Brauer, 200 Public Square, Ste. 2800,
Cleveland, OH 44114-2303 06/30/19

Luke T. Brewer, 623 W. St. Clair Avenue,
Cleveland, OH 44113 06/30/19

Michael C. Brink, 950 Main Avenue, Ste. 1100,
Cleveland, OH 44113-7213 06/30/19

Jon R. Burney, 497 Cahoon Road,
Bay Village, OH 44140 06/30/19

Tera N. Coleman, 127 Public Square, Ste. 2000,
Cleveland, OH 44114-1214 06/30/19

Fredric E. Kramer, 1187 Golden Gate Road,
Mayfield Heights, OH 44124 06/30/19

David A. Kutik, 901 Lakeside Avenue East,
Cleveland, OH 44114-1190 06/30/19

Theodore M. Mann, Jr., 32981 Charmwood Oval,
Solon, OH 44139-4422 06/30/19

Marlon A. Primes, 801 W. Superior Avenue, Ste. 400, Cleveland, OH 44113-1852	06/30/19
Daniel J. Ryan, 55 Public Square, Ste. 2100, Cleveland, OH 44113-1967	06/30/19
Nancy C. Schuster, 2913 Clinton Avenue, Cleveland, OH 44113-2940	06/30/19
Thomas G. Haren 200 Public Square, Ste. 3000, Cleveland, OH 44114	06/30/20
Christa A.G. Heckman, 950 Main Avenue, 4th Floor, Cleveland, OH 44113-7201	06/30/20
Lisa A. Reid, 615 W. Superior Avenue, 11 th Floor, Cleveland, OH 44113-1899	06/30/20
Karen E. Rubin, 127 Public Square, Ste. 3900, Cleveland, OH 44114-1291	06/30/20
Ryan T. Smith, 200 Public Square, Ste. 3000 Cleveland, OH 44114-2316	06/30/20
John P. Thomas, 18079 Spyglass Hill Drive, Strongsville, OH 44136-8021	06/30/20
Donald E. Worthing, 11250 Abbey Road, North Royalton, OH 44133	06/30/20
Barbara Friedman Yaksic, 8325 Browning Court, Mentor, OH 44060-8079	06/30/20

District 13

Counties: Columbiana and Mahoning

Board of Governors Representative:

Don W. Humphrey, Jr., 28849 State Route 172, Kensington, OH 44427	06/30/20
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Council of Delegates (3):

Ronald E. Slipski, 527 Greenmont Drive, Canfield, OH 44406-9660	06/30/19
Mark A. Hutson, 33 Pittsburgh Street, Columbiana, OH 44408-1309	06/30/20
J. Michael Thompson, 6 Federal Plaza Central, Ste. 1300, Youngstown, OH 44503-1508	06/30/20

District 14**Counties: Carroll, Stark and Tuscarawas****Board of Governors Representative:**

Daniel R. Griffith, 211 Woodrow Street, NW, Canton, OH 44720-1935	06/30/21
Kathleen A. Stoneman, 63 2 nd Street, SW, Carrollton, OH 44615	06/30/21

Council of Delegates (4):

Thomas P. Moushey, 1844 W. State Street, Ste. A, Alliance, OH 44601-5713	06/30/19
D. Stephen Stone, Jr., 981 W. State Street, Alliance, OH 44601-4676	06/30/19
Jennifer Thomas, P. O. Box 235, Carrollton, OH 44615	06/30/20
Howard L. Wernow, 4940 Munson Street NW, Ste 1100, Canton, OH 44718-3615	06/30/20

District 15

Counties: Belmont, Guernsey, Harrison, Jefferson and Monroe

Board of Governors Representative:

Bryan C. Conaway, 126 N. 9th Street,
Cambridge, OH 43725-2334 06/30/21

Council of Delegate (1):

C. Keith Plummer, P. O. Box 640,
Cambridge, OH 43725-0640 06/30/19

District 16

Counties: Allen, Auglaize, Hardin and Mercer

Board of Governors Representative:

Amy B. Ikerd, 119 N. Walnut Street,
Celina, OH 45822-1657 06/30/21

Council of Delegates (1):

Courtney W. Burton, P. O. Box 299,
Wapakoneta, OH 45895-0299 06/30/20

District 17

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

Board of Governors Representative:

Michael L. Barr, P. O. Box 686,
Pomeroy, OH 45769-0686 06/30/19

Council of Delegates (1):

Scott M. Robe, 14 W. Washington Street,
Athens, OH 45701-2432 06/30/19

District 18

Counties: Ashtabula, Geauga, Lake and Trumbull

Board of Governors Representative:

Stuart W. Cordell, P. O. Box 2300
Ashtabula, OH 44005-2300 06/30/19

Council of Delegates (4):

Cory C. Funk, 4333 Arrowhead Court,
Conneaut, OH 44030 06/30/19

Anna M. Parise, 60 S. Park Place,
Painesville, OH 44077-3417 06/30/19

Dennis M. Coyne, 1428 Hamilton Avenue,
Cleveland, OH 44114-1106 06/30/20

Matthew G. Vansuch, 6550 Seville Drive, Ste. B,
Canfield, OH 44406 06/30/20

At-Large Delegates

Magistrate Joseph S. Gallagher, 41 N. Perry Street,
Dayton, OH 45402-1431 06/30/19

Carol Seubert Marx, 106 Starrit Street, Ste. 210,
Lancaster, OH 43130-3993 06/30/19

Rachel A. Sabo, 6612 Dalmore Lane,
Dublin, OH 43016-6018 06/30/19

Martin E. Mohler, 405 Madison Avenue, Ste. 1000,
Toledo, OH 43604-1276 06/30/20

Christina M. Spencer, 6494 Centerville Business Parkway,
Dayton, OH 45459-2633 06/30/20

John S. Stith, 250 E. 5th Street, Ste. 2200,
Cincinnati, OH 45202-5118 06/30/20

Parliamentarian

Robert A. Brundrett, 33 N. High Street, 6 th Floor Columbus, OH 43215	06/30/19
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At-Large Board of Governors Appointees

Amanda M. Leffler, 388 S. Main Street, Ste. 500, Akron, OH 44311-4407	06/30/19
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William R. Groves, 900 Dayton Street, Yellow Springs, OH 45387	06/30/20
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Kathleen A. Stoneman, 63 2 nd Street, SW, Carrollton, OH 44615	06/30/21
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OSBA Elected Officers and Past Officers

Robin G. Weaver, President, 27 Lyman Circle, Shaker Heights, OH 44122	06/30/19
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Eleana A. Drakatos, President-elect, 1243 S. High Street, Columbus, OH 43206-3445	06/30/19
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Randall M. Comer, Immediate Past President 500 N. Fountain, Springfield, OH 45504-2539	06/30/19
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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 TRAFFIC LAW COMMITTEE**

2
3 *To the Council of Delegates:*

4 The Traffic Law Committee respectfully requests your favorable consideration of the
5 following proposal:

6
7 To amend §§4511.19(D), 37011.143 and 4511.19 (A) to address medical marijuana
8 users regarding OVI charges and address how the next round of breath testing machines
9 should be subject to challenge in OVI litigation.

10
11 Respectfully submitted

12
13 **Cleve M. Johnson, Columbus**
14 Chair, Traffic Law Committee

15
16 **Rationale for Proposal**

17
18 There are a couple of new developments which need to be addressed by the legislature. The
19 first is the advent of medical marijuana. The problem right now is that medical marijuana users
20 can never drive legally in Ohio again even if they are absolutely sober--not to the doctor, not
21 to the pharmacy, not to the grocery store. The reason for this is that marijuana can stay in a
22 person's system for as long as 30 days. So, someone who last used marijuana as long as 30
23 days ago can fail a drug test the way Ohio law reads now and be automatically guilty of OVI
24 without any way to prove their sobriety. Even a single use of marijuana can cause a person to
25 fail a drug test for as long as three days afterward. When these levels were originally set, the
26 attitude was that marijuana use was always illegal, so we don't care much whether the person
27 was impaired or not, which was why the current limits were set even though they directly
28 contradicted all available scientific evidence. We just want to punish them for using marijuana.
29 That rationale is no longer applicable, with legal use now available to a much wider section of
30 people, including medical marijuana and those residents or visitors to states where it is legal.
31 Also, under United States Supreme Court caselaw, there are potential constitutional problems
32 with punishing sober people for past drug use.

33
34 This proposal seeks to remedy that by creating a marijuana threshold at which point the law
35 would allow the jury to infer impairment simply by the evidence presented, but the defense
36 would also be able to show evidence of sobriety at trial, leaving the determination of
37 impairment to the jury as is proper.

38
39 The second problem is that once again, Ohio is preparing to get new breath testing machines,
40 even while many of the previous new machines sit unused at the Department of Health and
41 have never been put into service due to problems arising out of litigation that occurred at the
42 time they were introduced. The last time this happened, complex and hard-fought litigation
43 resulted. Neither side looks forward to this happening again. The proposal here evolved from
44 discussions concerned with avoiding this situation in the future, by shifting the focus away
45 from complex pre-trial litigation to allowing the jury to decide after hearing all relevant and
46 admissible evidence.

47
48 Not only did the committee extensively discuss these matters, but input was also sought

informally from key legislative members as well. Some provisions were added at their suggestion.

Text of the Proposal

4511.19(D)

(1)(a) In any criminal prosecution or juvenile court proceeding for a violation of division (A)(1)(a) of this section or for an equivalent offense that is vehicle-related, the result of any test of any blood or urine withdrawn and analyzed at any health care provider, as defined in section 2317.02 of the Revised Code, may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

(b)(i) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent offense that is vehicle-related, the court may admit evidence on withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two-hour time limit specified in division (A) of section 4511.192 of the Revised Code as the maximum period of time during which a person may consent to a chemical test or tests as described in that section.

(ii) Subject to the limitations contained in division (D)(1)(b)(iii) of this section, the court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under section 4511.191 of the Revised Code or a blood or urine sample is obtained pursuant to a search warrant. Only a physician, a registered nurse, an emergency medical technician-intermediate, an emergency medical technician-paramedic, or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood.

(iii) All evidence proposed to be admitted under division (D)(1)(b) of this section shall be subject to the Rules of Evidence, specifically including Evid. R. 702 and the standards for scientific evidence admissibility in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

(iv) The bodily substance withdrawn under division (D)(1)(b) of this section shall be analyzed in accordance with methods approved by the director of health by an individual possessing a valid permit issued by the director pursuant to section 3701.143 of the Revised Code.

(c)(i) Consistent with RC 3701.143, the admissibility of any evidence admitted under division (D)(1)(b) of this section regarding the concentration of alcohol, drugs of abuse, or a combination of them in any bodily substance, shall not affect, impair, or limit the admissibility

of any other testimony or evidence regarding the analysis of the bodily substance under RC 3701.143 or the method, process, reliability, or equipment used in the process of analyzing that bodily substance that is otherwise admissible under the Rules of Evidence.

(ii) If testimony or evidence is offered under this section, and is otherwise admissible under the Rules of Evidence, then the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(ed) As used in division (D)(1)(b) of this section, "emergency medical technician-intermediate" and "emergency medical technician-paramedic" have the same meanings as in section 4765.01 of the Revised Code.

(2) In a criminal prosecution or juvenile court proceeding for a violation of division (A) of this section or for an equivalent offense that is vehicle-related, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in divisions (A)(1)(b), (c), (d), and (e) of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of division (A)(1)(j) of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of division (B) of this section or for an equivalent offense that is substantially equivalent to that division.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis.

If the chemical test was obtained pursuant to division (D)(1)(b) of this section, the person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. If the person was under arrest as described in division (A)(5) of section 4511.191 of the Revised Code, the arresting officer shall advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. If the person was under arrest other than described in division (A)(5) of section 4511.191 of the Revised Code, the form to be read to the person to be tested, as required under section 4511.192 of the Revised Code, shall state that the person may have an independent test performed at the person's expense. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer.

(4)

(a) As used in divisions (D)(4)(b) and (c) of this section, "national highway traffic safety administration" means the national highway traffic safety administration established as an administration of the United States department of transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration, all of the following apply:

(i) The officer may testify concerning the results of the field sobriety test so administered.

(ii) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

(iii) If testimony is presented or evidence is introduced under division (D)(4)(b)(i) or (ii) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(c) Division (D)(4)(b) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (D)(4)(b) of this section.

3701.143

(A) For purposes of sections 1547.11, 4511.19, and 4511.194 of the Revised Code, the director of health shall determine, or cause to be determined, techniques or methods for chemically analyzing a person's whole blood, blood serum or plasma, urine, breath, or other bodily substance in order to ascertain the amount of alcohol, a drug of abuse, controlled substance, metabolite of a controlled substance, or combination of them in the person's whole blood, blood serum or plasma, urine, breath, or other bodily substance. The director shall approve satisfactory techniques or methods, ascertain the qualifications of individuals to conduct such analyses, and issue permits to qualified persons authorizing them to perform such analyses. Such permits shall be subject to termination or revocation at the discretion of the director.

As used in this section, "drug of abuse" has the same meaning as in section 4506.01 of the Revised Code.

(B)(1) The authority granted under this section, and any rules promulgated under that authority, shall in no way affect, impair, or limit the admissibility of any testimony or evidence used to support or challenge any evidence regarding the analysis of the bodily substance under the authority of this section or the method, process, reliability, or equipment used in the process

of analyzing that bodily substance, so long as the testimony or evidence is otherwise admissible under the Rules of Evidence.

(2) Consistent with RC 4511.19(D), any testimony or evidence offered as described in division (B)(1) of this section shall be admitted by the court, and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

4511.19(A) – Marijuana Per Se

(A)(1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(b) The person has a concentration of eight-hundredths of one per cent or more but less than seventeen-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.

(c) The person has a concentration of ninety-six-thousandths of one per cent or more but less than two hundred four-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.

(d) The person has a concentration of eight-hundredths of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(e) The person has a concentration of eleven-hundredths of one gram or more but less than two hundred thirty-eight-thousandths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(f) The person has a concentration of seventeen-hundredths of one per cent or more by weight per unit volume of alcohol in the person's whole blood.

(g) The person has a concentration of two hundred four-thousandths of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma.

(h) The person has a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath.

(i) The person has a concentration of two hundred thirty-eight-thousandths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.

(j) Except as provided in division (K) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

(i) The person has a concentration of amphetamine in the person's urine of at least five hundred nanograms of amphetamine per milliliter of the person's urine or has a concentration of

amphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

(ii) The person has a concentration of cocaine in the person's urine of at least one hundred fifty nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.

(iii) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.

(iv) The person has a concentration of heroin in the person's urine of at least two thousand nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.

(v) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.

(vi) The person has a concentration of L.S.D. in the person's urine of at least twenty-five nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.

~~(vii) The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.~~

(viii) Either of the following applies:

~~(I) The person is under the influence of alcohol, a drug of abuse, or a combination of them, and the person has a concentration of marihuana metabolite in the person's urine of at least fifteen nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.~~

~~(II) The person has a concentration of marihuana metabolite in the person's urine of at least thirty-five nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of marihuana metabolite per milliliter of the person's whole blood~~

289 ~~or blood serum or plasma.~~

290
291 (~~ix~~ vii) The person has a concentration of methamphetamine in the person's urine of at least
292 five hundred nanograms of methamphetamine per milliliter of the person's urine or has a
293 concentration of methamphetamine in the person's whole blood or blood serum or plasma of
294 at least one hundred nanograms of methamphetamine per milliliter of the person's whole blood
295 or blood serum or plasma.

296
297 (~~xviii~~ viii) The person has a concentration of phencyclidine in the person's urine of at least twenty-
298 five nanograms of phencyclidine per milliliter of the person's urine or has a concentration of
299 phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms
300 of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.

301
302 (~~ixi~~ ix) The state board of pharmacy has adopted a rule pursuant to section 4729.041 of the
303 Revised Code that specifies the amount of salvia divinorum and the amount of salvinorin A
304 that constitute concentrations of salvia divinorum and salvinorin A in a person's urine, in a
305 person's whole blood, or in a person's blood serum or plasma at or above which the person is
306 impaired for purposes of operating any vehicle, streetcar, or trackless trolley within this state,
307 the rule is in effect, and the person has a concentration of salvia divinorum or salvinorin A of
308 at least that amount so specified by rule in the person's urine, in the person's whole blood, or
309 in the person's blood serum or plasma.

310
311 (k) For purposes of division (A)(1)(a) of this section, and subject to division (A)(3) of this
312 section, the trier of fact may infer that a person is under the influence if any of the following
313 apply:

314
315 (i) The person has a concentration of delta-9-tetrahydrocannabinol (THC) of at least
316 **TWENTY-FIVE NANOGRAMS** in the person's urine.

317
318 (ii) The person has a concentration of delta-9-tetrahydrocannabinol (THC) of at least **FIVE**
319 **NANOGRAMS** in the person's whole blood or blood serum or plasma.

320
321 (2) No person who, within twenty years of the conduct described in division (A)(2)(a) of this
322 section, previously has been convicted of or pleaded guilty to a violation of this division, a
323 violation of division (A)(1) or (B) of this section, or any other equivalent offense shall do both
324 of the following:

325
326 (a) Operate any vehicle, streetcar, or trackless trolley within this state while under the influence
327 of alcohol, a drug of abuse, or a combination of them;

328
329 (b) Subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as
330 described in division (A)(2)(a) of this section, being asked by a law enforcement officer to
331 submit to a chemical test or tests under section 4511.191 of the Revised Code, and being
332 advised by the officer in accordance with section 4511.192 of the Revised Code of the
333 consequences of the person's refusal or submission to the test or tests, refuse to submit to the
334 test or tests.

335
336 (3) With regard to the inferences contained in division (A)(1)(k) of this section, all of the

337 following apply:

338
339 (a) Notwithstanding the expert testimony requirement in division (D)(1)(a), if the State admits
340 any chemical evidence under division (D)(1) of this section demonstrating a concentration of
341 THC exceeding the levels specified in division (A)(1)(k), the trier of fact may consider that
342 inference as evidence of the person being under the influence of marijuana without the need
343 for any further expert testimony on the subject.

344
345 (b) The inference that a person is under the influence of marijuana, contained in division
346 (A)(1)(k) of this section, may be supported or rebutted by either party with any relevant and
347 competent evidence or testimony to determine whether the defendant was under the influence
348 of marijuana at the time of operation of the vehicle, streetcar, or trackless trolley.

349
350 (c) Nothing in this section should be construed as altering the State's burden of proof. The trier
351 of fact shall only find a person guilty under this section if the State has proven, beyond a
352 reasonable doubt, all elements of the offense, including that the person was under the influence
353 of alcohol, a drug of abuse, or a combination of them at the time of operating the vehicle,
354 streetcar, or trackless trolley. In determining whether a person was under the influence, the
355 trier of fact shall consider all relevant and competent evidence or testimony, including the
356 inference, to determine the person's guilt or innocence.

358 **REPORT OF THE ACCESS TO JUSTICE COMMITTEE**

359
360 *To the Council of Delegates*

361
362 The Access to Justice Committee respectfully requests your favorable consideration of the
363 following proposed amendment to Section 4510 of the Revised Code:

364
365 To enact Section 4510.023 of the Revised Code to make the Fee Reduction & Amnesty
366 Pilot Program permanent, expand the definition of indigent to allow more low income
367 Ohioans to take advantage of the program and to create a requirement for the BMV to
368 notify an applicant of the reason their application for the program was denied and to
369 establish an appeals process.

370
371 Respectfully submitted,

372
373 **John P. Gilligan, Columbus**
374 Chair, Access to Justice Committee

375
376 **Rationale for Proposal**

377
378 The Ohio Bureau of Motor Vehicles reported in August 2018 that there are almost 3.3 million
379 active driver's license suspensions in Ohio. This impacts over 1 million Ohioans who struggle
380 to drive to work; to take their children to school; and to attend medical appointments. An
381 investigation by Cleveland.com revealed that license suspensions more significantly impact
382 low-income Ohioans.¹

383
384 Driver's license suspensions and the accompanying reinstatement fees stand between many
385 low-income Ohioans and their ability to legally drive to work; to job training programs; to the
386 grocery store; to medical appointments; and to other appointments that are a necessary part of
387 daily life. Because driving is necessary to accomplish most things in a productive daily life,
388 these low-income Ohioans face an impossible choice, drive on a suspended license or miss
389 days of work or vital appointments. This is especially true in Ohio's rural areas with limited
390 access to public transportation. Being stopped while driving on a suspended license only adds
391 to the financial burden of regaining a driver's license. This cycle of debt and driving without a
392 license stands between many Ohioans and employment and self-sufficiency.

393
394 **The Pilot Fee Reduction & Amnesty Pilot Program**

395
396 During the 132nd General Assembly (2017-2018), the legislature created a pilot program within
397 the Ohio Bureau of Motor Vehicles (BMV) to address the burden many low-income drivers

¹ In zip codes where more than half of the Ohioans have incomes below 200% of the federal poverty level, there are 99 license suspensions for every 1,000 residents. Dorn, S. License suspension disproportionately imposed on poor Ohioans, tapping them in debt.

Cleveland.com. Retrieved from

https://www.cleveland.com/metro/2017/03/license_suspensions_disproport_1.html

face. The pilot provides these low-income drivers with an opportunity to reduce or waive driver's license reinstatement fees for certain offenses once all court-ordered sanctions are completed; and in the case of fee reduction, once a period of 18-months from the time the suspension ended has lapsed.

The pilot, which operates from January 31, 2019 through July 31, 2019, creates an important opportunity for low-income Ohioans to regain legal driving privileges. The pilot creates two avenues for Ohioans with suspended licenses to seek relief from reinstatement fees. Under both avenues, an individual must complete all court-ordered sanctions prior to applying for reduction or amnesty. For individuals with only 1 qualifying offense, the reinstatement fee is reduced by 50%. For individuals with multiple qualifying offenses, the reinstatement fee is the greater amount of either the lowest reinstatement fee amount owed or 10% of the total amount owed.

Full amnesty, 100% fee reduction, is available to those applicants with a qualifying offense(s) who can demonstrate indigence as demonstrated by participation in the Supplemental Nutrition Assistance Program (SNAP) pursuant to RC 5101.54.

Offenses involving alcohol, drug abuse, a deadly weapon, violent assault, or sexual crimes are not eligible for the program. The program also does not apply to commercial driver's licenses or permit holders.

In testimony before the legislature in late February 2019, Ohio Department of Public Safety Director, Tom Stickrath, reported that within the first month of the pilot, the BMV received nearly 24,000 applications for fee reductions or amnesty and approved more than 21,000.

Overview of Proposed Statute

The proposed bill language would maintain the essential structure of the pilot program with only three changes.

First, Section 4510.023(B) establishes a permanent program in law. The pilot program is operational from January 31, 2019 through July 31, 2019. The response within the first month of the pilot program alone demonstrates the great need for Ohioans to have a meaningful opportunity to regain a valid driver's license. Moreover, when Ohioans struggling to make ends meet have the opportunity to pay an amount they can afford in order to regain their driver's license, they seize the opportunity, and Ohio not only gains licensed drivers but revenue that was otherwise uncollectable.

Second, Section 4510.023(A)(6) expands the definition of indigent beyond participation in the SNAP program to include those individuals participating in Medicaid, Ohio Works First, SSI, or the Veterans Pension Benefit programs. The inclusion of these programs is consistent with the pending financial disclosure affidavit of indigency created pursuant to R.C. 2323.311.² This

² R.C. 2323.311 sets the qualifying indigency level at 187.5% of the federal poverty guidelines. Each of the programs listed on the affidavit are income based. A person cannot qualify if they earn in excess of 187.5% of the federal poverty guidelines. R.C. 2323.311(B)(4)-(6).the federal poverty guidelines. R.C. 2323.311(B)(4)-(6).

change will bring consistency to the definition of indigency and also maximize the number of Ohioans who can take advantage of the program.

Finally, Section 4510.023(F) creates a requirement for the BMV to notify an applicant of the reason their application for the program was denied and to establish an appeals process. These provisions are not part of the current pilot. They are added to the proposed bill language based on feedback from driver's license reinstatement clinics. Because the BMV is not directed to explain the reason for a denial, otherwise eligible applicants who receive a denial because they incorrectly complete the application or submit the wrong supporting information to demonstrate indigency may erroneously believe they cannot seek relief under the program.

Text of the Proposal

To enact section 4510.023 of the Revised Code to read as follows:

(A) As used in this section:

(1) "Eligible offense" means an offense under any of the following Revised Code sections if the offense, an essential element of the offense, the basis of the charge, or any underlying offense did not involve alcohol, a drug of abuse, combination thereof, or a deadly weapon: 2151.354, 2152.19, 2152.21, 2907.24, 2913.02, 4507.20, 4509.101, 4509.17, 4509.24, 4509.40, 4510.037, 4510.05, 4510.06, 4510.15, 4510.22, 4510.23, 4510.31, 4510.32, 4511.203, 4511.205, 4511.251, 4511.75, 4549.02, 4549.021, and 5743.99.

(2) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(3) "Drug of abuse" has the same meaning as in section 4511.181 of the Revised Code.

(4) "Complete amnesty" means a waiver of reinstatement fees.

(5) "Driver's license or permit" does not include a commercial driver's license or permit.

(6) "Indigent" means a person who is a participant in any of the following programs:

(a) the supplemental nutrition assistance program administered by the department of job and family services pursuant to section 5101.54 of the Revised Code

(b) the Medicaid program pursuant to section 5163 of the Revised Code

(c) the Ohio Works First program administered by the department of job and family services pursuant to section 5107.10 of the Revised Code

(d) the Supplemental Security Income program pursuant to 20 CFR 416.1100

(e) the U.S. Department of Veterans Affairs Veterans Pension Benefit program pursuant to 38 USC 1521

(B) Not later than ninety days after the effective date of this section, the Registrar of Motor Vehicles shall establish a driver's license reinstatement fee debt reduction and amnesty program.

(C) Under the program, both of the following shall apply:

(1) A person whose driver's license or permit has been suspended as a result of an eligible offense may apply to the Registrar for driver's license reinstatement fee debt reduction if the person has completed all court-ordered sanctions related to the eligible offense other than the payment of reinstatement fees and at least eighteen months have expired since the end of the period of suspension ordered by the court.

(2) A person whose driver's license or permit has been suspended as a result of an eligible offense may apply to the Registrar for complete amnesty if the person has completed all court-ordered sanctions related to the eligible offense other than the payment of reinstatement fees, and the person is indigent and can demonstrate proof of indigence by providing documentation in a form approved by the Registrar.

(D)

(1) The Registrar shall grant reinstatement fee debt reduction to a person who is eligible under division (C)(1) of this section as follows:

(a) If the person owes reinstatement fees for multiple eligible offenses, the person shall be required to pay either the lowest reinstatement fee owed for those offenses or ten per cent of the total amount owed for those offenses, whichever amount is greater.

(b) If the person owes reinstatement fees for one eligible offense, the person shall be required to pay one-half of the reinstatement fee owed for that offense.

(2) The Registrar shall grant complete amnesty to a person eligible under division (C)(2) of this section.

(E) The Registrar shall conduct a public service announcement regarding the driver's license reinstatement fee debt reduction and amnesty program that includes a description of the program and its requirements. In addition, the Registrar shall make such information available on the Bureau of Motor Vehicle's web site.

(F)

(1) The Registrar shall provide an explanation in writing stating the reason for denial to a person whose application under (D)(1) or (D)(2) of this section is denied.

(2) The Registrar shall establish an appeal procedure for a person whose application

533 under (D)(1) or (D)(2) of this section is denied.

534

535 (G) The Registrar may establish any requirements and procedures necessary to administer and
536 implement this section.

537

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538 **REPORT OF THE CORPORATION LAW COMMITTEE**

539
540 *To the Council of Delegates:*

541
542 The Corporation Law Committee respectfully requests your favorable consideration of
543 the following resolution and proposal:

- 544
545 1. A resolution calling for the adoption of a commercial docket or a similar procedure
546 designed for the resolution of business disputes by judges experienced with or
547 trained to handle such matters throughout Ohio pursuant to such rules, laws or
548 regulations as determined by the state legislature in conjunction with the Supreme
549 Court of the State of Ohio. The Ohio State Bar Association is authorized to work
550 with the Supreme Court of Ohio, the state legislature and other interested parties to
551 recommend and seek implementation of a system meeting the criteria established
552 above.
553
554 2. The adoption of proposed Chapter 1706 of the Revised Code to restate the Ohio
555 Limited Liability Company Act.

556
557 Respectfully submitted,

558
559 **Michael J. Moeddel**, *Cincinnati*
560 Chair, Corporation Law Committee
561

562 **1. Resolution: The adoption of a commercial docket or a similar procedure designed**
563 **for the resolution of business disputes by judges experienced with or trained to handle**
564 **such matters throughout Ohio pursuant to such rules, laws or regulations as determined**
565 **by the state legislature in conjunction with the Supreme Court of the State of Ohio. The**
566 **Ohio State Bar Association is authorized to work with the Supreme Court of Ohio, the**
567 **state legislature and other interested parties to recommend and seek implementation of**
568 **a system meeting the criteria established above.**

569
570 **Rationale for Resolution**

571
572 In April 2007, the late Chief Justice Thomas Moyer spoke of the concern that all Ohio citizens
573 share regarding the economic realities challenging the state's job creators. He explained that
574 when making decisions to locate or remain in Ohio, employers assess a number of criteria,
575 including the prospect of costly and time-consuming civil litigation arising from commercial
576 transactions. He further noted that a number of states have responded to this reality by
577 establishing business or complex commercial dockets in courts of general jurisdiction. These
578 dockets are focused on litigation between businesses, acknowledge that most business-to-
579 business litigation is different from other litigation, and that these disputes often benefit from
580 advanced case management techniques and judges with business law experience. As a result
581 of this focus, the efficient resolution of commercial cases is promoted, fewer court resources
582 are required, the administration of justice is enhanced, and ultimately the state's business
583 climate is improved. With this in mind, Chief Justice Moyer created the Supreme Court Task

Force on Commercial Dockets, charging it with assessing the best method of establishing commercial civil litigation dockets in Ohio's Courts of Common Pleas.

Based on the Task Force's recommendation, the Supreme Court adopted a set of Temporary Rules of Superintendence for Courts of Ohio in order to establish a framework for commercial dockets in Ohio. In March 2009, a temporary commercial docket was established in the courts of common pleas in Cuyahoga, Franklin, Hamilton and Lucas counties. In December 2011, based on the experience with the temporary commercial docket, the Supreme Court of Ohio issued its Report & Recommendations of the Task Force on Commercial Dockets, finding that this will benefit the citizens, the bench and bar of Ohio and will ultimately make Ohio a jurisdiction that is more favorable to business. Specifically, the Task Force determined that permanent establishment of the Commercial Docket in Ohio would do each of the following:

- Provide the commercial docket judges with more concentrated experience in handling business disputes;
- Increase the number of published commercial litigation decisions, thus providing more guidance to businesses and their legal advisers;
- Promote predictable outcomes, which are important to business decision makers;
- Contribute to greater efficiency in the court system;
- Lessen delays in the court system.

In February 2013, the Supreme Court adopted permanent rules that provided for voluntary participation by a court of common pleas and the commercial docket judges in eligible counties, which included counties with either 6 or more general division judges or populations exceeding 300,000. These rules remain in effect today.

Based on issues brought to the Corporation Law Committee, two primary concerns have been identified with the current commercial docket system. First, the system is not mandatory and therefore its availability is inconsistent. Second, the system is limited in its availability to certain counties thereby making the system unavailable to businesses in counties throughout Ohio. These issues are addressed more fully below.

The availability of the Commercial Dockets in available counties is not mandatory and, as a result, the dispute resolution process to which business owners and lawyers are subject is inconsistent – contradicting the basic reasons for the Commercial Docket. As a result of the voluntary nature of the system, the continuation of the Commercial Docket in any given county has turned on an annual determination made by the judges of the relevant courts of common pleas. Some counties have discontinued the operation of the Commercial Docket and others have discontinued it only to then re-start it. The program history from in each county has been highly variable.

- **Cuyahoga County.** Cuyahoga County’s commercial docket was fully operational with two judges until 2015, at which time the judges of the court voted to discontinue their docket. Judge John P. O’Donnell continued to hear pending cases following the docket’s dissolution. In 2017, the members of the common pleas court voted to restart the commercial docket, with four judges hearing cases beginning in 2018.
- **Franklin County.** In 2012, prior to the adoption of the final superintendence rules, the judges in Franklin County voted to cease the operation of their court’s Commercial Docket. Recent reports suggest the court may be reconsidering its decision to disband its commercial docket program.
- **Hamilton County.** In 2017, the judges in Hamilton County voted to cease their Commercial Docket’s operation.
- **Lucas County.** Only the Commercial Docket program in Lucas County has been fully operational since inception, with two judges continuously hearing cases since 2009.

Shown in Table 1, below, are the annual total number of incoming cases filed in each Commercial Docket from 2009 to 2018 and the number of cases pending on those dockets on December 31 of each year. The individual county incoming caseload trend lines are displayed graphically in Figure 1.

Table 1. Incoming Cases and Cases Pending at End of Year, 2009 to 2018

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
CUYAHOGA										
Incoming Cases	342	540	653	614	660	761	41	2	1	339
Cases Pending End of Year	221	333	379	406	501	527	41	20	10	156
FRANKLIN										
Incoming Cases	290	389	362	158						
Cases Pending End of Year	176	311	293	0						
HAMILTON										
Incoming Cases	762	794	603	474	454	403	408	379	1	0
Cases Pending End of Year	375	405	359	281	302	267	251	225	27	0
LUCAS										
Incoming Cases	327	317	239	198	177	154	163	226	179	177
Cases Pending End of Year	139	173	141	137	103	111	111	110	106	108

The reasons for discontinuing the Commercial Docket are varied, but the reasons do not generally relate to the efficient or effective administration of justice or result from any experience that indicates the conclusions of Chief Justice Moyer or the Task Force on Commercial Dockets were inaccurate. Some of the most commonly articulated reasons include the desire by the judges on the Court of Common Pleas to hear a wide variety of cases, a concern that judges who were elected for one purpose are being designated primarily to hear a certain type of cases, a concern with the impact of campaign contributions on judges who do not hear cases on the Commercial Docket and disagreement with the methodology used in

determining who should serve as a Commercial Docket judge. Each of these concerns need to be considered in improving the current system.

Equally important to improving the system is to assure the system that is available to all litigants throughout the State of Ohio. While the voluntary system provides the opportunity for certain counties to take part in a Commercial Docket, the current system is not available to the vast majority of counties in the state. These parts of the state do not have the option of participating in the current Commercial Docket system. We believe it is important for all businesses in the State of Ohio to have access to the system.

In conclusion, in order to assure businesses that the dispute resolution system used in Ohio to resolve their disputes will result in consistent results and be efficient in creating those resolutions, the starting point should be that the basic structure of that system should be consistent over time and space. We acknowledge that difficult issues will need to be addressed in improving the current system. The Corporation Law Committee believes that this task is a worthwhile endeavor and is prepared to work with all the relevant constituencies to study the issue and come to a conclusion that benefits the members of the bar, Ohio businesses and all the citizens of the State of Ohio.

Text of Resolution

WHEREAS, stability and predictability are fundamental to ensuring litigants have confidence in the administration of justice and that attorneys can best advise their clients; and

WHEREAS, consistency and the state's litigation climate are primary factors many businesses consider when choosing where to locate and do business,

WHEREAS, it is imperative for state government, including the state judiciary, to have the necessary tools to foster a vibrant economy; and

WHEREAS, the state judicial system needs to be prepared to handle complex business litigation and all other matters in a timely and efficient manner; and

WHEREAS, the voluntary establishment of commercial dockets in certain portions of the state have allowed judges to specialize and develop expertise in complex business litigation, creating stability for litigants and efficiencies within the full and diverse dockets in their respective courts of common pleas; and

WHEREAS, despite the benefits, commercial dockets have not been applied consistently across the state, and the current rules do not allow for the vast majority of jurisdictions throughout the state to take advantage of them; and

WHEREAS, a statewide commercial docket or similar procedure will provide the optimal judicial framework to promote a healthy business climate and the efficient administration of justice; and

WHEREAS, the OSBA is uniquely positioned to bring together the state legislature, the state judiciary and all other interested parties to develop the structure for a statewide commercial docket or similar procedure;

NOW, THEREFORE, BE IT RESOLVED that the OSBA support the creation of a statewide commercial docket or similar procedure; and

BE IT FURTHER RESOLVED that the OSBA use its advocacy resources to urge all branches of state government and other constituencies to implement such a system for the benefit of all Ohioans.

2. PROPOSAL: The reinstatement of proposed Chapter 1706 of the Revised Code to restate the Ohio Limited Liability Company Act.

Rationale for Proposal

The original Ohio Limited Liability Act was enacted in 1994. Since that time the utility and prominence of the limited liability company as a business entity has developed significantly. Although changes have been made over the years to the Ohio LLC Act in an effort to improve clarity and to keep it current, Ohio is one of the few states whose original limited liability company act has not seen a comprehensive revision. The proposed Revised Ohio LLC Act provides greater consistency and clarity and includes modern advancements that sophisticated investors require to do business. We believe that the end result is one of the most modern limited liability company acts in the country.

This Revised Ohio LLC Act effects a complete restatement of the Ohio LLC Act. This Revised Ohio LLC Act is based on the Revised Prototype Limited Liability Company Act published by the American Bar Association's Committee of LLCs, Partnerships and Unincorporated Entities (the "Prototype Act"), modified to take into consideration certain familiar aspects of the current Ohio LLC Act, the methodology used by the Ohio state legislature in adopting the Revised Uniform Partnership Act in 2008, and the impact on other Ohio statutes and policies and procedures, including those of the Ohio Secretary of State.

Although the Revised Ohio LLC Act has been primarily drafted by the Limited Liability Company Subcommittee of the Corporation Law Committee, input and feedback has been provided by a number of other OSBA committees, including the Estate Planning, Trust and Probate Law Section and the Corporate Counsel Section.

A summary of certain material considerations in drafting the Revised Ohio LLC Act are described below:

1. Terminology.

Most modern limited liability company acts, including the Prototype Act, use the terminology certificate of formation, limited liability company agreement, limited liability company interests, registered office and registered agent. The Revised Ohio LLC Act retains the

terminology used in the Ohio LLC Act to reduce confusion by business persons and practitioners familiar with the current terminology, considering that many existing limited liability companies may continue with their current operating agreement and other organizational documents in effect. They will benefit from the consistency in this terminology. The consistent terminology also is likely to benefit the Secretary of State's office by eliminating a potentially confusing and unnecessary transition to new terminology. Certain terminology has been updated in order to signify a slightly different meaning than current terminology, or where the terminology has been adopted in similar Ohio business entity statutes.

2. Consolidation of Provisions on Limited Liability Company Agreement Override.

Consistent with the current Ohio LLC Act (Section 1705.081) and the Prototype Act (Section 110), the Revised Ohio LLC Act places in one Section (Section 1706.10) the various provisions that are not permitted to be modified by the operating agreement. This centralization allows for the elimination of the phrase "unless otherwise provided in the limited liability company agreement" or similar phrases throughout the Revised Ohio LLC Act and the ambiguity that results in the absence of express override language. Therefore, all provisions within the Revised Ohio LLC Act are "default" provisions that may be modified by the operating agreement unless modifications are prohibited under Section 1706.10.

3. Elimination of Manager-Managed and Member-Managed Dichotomy and Statutory Actual and Apparent Authority.

Consistent with the Prototype Act, the Revised Ohio LLC Act eliminates the member-managed and manager-managed bifurcation of management structures and the statutorily conferred actual and apparent authority of members and managers in those paradigms. Instead, the Revised Ohio LLC Act (Section 1706.31) provides that a person's actual or apparent authority to bind the limited liability company will be determined with reference to the operating agreement, decisions of the members in accordance with the operating agreement or the default rules of the Revised Ohio LLC Act. This approach is more consistent with the flexibility legal practitioners and the public have applied to structuring the governance and operation of limited liability companies. These structures do not reflect the strictly bifurcated organization contemplated by the current Ohio LLC Act but a variety of structures that provide for managers, officers, boards of directors, managing members, etc.

4. Fiduciary Duties or Standards of Conduct.

Consistent with the current Ohio LLC Act and certain other Ohio business entity statutes, the Revised Ohio LLC Act provides for exclusive statutory default fiduciary duties for members and managers. This is a significant departure from the Prototype Act which does not provide for statutory default fiduciary duties, relying on the premise that common law provides an adequate basis for applying the obligations associated with members and agents of a limited liability company.

5. Reinstatement.

801
802 A new concept of reinstatement after dissolution is included in the Revised Ohio LLC Act.
803 While this concept is new to the Ohio LLC Act, it is not necessarily new to Ohio
804 unincorporated entity acts. Section 1776.62(B) permits the partners to reinstate a dissolved
805 general partnership upon certain actions of the partners and dissociated partners. Likewise, the
806 Revised Ohio LLC Act allows the members and/or owners of the limited liability company
807 interests to reinstate the limited liability company with retroactive effect, subject to third
808 parties' rights.

809 810 6. Annual Reports.

811
812 Consistent with the current Ohio LLC Act, the Revised Ohio LLC Act does not require the
813 filing of an annual report. The Prototype Act and most state business entity statutes now
814 require the filing of an annual report. In many states the filing of an annual report acts as a tax
815 collection mechanism. Although there might be benefits to adopting an annual report
816 requirement, we do not believe that the Revised Ohio LLC Act is the appropriate time method
817 of considering such a modification.

818 819 7. Designation of Principal Office.

820
821 The Revised Ohio LLC Act permits the identification of a principal office of the limited
822 liability company but does not require the designation of a principal office of the limited
823 liability company. The Prototype Act requires the designation of a principal office. There are
824 certain advantages to identifying a principal office of the limited liability company. However,
825 the transition to such a requirement without also requiring annual reports creates unnecessary
826 complexity.

827 828 8. Series Limited Liability Companies.

829
830 The Revised Ohio LLC Act permits a limited liability company to establish, by way of its
831 operating agreement, one or more designated series of assets and liabilities with which certain
832 subjects of members might be associated. Series provisions were provided throughout the
833 Revised Ohio LLC Act in an effort to acknowledge a number of jurisdictions that have added
834 so called "series" limited liability companies to their statutes. The series provisions are based
835 on those provided in the Prototype Act. Series provisions are contained primarily in Article
836 11 but also are included throughout the Revised Ohio LLC Act.

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**OHIO REVISED
LIMITED LIABILITY
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**OHIO
REVISED LIMITED LIABILITY COMPANY ACT**

CHAPTER 1706

1706.01 SHORT TITLE. This chapter shall be known and may be cited as the “Ohio Revised Limited Liability Company Act.”

1706.02 DEFINITIONS. As used in this chapter, unless the context otherwise requires:

(A) “Articles of organization” means the articles of organization described in Section 1706.21, and the articles of organization as amended or restated.

(B) “Assignment” means a transfer, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift or transfer by operation of law.

(C) “Constituent limited liability company” means a constituent entity that is a limited liability company.

(D) “Constituent entity” means an entity that is party to a merger.

(E) “Contribution” means anything of value, including cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company, or a series thereof, in the person’s capacity as a member.

(F) “Converted entity” means the entity into which a converting entity converts pursuant to Section 1706.115 through Section 1706.118.

(G) “Converting limited liability company” means a converting entity that is a limited liability company.

(H) “Converting entity” means an entity that converts into a converted entity pursuant to Section 1706.115.

(I) “Debtor in bankruptcy” means a person that is the subject of:

(1) an order for relief under Title 11 of the United States Code or a successor statute of general application; or

(2) a comparable order under federal, state, or foreign law governing insolvency.

(J) “Distribution” means a transfer of money or other property from a limited liability company, or a series thereof, to another person on account of a membership interest.

(K) “Entity” means a general partnership, limited partnership, limited liability partnership, limited liability company, association, corporation, professional corporation, professional association, nonprofit corporation, business trust, real estate investment trust, common law trust, statutory trust, cooperative association, or similar organizations and entities having a governing statute, in each case, whether foreign or domestic.

(L) “Foreign limited liability company” means an entity that is:

(a) an unincorporated association;

(b) organized under laws of a state other than the laws of this state, or under the laws of any foreign country;

(c) organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered, qualified, or organized under any statute of this state other than this chapter.

(M) “Governing statute” means the statute that governs an entity’s internal affairs.

(N) “Limited liability company,” except in the phrase “foreign limited liability company,” means an entity formed or existing under this chapter.

(O) “Manager” means any person designated by the limited liability company or its members with the authority to manage all or part of the activities or affairs of the limited liability company on behalf of the limited liability company, which person has agreed to serve in such capacity, whether such person is designated as a manager, director, officer or otherwise.

(P) “Membership interest” means a member’s right to receive distributions from a limited liability company or series thereof.

(Q) “Member” means a person that has been admitted as a member of a limited liability company under Section 1706.41 and that has not dissociated as a member.

(R) “Operating agreement” means any agreement, written or oral, of all the members or written declaration of the sole member, as to the affairs and activities of a limited liability company and any series thereof. The operating agreement includes any amendments to the operating agreement.

(S) “Organizational documents” means:

(1) for a general partnership or foreign general partnership, its partnership agreement;

(2) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(3) for a limited liability limited partnership or foreign limited liability limited partnership, its certificate of limited partnership and partnership agreement;

(4) for a limited liability company or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;

(5) for a business or statutory trust or foreign business or statutory trust, its trust instrument, or comparable records as provided in its governing statute;

(6) for a corporation for profit or foreign corporation for profit, its articles of incorporation, regulations and other agreements among its shareholders that are authorized by its governing statute, or comparable records as provided in its governing statute;

(7) for a nonprofit corporation or foreign nonprofit corporation, its articles of incorporation, regulations and other agreements that are authorized by its governing statute or comparable records as provided in its governing statute;

(8) for a professional corporation or foreign professional corporation, its articles of incorporation, regulations and other agreements among its shareholders that are authorized by its governing statute, or comparable records as provided in its governing statute; and

(9) for any other entity, the basic records that create the entity, determine its internal governance, and determine the relations among the persons that own it, are members of it, or govern it.

(T) “Organizer” means a person executing the initial articles of organization filed by the secretary of state in accordance with Section 1706.21.

(U) “Person” means an individual, entity, trust, estate, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee, trustee, personal representative, fiduciary, or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether foreign or domestic.

(V) “Principal office” means the location specified by a limited liability company, foreign limited liability company, or other entity as its principal office in the last filed record in which the limited liability company, foreign limited liability company, or other entity specified its principal office on the records of the secretary of state, or, if no such location has previously been specified, the location reasonably apparent to an unaffiliated third person as

the principal executive office of the limited liability company, foreign limited liability company or other entity.

(W) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in written or paper form through an automated process.

(X) “Sign” means, with the present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic symbol, sound, or process.

(Y) “Surviving entity” means an entity into which one or more other entities are merged, whether the entity pre-existed the merger or was created pursuant to the merger.

(Z) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(AA) “Tribunal” means a court or, if provided in the operating agreement or otherwise agreed, an arbitrator, arbitration panel or other tribunal.

1706.03 KNOWLEDGE; NOTICE.

(A) A person knows a fact when the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under law other than this chapter.

(B) A person has notice of a fact when the person:

(1) knows of it;

(2) receives notification of it;

(3) has reason to know the fact from all of the facts known to the person at the time in question; or

(4) is deemed to have notice of the fact under subsection (D).

(C) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(D) A person (whether or not a member) is deemed to have notice of a limited liability company's:

(1) matters included in the articles of organization under Sections 1706.21(A)(1), (A)(2), and (A)(3), upon filing;

(2) dissolution, 90 days after a certificate of dissolution under Section 1706.77(B)(1) becomes effective;

(3) merger or conversion, 90 days after a certificate of merger under Section 1706.113 or certificate of conversion under Section 1706.117 becomes effective; and

(4) reinstatement, 90 days after a certificate of reinstatement under Section 1706.83 becomes effective.

(E) A member's knowledge, notice, or receipt of a notification of a fact relating to the limited liability company is not knowledge, notice, or receipt of a notification of a fact by the limited liability company solely by reason of the member's capacity as a member.

Official Comment

Subsection (E) clarifies that a member's knowledge, notice, or receipt of a notification of a fact in that member's sole capacity as a member is not imputed to the limited liability company. If the member is an agent of the company, i.e., an officer or other manager, then the notice may be imputed to the limited liability company via the law of agency. Restatement Third, Agency § 5.02(1).

1706.04 NATURE AND DURATION OF LIMITED LIABILITY COMPANY.

(A) A limited liability company is a separate legal entity. A limited liability company's status for tax purposes shall not affect its status as a separate legal entity formed under this Act.

(B) A limited liability company has perpetual duration.

Official Comment

Subsection (A) is not modifiable by the operating agreement. See Section 1706.10(C)(1).

1706.05 POWERS AND PRIVILEGES.

(A) A limited liability company may carry on any lawful activity, whether or not for profit.

(B) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter or by any other law or by its operating agreement, together with any powers incidental thereto, including those powers and privileges necessary or convenient to the conduct, promotion, or attainment of the business, purposes, or activities of the limited liability company.

(C) Without limiting the general powers enumerated in subsection (B) of this section, a limited liability company shall have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge, or other swap agreements, or cap, floor, put, call, option, exchange, or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

(D) A series established under this chapter has the power and capacity, in the series' own name, to:

- (1) sue and be sued;
- (2) contract;
- (3) hold and convey title to assets of the series, including real property, personal property, and intangible property; and
- (4) grant liens and security interests in assets of the series.

Official Comment

The use of limited liability companies for nonprofit activities or for the public benefit is authorized by this chapter; however, as with all limited liability company acts, careful attention to drafting of the operating agreement will be required to meet the tax requirements of the various taxing authorities.

1706.06 GOVERNING LAW. The law of this state governs:

- (A) the organization and internal affairs of a limited liability company;
- (B) the liability of a member as a member for the debts, obligations, or other liabilities of a limited liability company;
- (C) the authority of the members and agents of a limited liability company; and
- (D) the availability of the assets of a series or the limited liability company for the obligations of another series or the limited liability company.

1706.07 RULES OF CONSTRUCTION.

(A) It is the policy of this chapter and this state to give maximum effect to the principles of freedom of contract and to the enforceability of operating agreements.

(B) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(C) Rules that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(D) Unless the context otherwise requires, as used in this chapter, the singular shall include the plural and the plural may refer to only the singular. The use of any gender shall be applicable to all genders. The captions contained in this chapter are for purposes of convenience only and shall not control or affect the construction of this chapter.

(E) Sections 1309.406 and 1309.408 of the Revised Code do not apply to any interest in a limited liability company, including all rights, powers, and interests arising under an operating agreement or this chapter. This provision prevails over Sections 1309.406 and 1309.408 of the Revised Code, and is expressly intended to permit the enforcement of the provisions of an operating agreement that would otherwise be ineffective under Sections 1309.406 and 1309.408 of the Revised Code.

(F) This chapter applies to all limited liability companies equally regardless of whether the limited liability company has one or more members or whether it is formed by a filing under section 1706.21 of the Revised Code or by merger, consolidation, conversion or otherwise.

1706.08 NAME.

(A) The name of a limited liability company must contain the words “limited liability company” or the abbreviation “L.L.C.”, “LLC”, “limited,” “ltd.,” or ltd”.

(B) Except as provided in this section and in Sections 1701.75, 1701.78, 1701.82, 1705.36, and 1705.37 of the Revised Code, the name of a limited liability company must be distinguishable on the records of the secretary of state from:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state;

(2) each name reserved under Section 1706.09;

(3) the name of any trade name to which the exclusive right, at the time in question, is registered in the office of the secretary of state pursuant to Chapter 1329. of the Revised Code.

(C) subsection (B) shall not apply if a person files with the secretary of state either of the following:

(1) a consent given by an entity or person in whose name is registered the exclusive right to use a trade name, to the use of a name by a limited liability company, that is on a form as prescribed by the secretary of state and is signed by an authorized officer or other authorized representative of the consenting entity or person in whose name the trade name is registered; or

(2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the person to the use of the name in this state.

(D) If a judicial sale or other transfer by order of a tribunal involves the right to use the name of a limited liability company or of a foreign limited liability company, then subsection (B) shall not be applicable with respect to any person that is subject to the order.

(E) The name of a delinquent limited liability company or a delinquent foreign limited liability company shall, on the records of the secretary of state, include the word “delinquent”, followed by the effective date of the delinquency of the limited liability company or the foreign limited liability company, after the four-hundredth day after the effective date of its delinquency under Section 1706.72.

(F) If a foreign limited liability company’s filed registration of a foreign limited liability company is cancelled by the filing of a cancellation of a foreign limited liability company, the name of the foreign limited liability company shall, on the records of the secretary of state, include the words “state registration of a foreign limited liability company cancelled” followed by the effective date of the cancellation of a foreign limited liability company.

(G) If a limited liability company delivers to the secretary of state for filing a certificate of dissolution, the name of the limited liability company shall, on the records of the secretary of state, include the word “dissolved” followed by the effective date of the dissolution of the limited liability company.

Official Comment

To the extent that other law requires professionals, banks, or other entities or individuals to utilize certain names in the name of the limited liability company to transact business in a limited liability company, that other law must be followed in determining the name, but the name must nevertheless comply with section 1706.08(A).

1706.09 RESERVATION OF NAME.

(A) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign limited liability company whose name is not available, by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the

secretary of state finds that the name applied for is available, the secretary of state must reserve that name for the applicant's exclusive use for a 180-day period.

(B) The owner of a reserved limited liability company name may renew the reservation for successive periods of 180 days each by delivering to the secretary of state for filing, during the 45-day period preceding the date of expiration of the reservation, a renewal application.

(C) The owner of a name reserved for a limited liability company may assign the reservation to another person by delivering to the secretary of state for filing a signed notice of the transfer that states the name and address of the transferee.

(D) The owner of a reserved limited liability company name may terminate the name reservation by delivering to the secretary of state for filing a signed notice of name reservation cancellation.

1706.10 OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

(A) Except as otherwise provided in subsections (B) and (C):

(1) the operating agreement governs relations among the members as members and between the members and the limited liability company; and

(2) to the extent the operating agreement does not otherwise provide for a matter described in subsection (A)(1), this chapter governs the matter.

(B)

(1) To the extent that, at law or in equity, a member, manager or other person has duties (including fiduciary duties) to the limited liability company, or to another member or to another person that is a party to or is otherwise bound by an operating agreement, the member's, manager's, or other person's duties may be expanded or restricted or eliminated by a written operating agreement, but an operating agreement may not eliminate the implied covenant of good faith and fair dealing.

(2) A written operating agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company or to another member or to another person that is a party to or is otherwise bound by an operating agreement, but an operating agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied covenant of good faith and fair dealing.

(3) A member, manager or other person shall not be liable to a limited liability company or to another member or to another person that is a party to or is otherwise

bound by an operating agreement for breach of fiduciary duty for the member's or other person's good faith reliance on the operating agreement.

(4) An operating agreement may provide that:

(a) a member or assignee who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences; and

(b) at the time or upon the happening of events specified in the operating agreement, a member or assignee may be subject to specified penalties or consequences.

(5) A penalty or consequence that may be specified under paragraph (4) of this subsection may include and take the form of reducing or eliminating the defaulting member's or assignee's proportionate interest in a limited liability company, subordinating the member's or assignee's membership interest to that of non-defaulting members or assignees, forcing a sale of that membership interest, forfeiting the defaulting member's or assignee's membership interest, the lending by other members or assignees of the amount necessary to meet the defaulting member's or assignee's commitment, a fixing of the value of the defaulting member's or assignee's membership interest by appraisal or by formula and redemption or sale of the membership interest at that value, or other penalty or consequence.

(C) An operating agreement may not:

(1) vary the nature of the limited liability company as a separate legal entity under Section 1706.04(A);

(2) vary the law applicable under Section 1706.06;

(3) except as otherwise provided in Section 1706.12(B), restrict the rights under this chapter of a person other than a member, dissociated member, or assignee;

(4) vary the power of the court under Section 1706.24;

(5) eliminate the implied covenant of good faith and fair dealing;

(6) eliminate or limit the liability of a member or other person for any act or omission that constitutes a bad faith violation of the implied covenant of good faith and fair dealing;

(7) waive the requirements of Section 1706.43(A);

(8) waive the prohibition on issuance of a certificate of a membership interest in bearer form under Section 1706.52(D); or

(9) waive the requirements of Section 1706.122(B).

(D) The operating agreement is to be interpreted by the general rules of contract interpretation.

1706.11 OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS ADMITTED AS MEMBERS; PREFORMATION AGREEMENT.

(A) A limited liability company is bound by and may enforce the operating agreement, whether or not the limited liability company has itself manifested assent to the operating agreement.

(B) A person that is admitted as a member of a limited liability company becomes a party to and assents to the operating agreement subject to Section 1706.43(A).

(C) Two or more persons intending to be the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement will become the operating agreement. One person intending to be the initial member of a limited liability company may assent to terms providing that upon the formation of the limited liability company the terms will become the operating agreement.

(D) The operating agreement of a limited liability company having only one member shall not be unenforceable by reason of there being only one person who is a party to the operating agreement.

Official Comment

The language specifying that a person is deemed to become a party to the operating agreement upon admission as a member is intended to make clear that the member is bound by and may enforce the agreement.

1706.12 OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

(A) An operating agreement may be amended upon the consent of all of the limited liability company's members or in such other manner authorized by the operating agreement. If an operating agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the operating agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law (except that the approval of any person may be waived by that person and any conditions may be waived by all persons for whose benefit those conditions were intended).

(B) An operating agreement may provide rights to any person, including a person who is not a party to the operating agreement, to the extent set forth in the operating agreement.

(C) The obligations of a limited liability company and its members to a person in the person's capacity as an assignee or dissociated member are governed by the operating agreement. An assignee and dissociated member are bound by the operating agreement.

1706.13 STATUTORY AGENT FOR SERVICE OF PROCESS.

(A) A limited liability company and a foreign limited liability company that has an effective registration as a foreign limited liability company under Section 1706.92 must continuously maintain in this state a statutory agent for service of process.

(B) A statutory agent of a limited liability company and a foreign limited liability company must be an individual who is a resident of this state or an entity authorized to transact business in this state and who maintains a mailing address in this state.

(C) A limited liability company and a foreign limited liability company may change its statutory agent, the address of the statutory agent, or both by delivering to the secretary of state for filing a statutory agent update setting forth:

(1) the name of the limited liability company or foreign limited liability company;

(2) the street and mailing address of its current statutory agent;

(3) the name of its current statutory agent;

(4) if the statutory agent is to be changed, the name of its successor statutory agent; and

(5) if the address of the statutory agent is to be changed, the new street and mailing address of the statutory agent, or, if the statutory agent is to be changed, the street and mailing address of the successor statutory agent.

(D) A statutory agent of a limited liability company and a foreign limited liability company may change its name, its mailing address, or both by delivering to the secretary of state for filing a written statement setting forth:

(1) the name of the limited liability company or foreign limited liability company represented by the statutory agent;

(2) the mailing address of the statutory agent as currently shown on the records of the secretary of state;

(3) the name of the statutory agent of the limited liability company or foreign limited liability company as currently shown on the records of the secretary of state;

(4) if the name of the statutory agent is to be changed, the new name of the statutory agent;

(5) if the address of the statutory agent is to be changed, the new street and mailing address of the statutory agent; and

(6) a recitation that notice of the change was given to the limited liability company or foreign limited liability company at least 10 days before the date the statement is delivered for filing.

(E) A statutory agent of a limited liability company and a foreign limited liability company may resign as statutory agent by delivering to the secretary of state for filing a written notice of resignation setting forth the name of the limited liability company or foreign limited liability company and stating that the statutory agent is resigning and by mailing a copy of the notice to the limited liability company at the current or last known address of its principal office on or prior to the date that the notice is filed with the secretary of state. The notice shall also include a statement that a copy of the notice has been sent to the limited liability company within the time and in the manner specified in this division.

(F) An agency for service of process terminates on the earlier of:

(1) the 30th day after the secretary of state files the statement of resignation;

(2) when a record designating a new statutory agent is delivered to the secretary of state for filing on behalf of the limited liability company or foreign limited liability company and becomes effective.

1706.14 SERVICE OF PROCESS.

(A) A statutory agent appointed by a limited liability company or foreign limited liability company is a statutory agent of the limited liability company or foreign limited liability company for service of any process, notice, or demand required or permitted by law to be served on the limited liability company or foreign limited liability company.

(B) If a limited liability company or foreign limited liability company does not appoint or maintain a statutory agent in this state or the statutory agent cannot with reasonable diligence be found at the mailing address for the statutory agent on file with the secretary of state, the limited liability company or foreign limited liability company shall be deemed to have consented to service of process by mail or other nationally recognized delivery service addressed to the limited liability company or foreign limited liability company at the principal office of the limited liability company or foreign limited liability company.

(C) Service is effected under subsection (A) or (B) at the earliest of:

(1) the date the limited liability company or foreign limited liability company receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the limited liability company or foreign limited liability company; or

(3) five days after the process, notice, or demand is deposited with the United States Postal Service, if mailed postpaid and correctly addressed.

(D) This Section does not affect the right to serve process, notice, or demand in any other manner provided by law.

1706.21 FORMATION OF LIMITED LIABILITY COMPANY; ARTICLES OF ORGANIZATION.

(A) In order to form a limited liability company, one or more persons shall execute articles of organization and deliver it to the secretary of state for filing. The articles of organization shall set forth:

(1) the name of the limited liability company;

(2) the name of the limited liability company's statutory agent and the mailing address of the statutory agent;

(3) if applicable, a statement as provided in Section 1706.122(B)(3); and

(4) any other matters the organizers or the members determine to include in the articles of organization.

(B) A limited liability company is formed when the articles of organization are filed by the secretary of state or at any later date or time specified in the articles of organization.

(C) The fact that articles of organization are on file in the office of the secretary of state is notice of the matters required to be included by subsections (A)(1), (A)(2) and (A)(3) but is not notice of any other fact.

(D) An operating agreement may be entered into either before, after, or at the time of the filing of the articles of organization and, whether entered into before, after, or at the time of the filing, may be made effective as of the filing of the articles of organization or at any other time or date provided in the operating agreement.

1706.22 AMENDMENT OR RESTATEMENT OF ARTICLES OF ORGANIZATION.

(A) The articles of organization may be amended at any time.

(B) The articles of organization may be restated with or without amendment at any time.

(C) To amend its articles of organization, a limited liability company must deliver to the secretary of state for filing a certificate of amendment stating:

- (1) the name of the limited liability company;
- (2) the date of filing of its articles of organization; and
- (3) the changes the amendment makes to the articles of organization as most recently amended or restated.

(D) Restated articles of organization must be delivered to the secretary of state for filing in the same manner as an amendment. Restated articles of organization must be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's name and the date of the filing of its articles of organization. Any amendment or change effected in connection with the restatement of the articles of organization shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect the amendment or change.

(E) The original articles of organization, as theretofore amended or supplemented, shall be superseded by the restated articles of organization and thenceforth, the articles of organization, including any further amendment or changes made thereby, shall be the articles of organization of the limited liability company, but the original effective date of formation shall remain unchanged.

1706.23 SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO SECRETARY OF STATE.

(A) A record delivered to the secretary of state for filing pursuant to this chapter must be signed as provided by this section.

(1) A limited liability company's initial articles of organization must be signed by at least one person.

(2) A record signed on behalf of a limited liability company must be signed by a person authorized by the limited liability company.

(3) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the limited liability company's activities under Section 1706.78(A) or a person appointed under Section 1706.78(B) to wind up those activities.

(4) A statement of denial by a person under Section 1706.31 must be signed by that person.

(5) Any other record must be signed by the person on whose behalf the record is delivered to the secretary of state.

(B) Any record to be filed under this chapter may be signed by an agent, including an attorney-in-fact. Powers of attorney relating to the signing of the record need not be delivered to the secretary of state.

1706.24 SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

(A) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing under this chapter does not do so, any other person that is aggrieved by that failure to sign may petition the appropriate court to order:

- (1) the person to sign the record;
- (2) the person to deliver the record to the secretary of state for filing; or
- (3) the secretary of state to file the record unsigned.

(B) If a petitioner under subsection (A) is not the limited liability company or foreign limited liability company to whom the record pertains, the petitioner shall make the limited liability company or foreign limited liability company a party to the action. A person aggrieved under subsection (A) may seek the remedies provided in subsection (A) in a separate action against the person required to sign the record or as a part of any other action concerning the limited liability company in which the person required to sign the record is made a party.

(C) A record filed unsigned pursuant to this section is effective without being signed.

(D) A court may award reasonable expenses, including reasonable attorneys' fees, to the party or parties who prevail, in whole or in part, with respect to any claim made under subsection (A).

1706.25 DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF STATE; EFFECTIVE TIME AND DATE.

(A) Each record authorized or required to be delivered to the secretary of state for filing under this chapter shall:

(1) contain all information required by the law of this state to be contained in the record but, unless otherwise provided by law, shall not be required to contain other information;

(2) be on or in a medium and in such form acceptable to the secretary of state and from which the secretary of state may create a record that contains all of the information stated in the record. The secretary of state may require that the record be delivered by any one or more means or on or in any one or more media acceptable to the secretary of

1726 state. The secretary of state is not required to file a record that is not delivered by a means and
1727 in a medium that complies with the requirements then established by the secretary of state for
1728 the delivery and filing of records. If the secretary of state permits a record to be delivered on
1729 paper, the record shall be typewritten or machine printed, and the secretary of state may impose
1730 reasonable requirements upon the dimensions, legibility, quality, and color of the paper and
1731 typewriting or printing and upon the format and other attributes of any record that is delivered
1732 electronically. The secretary of state shall, at the earliest practicable time, allow for the
1733 delivery of a record for filing to be accomplished electronically, without the necessity for the
1734 delivery of a physical original record or the image thereof, if all required information is
1735 delivered and is readily retrievable from the data delivered. If the delivery of a record for filing
1736 is required to be accomplished electronically, that record shall not be accompanied by any
1737 physical record unless the secretary of state permits that accompaniment.
1738

1739 (3) be in English. A person's name set forth in the record need not be in
1740 English if expressed in English letters or Arabic or Roman numerals. Records of a foreign
1741 person need not be in English if accompanied by a reasonably authenticated English
1742 translation.

1743 (4) be delivered to the secretary of state for filing and be accompanied by
1744 all required fees and penalties.
1745

1746 (B) Unless the secretary of state determines that a record does not comply with the
1747 filing requirements of this chapter, the secretary of state shall file the record and:
1748

1749 (1) for a statement of denial, send a copy of the filed statement and a receipt
1750 for the fees to the person on whose behalf the statement was delivered for filing and to the
1751 statutory agent for the limited liability company;
1752

1753 (2) for all other records, send a copy of the filed record and a receipt for the
1754 fees to the person on whose behalf the record was filed.
1755

1756 (C) Upon request and payment of the requisite fee, the secretary of state shall send
1757 to the requester a certified copy of a requested record.
1758

1759 (D) Except as otherwise provided in Section 1706.13(F) and Section 1706.26, a
1760 record delivered to the secretary of state for filing under this chapter may specify an effective
1761 time and a delayed effective date. Subject to Sections 1706.13(F) and 1706.26, a record filed
1762 by the secretary of state is effective:
1763

1764 (1) if the record does not specify an effective time and does not specify a
1765 delayed effective date, on the date and at the time the record is filed as evidenced by the
1766 secretary of state's endorsement of the date and time on the record;
1767

1768 (2) if the record specifies an effective time but not a delayed effective date,
1769 on the date the record is filed at the time specified in the record;
1770

1771 (3) if the record specifies a delayed effective date but not an effective time,
1772 at 12:01 a.m. on the earlier of:

1773
1774 (a) the specified date; or

1775
1776 (b) the 90th day after the record is filed; or

1777
1778 (4) if the record specifies an effective time and a delayed effective date, at
1779 the specified time on the earlier of:

1780
1781 (a) the specified date; or

1782
1783 (b) the 90th day after the record is filed.

1784
1785 **1706.26 CORRECTING FILED RECORD.**

1786
1787 (A) A limited liability company or foreign limited liability company may deliver to
1788 the secretary of state for filing a statement of correction to correct a record previously delivered
1789 by the limited liability company or foreign limited liability company to the secretary of state
1790 and filed by the secretary of state if at the time of filing the record contained incorrect or
1791 inaccurate information or was defectively signed.

1792
1793 (B) A statement of correction under subsection (A) may not state a delayed effective
1794 date and must:

1795
1796 (1) describe the record to be corrected, including its filing date, or attach a
1797 copy of the record as filed;

1798
1799 (2) specify the inaccurate information or the defect in the signing; and

1800
1801 (3) correct the incorrect or inaccurate information or defective signature.

1802
1803 (C) When filed by the secretary of state, a statement of correction is effective
1804 retroactively as of the effective date of the record the statement corrects, but the statement is
1805 effective when filed as to persons that previously relied on the uncorrected record and would
1806 be adversely affected by the correction.

1807
1808 **1706.27 LIABILITY FOR INCORRECT OR INACCURATE INFORMATION IN**
1809 **FILED RECORD.**

1810
1811 (A) A person who signs a record authorized or required to be filed under this chapter
1812 thereby affirms under the penalties of perjury that the facts stated in the record are true in all
1813 material respects.

1814
1815 (B) If a record delivered to the secretary of state for filing under this chapter and
1816 filed by the secretary of state contains incorrect or inaccurate information, a person that suffers

a loss by reasonable reliance on the information may recover damages for the loss from a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be incorrect or inaccurate at the time the record was signed.

1706.28 CERTIFICATE OF FULL FORCE AND EFFECT OR REGISTRATION.

(A) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of full force and effect for a limited liability company if the records filed in the office of the secretary of state show that the limited liability company has been formed under the laws of this state. A certificate of full force and effect must state:

- (1) the limited liability company's name;
- (2) that the limited liability company was formed under the laws of this state and the date of formation;
- (3) whether the secretary of state has determined that the limited liability company is delinquent;
- (4) whether the limited liability company has delivered to the secretary of state for filing a statement of dissolution; and
- (5) whether the limited liability company has delivered to the secretary of state for filing a certificate of reinstatement.

(B) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of registration for a foreign limited liability company if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of registration for the foreign limited liability company, has not revoked the certificate of registration for the foreign limited liability company, and has not filed a statement of cancellation of the certificate of registration for the foreign limited liability company. A certificate of registration must state:

- (1) the foreign limited liability company's name;
- (2) that the foreign limited liability company is authorized to transact business in this state;
- (3) that the secretary of state has not revoked the foreign limited liability company's certificate of registration;
- (4) that the secretary of state has not filed a statement of cancellation of the foreign limited liability company's certificate of registration; and
- (5) that the secretary of state has not determined that the foreign limited liability company is delinquent.

(C) Subject to any qualification stated in the certificate, a certificate of existence or certificate of registration issued by the secretary of state is, for a period of seven days after the date of such certificate, conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

RELATIONS OF MEMBERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

1706.29 POWER TO BIND LIMITED LIABILITY COMPANY. No person shall have the power to bind the limited liability company, or a series thereof, except:

(A) to the extent the person is authorized to act as the agent of the limited liability company or a series thereof under or pursuant to the operating agreement;

(B) to the extent the person is authorized to act as the agent of the limited liability company or a series thereof pursuant to Section 1706.45;

(C) to the extent provided in Section 1706.30; or

(D) to the extent provided by law other than this chapter.

1706.30 STATEMENT OF AUTHORITY.

(A) A limited liability company, on behalf of itself or a series thereof, may deliver to the secretary of state for filing a statement of authority. The statement:

(1) must include the name of the limited liability company;

(2) may state the authority of a specific person, or, with respect to any position that exists in or with respect to the limited liability company or series thereof, of all persons holding the position, to enter into transactions on behalf of the limited liability company or series thereof.

(B) To amend or cancel a statement of authority filed by the secretary of state, a limited liability company, on behalf of itself or a series thereof, must deliver to the secretary of state for filing an amendment or cancellation stating:

(1) the name of the limited liability company;

(2) the date the statement was filed; and

(3) the contents of the amendment or a declaration that the statement being affected is canceled.

(C) An effective statement of authority is conclusive in favor of a person that gives value in reliance on the statement, except to the extent that when the person gives value the person has knowledge to the contrary.

(D) Upon filing, a certificate of dissolution filed pursuant to Section 1706.77(B)(1) operates as a cancellation, under subsection (B) of this section, of each statement of authority.

(E) After a certificate of dissolution becomes effective, a limited liability company may, on behalf of itself or a series thereof, deliver to the secretary of state for filing a statement of authority that is designated as a post-dissolution or post-cancellation statement of authority.

(F) Upon filing, a statement of denial filed pursuant to Section 1706.31 operates as an amendment, under subsection (B) of this section, of the statement of authority to which the statement of denial pertains.

1706.31 STATEMENT OF DENIAL. A person named in a filed statement of authority may deliver to the secretary of state for filing a statement of denial that:

(A) states the name of the limited liability company and the date of filing of the statement of authority to which the statement of denial pertains; and

(B) denies the person's authority.

1706.32 LIABILITY OF MEMBERS TO THIRD PARTIES. A person who is a member of a limited liability company is not liable, solely by reason of being a member, for a debt, obligation, or liability of the limited liability company or a series thereof, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, agent, or employee of the limited liability company or a series thereof. The failure of a limited liability company or any of its members to observe any formalities relating to the exercise of the limited liability company's powers or the management of its activities is not a factor to consider in, or a ground for, imposing liability on the members for the debts, obligations or liability of the limited liability company.

Official Comment

This section sets forth one of the major characteristics of the limited liability company - a member, as such, is not liable for the debts and obligations of the limited liability company or for the conduct of managers, employees, agents, or members of the limited liability company.

This section is not intended to relieve a member from liability arising out of the member's own acts or omissions to the extent those acts or omissions would be actionable, either in contract or in tort, against the member if the member were acting in his individual capacity. For instance, a member may become liable in contract to a third party creditor of the limited liability company through a guarantee or similar arrangement. Accordingly, with

respect to a member's liability for the debts and obligations of the limited liability company, a member is analogous to a limited partner or a shareholder.

This section does not address the liability of a limited liability company's agent for the debts and obligations of the limited liability company because, like a corporate officer, a limited liability company's agent serves only as an agent of the limited liability company. Consequently, as a general rule, there should be no grounds for imposing liability on the limited liability company's agents. See Restatement Third, Agency § 6.01.

Note, by comparison, that members' liability under sections 1706.41 to 1706.50 for failure to make agreed contributions and for wrongful distributions is to the limited liability company, rather than to creditors.

1706.41 ADMISSION OF A MEMBER.

(A) In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the occurrence of:

(1) if the organizer was authorized by one or more persons intending to be members of the limited liability company to file the articles of organization on their behalf, the formation of the limited liability company; or

(2) if the organizer was not authorized by any other person intending to be members of the limited liability company, each organizer shall have the authority of a member of the limited liability company upon the formation of the limited liability company until the admission of the initial member of the limited liability company.

(B) After formation of a limited liability company, a person is admitted as a member of the limited liability company:

(1) as provided in the operating agreement;

(2) as the result of a transaction effective under Sections 1706.111 to 1706.120;

(3) with the consent of all the members or in the case of a limited liability company having only one member, the consent of the member; or

(4) if, within 90 consecutive days after the occurrence of the dissociation of the last remaining member:

(a) all holders of the membership interest last assigned by the last person to have been a member consent to the designation of a person to be admitted as a member; and

(b) the designated person consents to be admitted as a member effective as of the date the last person to have been a member ceased to be a member.

(C) A person may be admitted as a member without acquiring a membership interest and without making or being obligated to make a contribution to the limited liability company. A person may be admitted as the sole member without acquiring a membership interest and without making or being obligated to make a contribution to the limited liability company.

1706.42 FORM OF CONTRIBUTION. A contribution of a member to a limited liability company, or a series thereof, may consist of cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

1706.43 LIABILITY FOR CONTRIBUTIONS.

(A) A promise by a member to make a contribution to a limited liability company, or a series thereof, is not enforceable unless set forth in a writing signed by the member.

(B) A member's obligation to make a contribution to a limited liability company, or a series thereof, is not excused by the member's death, disability, or other inability to perform personally. If a member does not make a contribution required by an enforceable promise, the member or the member's estate is obligated, at the election of the limited liability company, or a series thereof, to contribute money equal to the value of the portion of the contribution that has not been made. The foregoing election shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company, or a series thereof, may have under the operating agreement or applicable law.

(C)

(1) The obligation of a member to make a contribution to a limited liability company may be compromised only by consent of all the members. A conditional obligation of a member to make a contribution to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company before the time the call occurs.

(2) The obligation of a member associated with a series to make a contribution to the series may be compromised only by consent of all the members associated with that series. A conditional obligation of a member to make a contribution to a series may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of that series before the time the call occurs.

(3) subsection (C)(1) shall not apply to a member's obligation to make a contribution to a series of a limited liability company.

2044 **1706.44 SHARING OF AND RIGHT TO DISTRIBUTIONS.**

2045
2046 (A)

2047
2048 (1) All members shall share equally in any distributions made by a limited
2049 liability company before its dissolution and winding up.

2050
2051 (2) A member has a right to a distribution before the dissolution and
2052 winding up of a limited liability company as provided in the operating agreement. A decision
2053 to make a distribution before the dissolution and winding up of the limited liability company
2054 is a decision in the ordinary course of activities of the limited liability company. A member's
2055 dissociation does not entitle the dissociated member to a distribution.

2056
2057 (3) A member does not have a right to demand and receive a distribution
2058 from a limited liability company in any form other than money. Except as otherwise provided
2059 in Section 1706.81(C), a limited liability company may distribute an asset in kind if each
2060 member receives a percentage of the asset in proportion to the member's share of distributions.

2061
2062 (4) If a member becomes entitled to receive a distribution, the member has
2063 the status of, and is entitled to all remedies available to, a creditor of the limited liability
2064 company with respect to the distribution.

2065
2066 (B)

2067
2068 (1) All members associated with a series shall share equally in any
2069 distributions made by the series before its dissolution and winding up.

2070
2071 (2) A member associated with a series has a right to a distribution before
2072 the dissolution and winding up of the series as provided in the operating agreement. A decision
2073 of the series to make a distribution before the dissolution and winding up of the series is a
2074 decision in the ordinary course of activities of the series. A member's dissociation from a series
2075 with which the member is associated does not entitle the dissociated member to a distribution
2076 from the series.

2077
2078 (3) A member associated with a series does not have a right to demand and
2079 receive a distribution from the series in any form other than money. Except as otherwise
2080 provided in Section 1706.134(C), a series may distribute an asset in kind if each member
2081 associated with the series receives a percentage of the asset in proportion to the member's share
2082 of distributions from the series.

2083
2084 (4) If a member associated with a series becomes entitled to receive a
2085 distribution from the series, the member has the status of, and is entitled to all remedies
2086 available to, a creditor of the series with respect to the distribution.

2087
2088 (C) Subsection (A) shall not apply to a distribution made by a series.

2090 **1706.45 ACTIVITIES AND AFFAIRS OF LIMITED LIABILITY COMPANY**
2091 **OR SERIES.**

2092
2093 (A)

2094
2095 (1) The activities and affairs of the limited liability company shall be under
2096 the direction, and subject to the oversight, of its members.

2097
2098 (2) The activities and affairs of a series shall be under the direction, and
2099 subject to the oversight, of the members associated with the series.

2100
2101 (3) Subsection (A)(1) shall not apply to the activities and affairs of a series.

2102 (B)

2103
2104 (1) Except as provided in subsection (C), a matter in the ordinary course of
2105 activities of the limited liability company may be decided by a majority of the members.

2106
2107 (2) Except as provided in subsection (C), a matter in the ordinary course of
2108 activities of a series may be decided by a majority of the members associated with the series.

2109
2110 (3) subsection (B)(1) shall not apply to matters of a series.

2111
2112 (C)

2113
2114 (1) The consent of all members is required to:

2115
2116 (a) amend the operating agreement;

2117
2118 (b) file a petition of the limited liability company for relief under
2119 Title 11 of the United States Code, or a successor statute of general application, or a
2120 comparable federal, state, or foreign law governing insolvency;

2121
2122 (c) undertake any act outside the ordinary course of the limited
2123 liability company's activities; and

2124
2125 (d) undertake, authorize, or approve any other act or matter for
2126 which this chapter requires the consent of all members.

2127
2128 (2) The consent of all members associated with a series is required to:

2129
2130 (a) undertake any act outside the ordinary course of the series'
2131 activities; and

2132
2133 (b) undertake, authorize, or approve any other act or matter for
2134 which this chapter requires the consent of all the members associated with a series.

(D) Any matter requiring the consent of members may be decided without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(E) This chapter does not entitle a member to remuneration for services performed for a limited liability company.

Official Comment

Decision making is the focus of this section rather than agency power. Agency power will result from action of the decision makers. Language from the partnership context that arguably implies each member is an agent with authority to act in the absence of reason to know of a disagreement has been avoided.

1706.46 GENERAL STANDARDS OF CONDUCT FOR MEMBERS

(A) Unless either a written operating agreement for the limited liability company or a written agreement with a member establishes additional fiduciary duties, in the event that there have been designated one or more managers to supervise or manage the activities of the limited liability company, the only obligation a member who is not serving as a manager owes to the limited liability company and the other members is to discharge the member's duties and obligations under this chapter and the operating agreement in accordance with subsection (E) and for the avoidance of doubt subsections (C) and (D) shall not apply to such member.

(B) Unless either a written operating agreement for the limited liability company or a written agreement with a member establishes additional fiduciary duties or the duties of the member have been modified, waived, or eliminated as contemplated by Section 1706.10, in the event that there have not been designated one or more managers to supervise or manage the activities of the limited liability company, the only fiduciary duties a member owes to the limited liability company and the other members is the duty of loyalty and the duty of care set forth in subsections (C) and (D).

(C) A member's duty of loyalty to the limited liability company and the other members is limited to the following:

(1) to account to the limited liability company and hold for it any property, profit, or benefit derived by the member in the conduct and winding up of the limited liability company business or derived from a use by the member of limited liability company property or from the appropriation of a limited liability company opportunity; and

(2) to refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company business as or on behalf of a party having an interest adverse to the limited liability company.

(D) A member's duty of care to the limited liability company and the other members in the conduct and winding up of the limited liability company business is limited to refraining

from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

(E) A member shall discharge the duties to the limited liability company and the other members under this chapter and under the operating agreement and exercise any rights consistent with the implied covenant of good faith and fair dealing.

(F) A member does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(G) All the members of a limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty. It is a defense to a claim under subsection (C)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company. If, as permitted, by this subsection (G) or the limited liability company's operating agreement, a member enters into a transaction with a limited liability company which otherwise would be prohibited by subsection (C)(2) of this section, the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(H) This section applies to a person winding up the limited liability company business as the personal or legal representative of the last surviving member as if the person were a member.

Official Comment

This section provides default fiduciary duties for the purpose of providing an exclusive description of the duties applicable to members of an Ohio limited liability company. Absent provisions in a written operating agreement providing additional duties, section 1706.46 is intended to clarify that additional fiduciary duties are not to be implied based on common law principles or otherwise. These duties may be modified, waived or eliminated in the manner described in Section 1706.10 and subject to the limitations set forth therein.

1706.47 DEFAULT FIDUCIARY DUTIES OF MANAGERS

(A) Unless either a written operating agreement for the limited liability company or a written agreement with a manager establishes additional fiduciary duties or the duties of the manager have been modified, waived, or eliminated as contemplated by Section 1706.10, the only fiduciary duties of a manager to the limited liability company or its members are the duty of loyalty and the duty of care set forth in subsections (B) and (C).

(B) A manager's duty of loyalty to the limited liability company and its members is limited to the following:

(1) to account to the limited liability company and hold for it any property, profit, or benefit derived by the manager in the conduct and winding up of the limited liability

company business or derived from a use by the manager of limited liability company property or from the appropriation of a limited liability company opportunity; and

(2) to refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company business as or on behalf of a party having an interest adverse to the limited liability company.

(C) A manager's duty of care to the limited liability company in the conduct and winding up of the limited liability company activities is limited to acting in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the limited liability company.

(D) For purposes of division (C) of this section, both of the following apply:

(1) A manager of a limited liability company shall not be determined to have violated the manager's duties under division (C) unless it is proved that the manager has not acted in good faith, in a manner the manager reasonably believes to be in or not opposed to the best interests of the limited liability company.

(2) A manager shall not be considered to be acting in good faith if the manager has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by any of the persons described in Section 1706.50 of the Revised Code to be unwarranted.

(E) A manager shall be liable for monetary relief for a violation of the manager's duties under division (C) of this section only if it is proved that the manager's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the limited liability company or undertaken with reckless disregard for the best interests of the company. This division does not apply if, and only to the extent that, at the time of a manager's act or omission that is the subject of complaint, either of the following is true:

(1) The articles or the operating agreement of the limited liability company state by specific reference to division (E) of this section that the provisions of this division do not apply to the limited liability company.

(2) A written agreement between the manager and the limited liability company states by specific reference to division (E) of this section that the provisions of this division do not apply to the manager.

(F) All the members of a limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty. It is a defense to a claim under subsection (B)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company. If, as permitted by this section (F) or the operating agreement, a manager enters into a transaction with the limited liability company which otherwise would be prohibited by subsection (C)(2)

of this section, the member's rights and obligation arising from the transaction are the same as those of a person that is not a member.

(G) A manager shall discharge the duties to the limited liability company and the members under this chapter and under the operating agreement and exercise any rights consistently with the implied covenant of good faith and fair dealing.

(H) Nothing in this section affects the duties of a manager who acts in any capacity other than the manager's capacity as a manager. If a manager of a limited liability company also is a member of the limited liability company, the actions taken in the capacity as a member of the limited liability company shall be subject to section 1706.46. Nothing in this section affects any contractual obligations of a manager to the limited liability company.

Official Comment

This section provides an exclusive list of the default fiduciary duties applicable to managers of an Ohio limited liability company. Absent provisions in a written operating agreement providing additional duties, section 1706.46 is intended to clarify the additional fiduciary duties are not to be implied based on common law principles or otherwise. These duties may be modified, waived or eliminated in the manner described in Section 1706.10 and subject to the limitations set forth therein.

The term manager is defined in Section 1706.02 and is intended to encompass day-to-day managers of the limited liability company traditionally designated as officers as well as individuals who serve on a board of managers or comparable body with oversight responsibility for the limited liability company.

1706.48 INDEMNIFICATION, ADVANCEMENT, REIMBURSEMENT, AND INSURANCE.

A limited liability company, or a series thereof, may indemnify and hold harmless a member or other person, pay in advance or reimburse expenses incurred by a member or other person, and purchase and maintain insurance on behalf of a member or other person.

1706.49 RIGHT OF MEMBERS AND DISSOCIATED MEMBERS TO INFORMATION.

(A) Upon reasonable notice provided to the limited liability company, a member may inspect and copy during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(B) A limited liability company may charge a person that makes a demand under this section the reasonable costs of labor and materials for copying.

(C) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (E) applies both to the agent or legal representative and the member or dissociated member.

(D) The rights under this section do not extend to an assignee who is not admitted as a member.

(E) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may:

(1) impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient; and

(2) keep confidential from the members and any other persons, for such period of time as the limited liability company deems reasonable, any information that the limited liability company reasonably believes to be in the nature of trade secrets or other information the disclosure of which the limited liability company in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its activities, or that the limited liability company is required by law or by agreement with a third party to keep confidential.

1706.50 RELIANCE ON REPORTS AND INFORMATION.

Each member and agent of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports, or statements presented by another member or agent of the limited liability company, or by any other person as to matters the member or the agent reasonably believes are within that other person's professional or expert competence, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company, or a series thereof, or the value and amount of assets or reserves or contracts, agreements, or other undertakings that would be sufficient to pay claims and obligations of the limited liability company, or series thereof, or to make reasonable provision to pay those claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid.

1706.51 MEMBER'S MEMBERSHIP INTEREST.

The only interest of a member that is assignable is the member's membership interest. A membership interest is personal property.

Official Comment

The member's "membership interest" is defined in section 1706.02(O) to mean only the members' financial rights – that is, the member's right to receive distributions. The

member's "membership interest" differs from the member's broader rights in the limited liability company. A member has both certain governance rights to participate in management and control and financial rights to receive distributions. In order to clarify the rights of members, assignees, creditors, and heirs, the statute defines what a member conveys by assignment in the absence of a contrary agreement. The most important differences between members' rights and their "membership interests" are that the latter do not include the rights to participate in decision making and to inspect the books and records of the limited liability company.

Whether a "membership interest" pledged as security is governed by Article 8 or Article 9 of the Uniform Commercial Code depends on the rules stated in those Articles. However, section 1706.07(E) provides that §§ 9-406 and 9-408 of the Uniform Commercial Code do not apply to a membership interest in a limited liability company, including all rights, powers, and interests assigned under an operating agreement.

1706.52 ASSIGNMENT OF LIMITED LIABILITY COMPANY INTEREST.

- (A) An assignment, in whole or in part, of a membership interest:
- (1) is permissible;
 - (2)
 - (a) does not by itself cause a member to cease to be a member of the limited liability company; and
 - (b) does not by itself cause a member to cease to be associated with a series of the limited liability company; and
 - (3) does not by itself cause a dissolution and winding up of the limited liability company, or a series thereof; and
 - (4) subject to Section 1706.54, does not entitle the assignee to:
 - (a) participate in the management or conduct of the activities of the limited liability company, or a series thereof; or
 - (b) have access to records or other information concerning the activities of the limited liability company, or a series thereof.
- (B) An assignee has the right to receive, in accordance with the assignment, distributions to which the assignor would otherwise be entitled.
- (C) A membership interest may be evidenced by a certificate of membership interest issued by the limited liability company, or a series thereof. An operating agreement may provide for the assignment of the membership interest represented by the certificate and make other provisions with respect to the certificate.

(D) A limited liability company, or a series thereof, shall not issue a certificate of membership interest in bearer form.

(E) A limited liability company, or a series thereof, need not give effect to an assignee's rights under this section until the limited liability company, or a series thereof, has notice of the assignment.

(F) Except as otherwise provided in Sections 1706.62(J), when a member assigns a membership interest, the assignor retains the rights of a member other than the right to distributions assigned and retains all duties and obligations of a member.

(G) When a member assigns a membership interest to a person that is admitted as a member with respect to the assigned interest, the assignee is liable for the member's obligations under Sections 1706.43, 1706.45(A)(2), and 1706.45(B)(2) to the extent that the obligations are known to the assignee when the assignee voluntarily accepts admission as a member.

Official Comment

Subsection (A). Unlike a corporate shareholder, as a default rule, a limited liability company member can freely assign only financial rights. Because an assignment of a membership interest assigns only financial rights, it follows that an assignment does not constitute a change in membership. Subsection (A)(4) is intended to deny assignees of membership interests not only voting and decisional rights, but also rights to information. Some limited liability companies may want to give assignees a right to compel winding up to prevent them from being completely locked in, and information rights required for federal and state income tax purposes and to protect them from unfair dealing by the members.

Subsection (B). This chapter does not specifically define the "distributions" to which assignees have a right. An assignee would probably expect to receive, in the absence of contrary agreement, a financial interest equal to that of the assignor, including the assignor's unreturned capital contribution, if any, and residual claim to the assets of the limited liability company after all fixed claims, including debts to members, have been paid. It does not include rights the member has other than on account of the member's capital investment, such as repayment of loans, indemnification, and accrued salaries.

Subsection (F). Under this subsection, the assignor retains decisional authority and information rights notwithstanding the assignment. However, under § 1706.62(D)(2) of this chapter, the remaining members have the right to expel a member who has assigned all of the member's interest.

Subsection (G). This subsection clarifies a point that was not explicitly addressed in the Prototype Act and limited liability company statutes based on it, i.e., that an assignee of a membership interest does not have any of the obligations of a member until the assignee is admitted as a member voluntarily, at which point, the assignee acquires obligations as well as rights of membership known to the assignee at the time the assignee voluntarily became a

member. This section clarifies that liabilities may not be involuntarily imposed on an assignee by effecting the assignee's admission as a member without the assignee's consent.

1706.53 CHARGING ORDER.

(A) On application to a court of competent jurisdiction by any judgment creditor of a member or assignee, the court may charge the membership interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged and after the limited liability company has been served with the charging order, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the membership interest.

(B) After the limited liability company is served with a charging order, the limited liability company or any member shall be entitled to pay to or deposit with the clerk of the court so issuing the charging order any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the charged membership interest, and the payment or deposit shall discharge the limited liability company and the judgment debtor from liability for the amount so paid or deposited and any interest that might accrue thereon. Upon receipt of the payment or deposit, the clerk of the court shall notify the judgment creditor of the receipt of the payment or deposit. The judgment creditor shall, after any payment or deposit into the court, petition the court for payment of so much of the amount paid or deposited as may be necessary to pay the judgment creditor's judgment. To the extent the court has excess amounts paid or deposited on hand after the payment to the judgment creditor, the excess amounts paid or deposited shall be distributed to the judgment debtor, and the charging order shall be extinguished. The court may, in its discretion, order the clerk to deposit, pending the judgment creditor's petition, any money paid or deposited with the clerk, in an interest bearing account at a bank authorized to receive deposits of public funds.

(C) A charging order constitutes a lien on the judgment debtor's membership interest.

(D) Subject to paragraph (C) of this section:

(1) a judgment debtor that is a member retains the rights of a member and remains subject to all duties and obligations of a member; and

(2) a judgment debtor that is an assignee retains the rights of an assignee and remains subject to all duties and obligations of an assignee.

(E) This chapter does not deprive any member or assignee of the benefit of any exemption laws applicable to the member's or assignee's membership interest.

(F) This section provides the sole and exclusive remedy by which a judgment creditor of a member or assignee may satisfy a judgment out of the judgment debtor's membership interest, and the judgment creditor shall have no right to foreclose, under this chapter or any other law, upon the charging order, the charging order lien, or the judgment

debtor's membership interest. A judgment creditor of a member or assignee has no right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the judgment debtor's membership interest or the property of a limited liability company. Court orders for actions or requests for accounts and inquiries that the judgment debtor might have made to the limited liability company are not available to a judgment creditor attempting to satisfy the judgment out of the judgment debtor's membership interest and may not be ordered by a court.

Official Comment

This section provides that unsecured creditors can obtain from a court a "charging order," which is similar to an attachment or garnishment, against the member's membership interest. Under this section, the charging order is available to judgment creditors of members or assignees. A charging order is not available to a party with rights against a member or assignee other than a judgment creditor. The phrase "judgment debtor" encompasses both members and assignees. This section attempts to balance the needs of the judgment creditor, the judgment debtor, and the limited liability company. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the membership interest of the judgment debtor while prohibiting interference in the management and activities of the limited liability company. Further, this section provides for a payment mechanism that is intended to protect all parties.

Subsection (A). The Prototype Act provided the judgment creditor with the same rights as an assignee, and the scope of these rights may not be entirely clear. The language in this chapter provides the judgment creditor with one specific right. That right is the right to receive any distribution that the judgment debtor would have received, but only after the limited liability company has been served with the charging order. This change was made in an effort to define what the judgment creditor was entitled to receive from the limited liability company and to protect the limited liability company from unknown charging orders.

Subsection (B). This provision provides a method for the limited liability company to pay a distribution that is subject to a charging order to the court. A payment pursuant to this subsection discharges the limited liability company and the judgment debtor to the extent of the payment. Because the judgment creditor may have a number of sources for the payment of its judgment, this subsection provides a mechanism to protect the limited liability company, the judgment debtor, and the judgment creditor in the event a distribution exceeds the amount then owed to the judgment creditor. The judgment creditor has no say in the timing or amount of the distributions. The charging order does not entitle the judgment creditor to accelerate any distributions or otherwise to interfere with the management and activities of the limited liability company.

Subsection (C). This provision provides the judgment creditor with a lien for purposes of the Uniform Commercial Code, the Bankruptcy Code, and general creditor rights laws; however, the lien may not be foreclosed upon. This lien is also important in the context of a merger, conversion, reorganization, or other assignments of membership interests. In the proper circumstances, such an organic change might trigger an order under subsection (F) by

the court to enforce its charging order, or might give rise to a separate cause of action against the limited liability company, the judgment debtor, or the other holders of membership interests.

The priority of the lien as to other creditors will be determined under applicable law and is not addressed in this chapter. The lien cannot be foreclosed upon as other liens. The limited scope of the remedy provided under this chapter eliminates a significant number of issues presented by other statutes that attempt to provide rights of redemption and other pre- and post-foreclosure remedies. Those rights were seen as clumsy and ineffective in assisting the collection of the debt while potentially posing the threat that a judgment creditor might obtain an overly broad court order interfering with the day to day activities of the limited liability company. The inability to foreclose is expressly stated in subsection (F) of this section.

Subsection (D). This provision clarifies that a member or assignee whose membership interest has been charged does not lose any of the member's or assignee's rights, other than the right to receive distributions from the limited liability company to the extent of the charging order.

Subsection (E). This provision gives the judgment debtor the benefit of any exemptions applicable under state law with respect to the membership interest; however, the extent of those exemptions vary from state to state.

Subsection (F). This provision attempts to eliminate the problems encountered by overly broad court orders. The provision was not intended, nor should it be interpreted, to prevent a court from enforcing its charging order in the event of a violation of the charging order by the judgment debtor or the limited liability company.

1706.54 POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER.

If a member dies, the deceased member's personal representative or other legal representative may, for purposes of settling the estate, exercise the rights of a current member under Section 1706.49.

1706.61 MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION.

(A) A person may not voluntarily dissociate from a limited liability company.

(B) A person's dissociation from a limited liability company is wrongful only if:

(1) it is in breach of an express provision of the operating agreement;

(2) the person is expelled as a member by a determination of a tribunal under Section 1706.62(D); or

(3) the person is dissociated by becoming a debtor in bankruptcy or making a general assignment for the benefit of creditors.

(C) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 1706.101, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member to the limited liability company or the other members.

1706.62 EVENTS CAUSING DISSOCIATION. A person is dissociated as a member from a limited liability company when:

(A) an event stated in the operating agreement as causing the person's dissociation occurs;

(B) the person is expelled as a member pursuant to the operating agreement;

(C) the person is expelled as a member by the unanimous consent of the other members if:

(1) it is unlawful to carry on the limited liability company's activities with the person as a member;

(2) the person is an entity and, within 90 days after the limited liability company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, or its right to transact business has been suspended by its jurisdiction of formation, the statement of dissolution or the equivalent has not been revoked or its right to transact business has not been reinstated; or

(3) the person is an entity and, within 90 days after the limited liability company notifies the person that it will be expelled as a member because the person has been dissolved and its activities are being wound up, the entity has not been reinstated or the dissolution and winding up have not been revoked or cancelled;

(D) on application by the limited liability company, the person is expelled as a member by tribunal order because the person:

(1) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the limited liability company's activities;

(2) has willfully or persistently committed, or is willfully or persistently committing, a material breach of the operating agreement or the person's duties or obligations under this chapter or other applicable law; or

(3) has engaged, or is engaging, in conduct relating to the limited liability company's activities that makes it not reasonably practicable to carry on the activities with the person as a member;

(E) in the case of a person who is an individual, the person dies, there is appointed a guardian or general conservator for the person, or there is a determination of a tribunal that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the operating agreement;

(F) the person becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, or seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property, but this subsection (F) shall not apply to a person who is the sole remaining member of a limited liability company;

(G) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire membership interest in the limited liability company is distributed, but not solely by reason of the substitution of a successor trustee;

(H) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire membership interest in the limited liability company is distributed, but not solely by reason of the substitution of a successor personal representative; or

(I) in the case of a member that is not an individual, the legal existence of the person otherwise terminates.

(J) there has been an assignment of all of the person's membership interest other than an assignment for security purposes.

1706.63 EFFECT OF PERSON'S DISSOCIATION AS A MEMBER

(A) A person who has dissociated as a member shall have no right to participate as a member in the activities and affairs of the limited liability company and is entitled only to receive the distributions to which that member would have been entitled if the member had not dissociated.

(B) Upon a person's dissociation, the member's duty of loyalty under Sections 1706.46(C)(1) and (2) and duty of care under Section 1706.46(D) continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the limited liability company's business pursuant to Section 1706.78.

(C) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or liability to a limited liability company or the other members that the person incurred while a member.

2685
2686 **1706.71 GROUNDS FOR DELINQUENCY.**
2687

2688 (A) A limited liability company may be declared delinquent under Section 1706.72
2689 if:

2690
2691 (1) the limited liability company does not pay any fee or penalty imposed
2692 by this chapter when it is due; or

2693
2694 (2) the limited liability company does not comply with the requirements of
2695 Section 1706.13.

2696
2697 (B) A foreign limited liability company may be declared delinquent under Section
2698 1706.72 if:

2699
2700 (1) the foreign limited liability company does not pay any fee or penalty
2701 imposed by this chapter when it is due;

2702
2703 (2) the foreign limited liability company does not comply with the
2704 requirements of Section 1706.13;

2705
2706 (3) the foreign limited liability company does not deliver for filing an
2707 appropriate certificate of correction when necessary to make its registration as a foreign limited
2708 liability company true in all respects; or

2709
2710 (4) the secretary of state receives an authenticated certificate from the
2711 secretary of state or other official having custody of the foreign limited liability company
2712 records in the jurisdiction under the law of which the foreign limited liability company was
2713 formed to the effect that the limited liability company no longer exists as the result of a merger
2714 or otherwise.

2715
2716 **1706.72 DECLARATION OF DELINQUENCY.**
2717

2718 (A) If the secretary of state determines that one or more grounds exist under Section
2719 1706.71 for declaring a limited liability company or a foreign limited liability company
2720 delinquent, the secretary of state shall deliver written notice stating those grounds to the
2721 statutory agent of the limited liability company or foreign limited liability company. The
2722 notice shall state that, if the limited liability company or foreign limited liability company does
2723 not correct each ground for declaring it delinquent within 60 days after delivery of the notice,
2724 the limited liability company or foreign limited liability company shall be delinquent following
2725 the expiration of the 60 days.

2726
2727 (B) If the limited liability company or foreign limited liability company does not
2728 correct each ground identified in the notice of the secretary of state for delinquency or
2729 demonstrate to the reasonable satisfaction of the secretary of state that the ground does not
2730 exist within 60 days after delivery of the notice, the limited liability company or foreign limited

liability company shall be delinquent following the expiration of the 60 days. Thereafter, the secretary of state shall deliver notice of the fact of delinquency to the statutory agent or the limited liability company or foreign limited liability; except that failure to deliver the notice shall not affect the fact of delinquency, and no person shall have a cause of action if the notice is not delivered.

1706.73 EFFECT OF DELINQUENCY.

(A) A delinquent limited liability company or delinquent foreign limited liability company may not maintain a proceeding in any court in this state for the collection of its debts until it has cured its delinquency pursuant to Section 1706.74(A), (B), or (C), provided such delinquency does not cause dissolution under Section 1706.76.

(B) A court may stay a proceeding commenced by a limited liability company or foreign limited liability company until it determines whether the limited liability company or foreign limited liability company is delinquent. If the court determines that the limited liability company or foreign limited liability company is delinquent, it may further stay the proceeding until the limited liability company or foreign limited liability company cures its delinquency pursuant to Section 1706.74, provided such delinquency does not cause dissolution under Section 1706.76. If a delinquent limited liability company or delinquent foreign limited liability company cures its delinquency in accordance with Section 1706.74, provided such delinquency does not cause dissolution under Section 1706.76, no proceeding in any court in this state to which that limited liability company or foreign limited liability company is a party shall thereafter be dismissed by reason of that instance of delinquency.

(C) The delinquency of a limited liability company or foreign limited liability company does not terminate the authority of the statutory agent of the limited liability company or foreign limited liability company.

(D) The existence of a limited liability company or foreign limited liability company continues notwithstanding its delinquency.

(E) Unless otherwise provided under this chapter, the delinquency of a limited liability company does not dissolve the limited liability company.

(F) A delinquent limited liability company may be dissolved at any time and by any manner as may be provided or permitted by its operating agreement or this chapter and, if it has failed to cure its delinquency for three years or more, the delinquent limited liability company may be dissolved pursuant to Section 1706.76.

1706.74 CURE OF DELINQUENCY.

(A) A delinquent limited liability company or delinquent foreign limited liability company may cure its delinquency by:

(1) correcting each ground cited by the secretary of state in the notice delivered to the limited liability company or foreign limited liability company pursuant to Section 1706.72; and

(2) paying all fees and penalties imposed by this chapter.

(B) In lieu of curing its delinquency pursuant to subsection (A) of this section, a delinquent foreign limited liability company may cure its delinquency by causing to be delivered to the secretary of state, for filing pursuant to Section 1706.96, a cancellation of a foreign limited liability company.

(C) A delinquent limited liability company may cure its delinquency by dissolving.

(D)

(1) Except as provided in paragraphs (2) and (3) of this subsection (D), the name of a limited liability company or foreign limited liability company following the curing of its delinquency shall be the same as its name, determined without regard to Section 1706.08(D), at the time the limited liability company or foreign limited liability company cures its delinquency if the name complies with Section 1706.08 and, if applicable, Section 1706.94, at the time the limited liability company or foreign limited liability company cures its delinquency. If the name of the limited liability company or foreign limited liability company would not be distinguishable on the records of the secretary of state as contemplated in Section 1706.08 and, if applicable, Section 1706.94, the name of the limited liability company or foreign limited liability company following curing of its delinquency shall be its name followed by the words “delinquency cured” and the year thereof.

(2) In the case of a foreign limited liability company that cures its delinquency pursuant to subsection (B) of this section, the name of the foreign limited liability company shall be its name at the time it cures its delinquency, determined in accordance with Section 1706.08(F), without regard to Section 1706.08(D).

(3) In the case of a limited liability company that cures its delinquency pursuant to subsection (C) of this section, the name of the limited liability company shall be its name at the time it cures its delinquency, determined in accordance with Section 1706.08(G), without regard to Section 1706.08(D).

1706.75 APPEAL FROM DECLARATION OF DELINQUENCY.

(A) A limited liability company or foreign limited liability company may appeal a declaration under Section 1706.72(B) that it is delinquent to the court of common pleas of the county in which the street address of the limited liability company or foreign limited liability company’s principal office is located, or, if the limited liability company or foreign limited liability company has no principal office in this state, to the court of common pleas of the county in which the street address of its statutory agent is located or, if the limited liability company or foreign limited liability company has no statutory agent, to the Franklin county

court of common pleas, within thirty days after the effective date of its delinquency. The limited liability company or foreign limited liability company shall commence its appeal by petitioning the appropriate court to set aside the declaration of its delinquency or to determine that the limited liability company or foreign limited liability company has cured its delinquency and attaching to the petition copies of those records of the secretary of state as may be relevant.

(B) The appropriate court may summarily order the secretary of state to take whatever action the appropriate court considers appropriate or may take any other action the appropriate court considers appropriate.

(C) The appropriate court's order or decision may be appealed as in other civil proceedings.

1706.76 EVENTS CAUSING DISSOLUTION.

A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

(A) an event or circumstance that the operating agreement states causes dissolution;

(B) the consent of all the members;

(C) a delinquent limited liability company has failed to cure its delinquency for three years or more and any member or person authorized pursuant to Section 1706.29 consents to the dissolution;

(D) the passage of 90 consecutive days after the occurrence of the dissociation of the last remaining member; provided that upon dissociation of the last remaining member pursuant to Section 1706.62(E), the limited liability company shall not be dissolved where:

(1) the operating agreement provides for the admission of a substitute member effective prior to the passage of such time period; or

(2) the admission of a substitute member, in writing, prior to the passage of such time period, which admission will be deemed effective as of the date of such dissociation; or

(E) on application by a member, the entry by the appropriate court of an order dissolving the limited liability company on the grounds that it is not reasonably practicable to carry on the limited liability company's activities in conformity with the operating agreement.

1706.77 EFFECT OF DISSOLUTION.

(A) A dissolved limited liability company continues its existence as a limited liability company but may not carry on any activities except as is appropriate to wind up and liquidate its activities and affairs, including:

- 2868
2869 (1) collecting its assets;
2870
2871 (2) disposing of its properties that will not be distributed in kind to persons
2872 owning membership interests;
2873
2874 (3) discharging or making provisions for discharging its liabilities;
2875
2876 (4) distributing its remaining property in accordance with Section 1706.81;
2877 and
2878
2879 (5) doing every other act necessary to wind up and liquidate its activities
2880 and affairs.
2881
2882 (B) In winding up its activities, a limited liability company may:
2883
2884 (1) deliver to the secretary of state for filing a certificate of dissolution
2885 setting forth:
2886
2887 (a) the name of the limited liability company;
2888
2889 (b) the date of the filing of its articles of organization;
2890
2891 (c) that the limited liability company has dissolved;
2892
2893 (d) the effective date (which shall be a date certain) of the certificate
2894 of dissolution if it is not to be effective upon the filing; and
2895
2896 (e) any other information the limited liability company shall deem
2897 proper;
2898
2899 (2) preserve the limited liability company's activities and property as a
2900 going concern for a reasonable time;
2901
2902 (3) prosecute, defend, or settle actions or proceedings whether civil,
2903 criminal, or administrative;
2904
2905 (4) make an assignment of the limited liability company's property;
2906
2907 (5) resolve disputes by mediation or arbitration; and
2908
2909 (6) merge or convert in accordance with Sections 1706.111 through
2910 1706.120.
2911
2912 (C) A limited liability company's dissolution, in itself:
2913

- 2914 (1) is not an assignment of the limited liability company's property;
2915
2916 (2) does not prevent the commencement of a proceeding by or against the
2917 limited liability company in its limited liability company name;
2918
2919 (3) does not abate or suspend a proceeding pending by or against the limited
2920 liability company on the effective date of dissolution;
2921
2922 (4) does not terminate the authority of its statutory agent; or
2923
2924 (5) does not abate, suspend, or otherwise alter the application of Section
2925 1706.32.
2926

2927 **1706.78 RIGHT TO WIND UP BUSINESS AND ACTIVITIES.**
2928

2929 (A) Subject to Section 1706.77(C)(5), after dissolution, the remaining members, if
2930 any, and if none, a person appointed by all holders of the membership interest last assigned by
2931 the last person to have been a member, may wind up the limited liability company's activities.
2932

2933 (B) The appropriate tribunal may order supervision of the winding up of a dissolved
2934 limited liability company, including the appointment of a person to wind up the limited liability
2935 company's activities:
2936

- 2937 (1) on application of a member, if the applicant establishes good cause;
2938
2939 (2) on application of an assignee, if:
2940
2941 (a) the limited liability company does not have any members; and
2942
2943 (b) within a reasonable time following the dissolution a person has
2944 not been appointed pursuant to subsection (A); or
2945
2946 (3) in connection with a proceeding under Section 1706.76(E).
2947

2948 **Official Comment**
2949

2950 The designation of the person with authority to wind up the limited liability company
2951 may be determined in the operating agreement. For example, the parties may agree to have a
2952 liquidating trustee take control on dissolution.
2953

2954 **1706.79 KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY**
2955 **COMPANY.**
2956

2957 (A) A dissolved limited liability company may dispose of any known claims against
2958 it by following the procedures described in subsection (B) at any time after the effective date
2959 of the dissolution of the limited liability company.

(B) A dissolved limited liability company may give notice of its dissolution in a record to the holder of any known claim. The notice must:

- (1) identify the dissolved limited liability company;
- (2) describe the information required to be included in a claim;
- (3) provide a mailing address to which the claim is to be sent;
- (4) state the deadline, which may not be fewer than 90 days from the effective date of the notice, by which the dissolved limited liability company must receive the claim; and
- (5) state that if not sooner barred, the claim will be barred if not received by the deadline.

(C) Unless sooner barred by any other statute limiting actions, a claim against a dissolved limited liability company is barred:

- (1) if a claimant who was given notice under subsection (B) does not deliver the claim to the dissolved limited liability company by the deadline; or
- (2) if a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejected notice.

(D) For purposes of this section, “known claim” or “claim” includes unliquidated claims but does not include a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

(E) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

Official Comment

Subsection (D) clarifies that “known claim” or “claim” includes unliquidated claims but not contingent liabilities.

1706.80 OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

(A) A dissolved limited liability company may publish notice of its dissolution and request that persons with claims against the dissolved limited liability company present them in accordance with the notice.

3006
3007 (B) The notice authorized by subsection (A) must:
3008

3009 (1) be posted prominently on the principal web site then maintained by the
3010 limited liability company, if any, and provided to the secretary of state to be posted on the
3011 website maintained by the secretary of state in accordance with subsection (J) which shall
3012 constitute the publishing of such notice within the meaning of subsection (A);
3013

3014 (2) describe the information that must be included in a claim and provide a
3015 mailing address to which the claim is to be sent; and
3016

3017 (3) state that if not sooner barred, a claim against the dissolved limited
3018 liability company will be barred unless a proceeding to enforce the claim is commenced within
3019 two years after the publication of the notice.
3020

3021 (C) If a dissolved limited liability company publishes a notice in accordance with
3022 subsection (B), unless sooner barred by any other statute limiting actions, the claim of each of
3023 the following claimants is barred unless the claimant commences a proceeding to enforce the
3024 claim against the dissolved limited liability company within two years after the publication of
3025 the notice:
3026

3027 (1) a claimant who was not given notice under Section 1706.79(B);
3028

3029 (2) a claimant whose claim was timely sent to the dissolved limited liability
3030 company but not acted on by the dissolved limited liability company; and
3031

3032 (3) a claimant whose claim is contingent at the effective date of the
3033 dissolution of the limited liability company or is based on an event occurring after the effective
3034 date of the dissolution of the limited liability company.
3035

3036 (D) A claim that is not barred under this section, any other statute limiting actions,
3037 or Section 1706.79 may be enforced:
3038

3039 (1) against a dissolved limited liability company, to the extent of its
3040 undistributed assets; and
3041

3042 (2) except as provided in subsection (H), if the assets of a dissolved limited
3043 liability company have been distributed after dissolution, against a member or assignee to the
3044 extent of that person's proportionate share of the claim or of the assets distributed to the
3045 member or assignee after dissolution, whichever is less, but a person's total liability for all
3046 claims under this subsection (D) may not exceed the total amount of assets distributed to the
3047 person after dissolution of the limited liability company.
3048

3049 (E) A dissolved limited liability company that published a notice under this section
3050 may file an application with the appropriate court in the county in which the dissolved limited
3051 liability company's principal office is located or, if it has none in this state, in the county in

3052 which the dissolved limited liability company's statutory agent is or was last located, for a
3053 determination of the amount and form of security to be provided for payment of claims that
3054 are contingent or have not been made known to the dissolved limited liability company or that
3055 are based on an event occurring after the effective date of the dissolution of the limited liability
3056 company but that, based on the facts known to the dissolved limited liability company, are
3057 reasonably estimated to arise after the effective date of the dissolution of the limited liability
3058 company. Provision need not be made for any claim that is or is reasonably anticipated to be
3059 barred under subsection (C).

3060
3061 (F) Within ten days after the filing of the application provided for in subsection (E),
3062 notice of the proceeding shall be given by the dissolved limited liability company to each
3063 potential claimant as described in subsection (E).

3064
3065 (G) The appropriate court may appoint a guardian ad litem to represent all claimants
3066 whose identities are unknown in any proceeding brought under this section. The reasonable
3067 fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid
3068 by the dissolved limited liability company.

3069
3070 (H) Provision by the dissolved limited liability company for security in the amount
3071 and the form ordered by the appropriate court under subsection (E) shall satisfy the dissolved
3072 limited liability company's obligation with respect to claims that are contingent, have not been
3073 made known to the dissolved limited liability company, or are based on an event occurring
3074 after the effective date of the dissolution of the limited liability company, and those claims
3075 may not be enforced against a person owning a membership interest to whom assets have been
3076 distributed by the dissolved limited liability company after the effective date of the dissolution
3077 of the limited liability company.

3078
3079 (I) Nothing in this section shall be deemed to extend any otherwise applicable
3080 statute of limitations.

3081
3082 (J)

3083
3084 (1) Except as provided in subsection (J)(2) of this section, the secretary of
3085 state shall make both of the following available to the public in a format that is searchable,
3086 viewable, and accessible through the internet:

3087
3088 (a) A list of all limited liability companies that have filed a
3089 certificate of dissolution;

3090
3091 (b) For each dissolved limited liability company on the list
3092 described in subsection (J)(1)(a) of this section, a copy of both the certificate of dissolution
3093 and the notice delivered under subsection (B).

3094
3095 (2) After the materials relating to any dissolved limited liability company
3096 have been posted for five years, the secretary of state may remove from the web site the

information that the secretary posted pursuant to subsection (J)(1) that relates to that dissolved company.

1706.81 APPLICATION OF ASSETS IN WINDING UP LIMITED LIABILITY COMPANY'S ACTIVITIES.

(A) Upon the winding up of a limited liability company, payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company.

(B) After a limited liability company complies with subsection (A), any surplus shall be distributed:

(1) first, to each person owning a membership interest that reflects contributions made on account of the membership interest and not previously returned, an amount equal to the value of the person's unreturned contributions; and

(2) then to each person owning a membership interest in the proportions in which the owners of membership interests share in distributions before dissolution.

(C) If the limited liability company does not have sufficient surplus to comply with subsection (B)(1), any surplus must be distributed among the owners of membership interests in proportion to the value of their respective unreturned contributions.

Official Comment

Distributions made pursuant to this section are subject to outstanding charging orders under section 1706.53.

1706.82 REINSTATEMENT AFTER DISSOLUTION.

(A) A limited liability company that has been dissolved may be reinstated upon compliance with the following conditions:

(1) the affirmative vote or consent shall have been obtained from the members or other persons entitled to vote or consent at the time that is:

(a) required for reinstatement under its operating agreement; or

(b) if its operating agreement does not state the vote or consent required for reinstatement, sufficient for dissolution under this chapter, or the greater or lesser vote or consent required for dissolution under its operating agreement;

(2) the members and other persons having authority under this chapter and under its operating agreement to bring about or prevent dissolution of the limited liability company shall not have, before or at the time of the vote or consent required by paragraph (1)

of this subsection (A), voted against reinstatement or delivered to the limited liability company their written objection to reinstatement; and

(3) in the case of a limited liability company dissolved in a proceeding initiated by one or more of the members, the affirmative vote or consent of each of those members shall have been obtained and shall be included in the vote or consent required by paragraph (1) of this subsection (A).

(B) To the extent that a limited liability company's operating agreement provides for the voting rights of members or other persons, for the calling of meetings, for notices of meetings, for consents and actions of members and other persons without a meeting, for establishing a record date for meetings, or for other matters concerning the voting or consent of members and other persons, those provisions shall govern the vote or consent required by paragraph (1) of subsection (A) of this section with respect to the limited liability company and the vote or objection of members and other persons provided for in paragraph (2) of subsection (A) of this section with respect to the limited liability company.

1706.83 CERTIFICATE OF REINSTATEMENT.

(A) In order to reinstate a limited liability company under Sections 1706.71 to 1706.85, a certificate of reinstatement shall be delivered to the secretary of state for filing stating:

(1) the name of the limited liability company before reinstatement;

(2) the name of the limited liability company following reinstatement, which limited liability company name shall comply with Section 1706.08;

(3) the date of formation of the limited liability company;

(4) the date of dissolution of the limited liability company, if known;

(5) a statement that all applicable conditions of Section 1706.82 have been satisfied; and

(6) the name and address of the statutory agent in compliance with Section 1706.13.

(B) If the articles of organization are no longer in the records of the secretary of state at the time the certificate of reinstatement is delivered to the secretary of state for filing, the limited liability company shall cause a true and complete copy of its articles of organization to be attached to its certificate of reinstatement.

1706.84 LIMITED LIABILITY COMPANY NAME UPON REINSTATEMENT.

3188 The name of a limited liability company following reinstatement shall be the limited
3189 liability company name, determined without regard to Section 1706.08(G), at the time of
3190 reinstatement if that limited liability company name complies with Section 1706.08 at the time
3191 of reinstatement. If that limited liability company name does not comply with Section 1706.08,
3192 the name of the limited liability company following reinstatement shall be that limited liability
3193 company name followed by the word “reinstated” and the effective date of reinstatement.

3194
3195 **1706.85 EFFECT OF REINSTATEMENT.**
3196

3197 (A) Subject to subsection (B) of this section, upon reinstatement, the limited
3198 liability company shall be deemed for all purposes to have continued its activities as if
3199 dissolution had never occurred; each right inuring to, and each debt, obligation, and liability
3200 incurred by, the limited liability company after the dissolution shall be determined as if the
3201 dissolution had never occurred.

3202
3203 (B) The rights of persons acting in reliance on the dissolution before those persons
3204 had notice of the reinstatement shall not be adversely affected by the reinstatement.

3205
3206 **1706.91 GOVERNING LAW.**
3207

3208 (A) The law of the state or other jurisdiction under which a foreign limited liability
3209 company is formed governs:

3210
3211 (1) the organization and internal affairs of a foreign limited liability
3212 company;

3213
3214 (2) the liability of a member as a member for the debts, obligations, or other
3215 liabilities of a foreign limited liability company or a series thereof;

3216
3217 (3) the authority of the members and agents of a foreign limited liability
3218 company or a series thereof; and

3219
3220 (4) the liability of the assets of a series or the foreign limited liability
3221 company for the obligations of another series or the foreign limited liability company.

3222
3223 (B) A foreign limited liability company’s application for registration as a foreign
3224 limited liability company may not be denied by reason of any difference between the laws of
3225 the jurisdiction under which the limited liability company is formed and the laws of this state.

3226
3227 (C) A foreign limited liability company, including a foreign limited liability
3228 company that has filed a registration as a foreign limited liability company, may not engage in
3229 any activities in this state that a limited liability company is forbidden to engage in by the laws
3230 of this state.

3231
3232 (D) A foreign limited liability company that has filed a registration as a foreign
3233 limited liability company shall in this state:

- 3234
3235 (1) have the same but no greater rights than a limited liability company;
3236
3237 (2) have the same but no greater privileges as a limited liability company;
3238 and
3239
3240 (3) except as otherwise provided by this chapter, be subject to the same
3241 duties, restrictions, penalties, and liabilities now or later imposed on, a limited liability
3242 company.
3243

3244 **1706.92 REGISTRATION AS A FOREIGN LIMITED LIABILITY COMPANY**
3245 **TO TRANSACT BUSINESS REQUIRED**
3246

3247 (A) Neither a foreign limited liability company nor any one or more of its series
3248 shall transact business in this state until the foreign limited liability company's registration as
3249 a foreign limited liability company is delivered to the secretary of state for filing and the foreign
3250 limited liability company is otherwise in compliance with this Sections 1706.91 to 1706.97.
3251

3252 (B) The registration as a foreign limited liability company must state:
3253

3254 (1) the name of the foreign limited liability company and, if the name does
3255 not comply with Section 1706.08, a trade name or fictitious name adopted pursuant to Section
3256 1706.94(A);
3257

3258 (2) the name of the state or other jurisdiction under whose law the foreign
3259 limited liability company is formed;
3260

3261 (3) the name and address of the foreign limited liability company's statutory
3262 agent in this state meeting the requirements of Section 1706.13;
3263

3264 (4) that the foreign limited liability company is a foreign limited liability
3265 company as defined in Section 1706.02; and
3266

3267 (5) the information required by Section 1706.92(C), if applicable.
3268

3269 (C) If a foreign limited liability company establishes or provides for the
3270 establishment of one or more series of assets, that fact shall be so stated in the registration as a
3271 foreign limited liability company. In addition, the foreign limited liability company shall state
3272 in the registration as a foreign limited liability company whether the debts, liabilities, and
3273 obligations incurred, contracted for, or otherwise existing with respect to a particular series, if
3274 any, shall be enforceable against the assets of that series only, and not against the assets of the
3275 foreign limited liability company generally or any other series thereof, and whether any of the
3276 debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with
3277 respect to the foreign limited liability company generally or any other series thereof shall be
3278 enforceable against the assets of that series.
3279

(D) Upon any change in circumstances that makes any statement contained in its filed registration as a foreign limited liability company no longer true, a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing an appropriate certificate of correction, on a form as prescribed by the secretary of state, so that its statement of foreign qualification is in all respects true.

(E) A foreign limited liability company is authorized to transact business in this state from the effective date of its registration as a foreign limited liability company until the earlier of the effective date of its cancellation of foreign limited liability company or the effective date of the secretary of state's revocation of the registration as a foreign limited liability company in accordance with Section 1706.95.

Official Comment

A foreign limited liability company must deliver to the secretary of state for filing a registration as a foreign limited liability company before transacting business; otherwise, it will be subject to the penalty provisions of section 1706.97(D). There is no requirement that a certificate of good standing from the jurisdiction of formation accompany the application for a registration as a limited liability company. See section 1706.27(B) regarding the effect of a filed document (perjury provision).

Note that subsection (D) presupposes that the foreign limited liability company in question continues to be a foreign limited liability company. As such, a successor foreign limited liability company to one that is qualified to transact business in a foreign jurisdiction may continue to be qualified by amending the registration as a foreign limited liability company. The effective date of the registration as a foreign limited liability company is determined in accordance with section 1706.25(D).

1706.93 ACTIONS NOT CONSTITUTING TRANSACTING BUSINESS.

(A) A foreign limited liability company shall not be considered to be transacting business in this state within the meaning of Sections 1706.91 to 1706.97 by reason of its or any one or more of its series' carrying on in this state any one or more of the following actions:

(1) maintaining, defending, or settling in its own behalf any proceeding or dispute;

(2) holding meetings or carrying on any other activities concerning its internal affairs;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the assignment, exchange, and registration of the foreign limited liability company's or its series' own securities or interests or maintaining trustees or depositories with respect to those securities or interests;

- 3326 (5) selling through independent contractors;
3327
3328 (6) soliciting or obtaining orders, whether by mail or electronic means or
3329 through employees or agents or otherwise, if the orders require acceptance outside this state
3330 before they become contracts;
3331
3332 (7) creating, as borrower or lender, or acquiring indebtedness, mortgages,
3333 or security interests in real or personal property;
3334
3335 (8) securing or collecting debts in its own behalf or enforcing mortgages or
3336 other security interests in real or personal property securing those debts, and holding,
3337 protecting, and maintaining property so acquired;
3338
3339 (9) owning, without more, real or personal property;
3340
3341 (10) conducting an isolated transaction that is not one in the course of
3342 repeated transactions of a like nature; and
3343
3344 (11) transacting business in interstate commerce.
3345
3346 (B) A foreign limited liability company shall not be considered to be transacting
3347 business in this state solely because it or any one or more of its series:
3348
3349 (1) owns a controlling interest in an entity that is transacting business in this
3350 state;
3351
3352 (2) is a limited partner of a limited partnership or foreign limited partnership
3353 that is transacting business in this state; or
3354
3355 (3) is a member of a limited liability company or foreign limited liability
3356 company that is transacting business in this state.
3357
3358 (C) This section does not apply in determining the contacts or activities that may
3359 subject a foreign limited liability company, or a series thereof, to service of process, taxation,
3360 or regulation under laws of this state other than this chapter.
3361
3362 (D) Nothing in this section shall limit or affect the right to subject a foreign limited
3363 liability company, or a series thereof, to the jurisdiction of the courts of this state or to serve
3364 upon any foreign limited liability company, or series thereof, any process, notice, or demand
3365 required or permitted by law to be served upon a foreign limited liability company, or series
3366 thereof, pursuant to any other provision of law or pursuant to the applicable rules of civil
3367 procedure.
3368

3369 **1706.94 NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY**
3370 **COMPANY.**
3371

(A) A foreign limited liability company whose name does not comply with Section 1706.08 may not file a registration as a foreign limited liability company until it adopts, for the purpose of transacting business in this state, a trade name or fictitious name that complies with Section 1706.08. A foreign limited liability company that adopts a trade name or fictitious name under this subsection and then files a registration as a foreign limited liability company under that trade name or fictitious name need not file a name registration when transacting business under that trade name or fictitious name. After filing the registration as a foreign limited liability company under a trade name or fictitious name, a foreign limited liability company shall transact business in this state under the trade name or fictitious name unless the foreign limited liability company has filed a name registration under another name and is authorized to transact business in this state under such name.

(B) If a foreign limited liability company to which a registration as a foreign limited liability has been filed changes its name to one that does not comply with Section 1706.08, it may not thereafter transact business in this state until it complies with subsection (A) by filing a certificate of correction.

Official Comment

The name of a foreign limited liability company filing a registration as a foreign limited liability company is subject to the “distinguishable upon the records” standard of section 1706.08. Where the actual name of a foreign limited liability company filing a registration as a foreign limited liability company is not distinguishable, the foreign limited liability company may qualify under a “trade” or “fictitious” name.

1706.95 REVOCATION OF REGISTRATION AS A FOREIGN LIMITED LIABILITY COMPANY.

(A) A registration as a foreign limited liability company may be revoked by the secretary of state in the manner provided in subsections (B) and (C) if the foreign limited liability company does not:

- (1) appoint and maintain a statutory agent as required by Section 1706.13;
- (2) deliver for filing a statutory agent update under Section 1706.13(C) within 30 days after a change has occurred in the name or address of the statutory agent; or
- (3) file a certificate of correction as required by Section 1706.92(D).

(B) To revoke a registration as a foreign limited liability company, the secretary of state shall prepare, sign, and file a notice of revocation and send copies to the foreign limited liability company’s statutory agent in this state, as last filed by the secretary of state. The notice must state:

- (1) the revocation’s effective date, which must be at least 60 days after the date the secretary of state sends the copy of the notice of revocation; and

3418
3419 (2) the grounds for revocation under subsection (A).
3420

3421 (C) The authority of a foreign limited liability company, and all series thereof, to
3422 transact business in this state ceases on the effective date of the notice of revocation unless
3423 before that date the foreign limited liability company cures each ground for revocation stated
3424 in the notice filed under subsection (B). If the foreign limited liability company cures each
3425 ground, the secretary of state shall file a record so stating, in which case the notice of revocation
3426 shall not have any further effect.
3427

3428 (D) Revocation of a registration as a foreign limited liability company will not
3429 terminate the authority of any statutory agent appointed by the foreign limited liability
3430 company.
3431

3432 **1706.96 CANCELLATION OF REGISTRATION OF A FOREIGN LIMITED**
3433 **LIABILITY COMPANY.**
3434

3435 (A) A foreign limited liability company that has a registration as a foreign limited
3436 liability company in the records of the secretary of state may cancel its registration as a limited
3437 liability company by delivering for filing a cancellation of a registration of a foreign limited
3438 liability company to the secretary of state.
3439

3440 (B) A cancellation of a registration of a foreign limited liability company shall set
3441 forth:
3442

3443 (1) the name of the foreign limited liability company, any trade name or
3444 fictitious name adopted for use in this state, and the name of the jurisdiction under whose law
3445 it is organized;
3446

3447 (2) the name and address of the statutory agent, or if a statutory agent is no
3448 longer to be maintained, a statement that the foreign limited liability company will not maintain
3449 a statutory agent, and the mailing address to which service of process may be mailed pursuant
3450 to Section 1706.13;
3451

3452 (3) that the foreign limited liability company, and all series thereof, will no
3453 longer transact business in this state and that it relinquishes its authority to transact business in
3454 this state;
3455

3456 (4) that the foreign limited liability company is cancelling its registration as
3457 a foreign limited liability company; and
3458

3459 (5) that any statement of trade or fictitious name it has on file in the records
3460 of the secretary of state and any trade or fictitious name with respect to the foreign limited
3461 liability company, are withdrawn upon the effective date of the cancellation of a foreign limited
3462 liability company.
3463

(C) The cancellation of a foreign limited liability company shall be effective upon filing by the secretary of state, whereupon the registration as a foreign limited liability company shall be cancelled and the foreign limited liability company, and all series thereof, will be without authority to transact business in this state.

1706.97 EFFECT OF FAILURE TO HAVE REGISTRATION AS A LIMITED LIABILITY COMPANY.

(A) No foreign limited liability company, or a series thereof, transacting business in this state, nor anyone on its behalf, shall be permitted to maintain a proceeding in any court in this state for the collection of its debts unless an effective registration as a limited liability company for the foreign limited liability company is on file in the records of the secretary of state.

(B) A court may stay a proceeding commenced by a foreign limited liability company, or series thereof, until it determines whether the foreign limited liability company should have a registration as a limited liability company on file in the records of the secretary of state. If the court determines that the foreign limited liability company should have a registration as a limited liability company on file in the records of the secretary of state, the court may further stay the proceeding until there is an effective registration as a limited liability company on file in the records of the secretary of state with respect to the foreign limited liability company. If a court determines that a foreign limited liability company should have a registration as a limited liability company on file in the records of the secretary of state, and the foreign limited liability company subsequently delivers for filing to the secretary of state a registration as a limited liability company, no proceeding in any court in this state to which the foreign limited liability company, or a series thereof, is a party shall, after the effective date of the registration as a foreign limited liability company, be dismissed by reason of the foreign limited liability company's prior noncompliance with Section 1706.92.

(C) If a foreign limited liability company, or a series thereof, conducts activities in this state without having on file in the records of the secretary of state a registration as a foreign limited liability company, the foreign limited liability company shall be liable to this state for an amount equal to the fee as prescribed by the secretary of state from time to time, not to exceed ninety-nine dollars for each calendar year or part of a calendar year during which the foreign limited liability company, or a series thereof, conducted activities in this state without having on file in the records of the secretary of state a registration as a foreign limited liability company, plus all penalties and interest imposed by this state pursuant to subsection (D) of this section for failure to pay that fee. No registration as a foreign limited liability company shall be filed until payment of the amounts due under this subsection (C) and subsection (D) of this section is made.

(D) If a foreign limited liability company, or a series thereof, conducts activities in this state without having a registration as a foreign limited liability company on file in the records of the secretary of state, the foreign limited liability company shall be subject to a civil penalty, payable to this state, not to exceed \$500.

(E) The amounts due to this state under subsection (C) of this section and the civil penalties set forth in subsection (D) of this section may be recovered in an action brought by the Attorney General. Upon a finding by the court that a foreign limited liability company, or series thereof, has conducted activities in this state in violation of this Sections 1706.91 to 1706.97, the court may issue, in addition to or in lieu of the imposition of a civil penalty, an injunction restraining the further conducting of activities by the foreign limited liability company and all of its series, and the further exercise of any rights and privileges of a foreign limited liability company in this state until all amounts plus any interest and court costs that the court may assess have been paid, and until the foreign limited liability company has otherwise complied with this Sections 1706.91 to 1706.97.

(F) Notwithstanding subsections (A) and (B) of this section, the conducting of activities in this state by a foreign limited liability company, or a series thereof, without having a registration as a foreign limited liability company on file in the records of the secretary of state does not impair the validity of the acts of the foreign limited liability company, or a series thereof, or prevent the foreign limited liability company, or a series thereof, from defending any proceeding in this state.

(G) Neither a member or agent of a foreign limited liability company nor a member associated with a series or agent of a series, is liable for the debts, obligations, or other liabilities of the foreign limited liability company, or a series thereof, solely because the foreign limited liability company, or a series thereof, conducted activities in this state without a registration as a foreign limited liability company being on file in the records of the secretary of state.

Official Comment

The foreign limited liability company is permitted to defend an action notwithstanding that it does not have a registration as a foreign limited liability company on file with the secretary of state. An action by a foreign limited liability company may be stayed, as contrasted with dismissed, while the requirement of a registration as a foreign limited liability company is determined and, if necessary, until the registration as a foreign limited liability company is filed. Failure to file the registration as a foreign limited liability company does not invalidate or impair the actions of the foreign limited liability company and does not cause the members to have personal liability for the limited liability company's debts and obligations.

1706.101 RIGHT OF DERIVATIVE ACTION.

(A) A member may commence or maintain a derivative action in the right of a limited liability company to recover a judgment in favor of the limited liability company by complying with Sections 1706.101 to 1706.109.

(B) A member associated with a series of a limited liability company may commence or maintain a derivative action in the right of the series to recover a judgment in favor of the series by complying with Sections 1706.101 to 1706.109.

3556 **1706.102 STANDING.**

3557
3558 (A) A member may commence or maintain a derivative action in the right of the
3559 limited liability company only if the member:

3560
3561 (1) fairly and adequately represents the interests of the limited liability
3562 company in enforcing the right of the limited liability company; and

3563
3564 (2) either:

3565
3566 (a) was a member of the limited liability company at the time of the
3567 act or omission of which the member complains; or

3568
3569 (b) acquired a membership interest through assignment by operation
3570 of law from a person who was a member at the time of the act or omission of which the member
3571 complains.

3572
3573 (B) A member associated with a series of a limited liability company may
3574 commence or maintain a derivative action in the right of the series only if the member:

3575
3576 (1) fairly and adequately represents the interests of the series in enforcing
3577 the right of the series; and

3578
3579 (2) either:

3580
3581 (a) was associated with the series at the time of the act or omission
3582 of which the member complains; or

3583
3584 (b) acquired a membership interest through assignment by operation
3585 of law from a person who was a member associated with the series at the time of the act or
3586 omission of which the member complains.

3587
3588 **1706.103 DEMAND.** A member may not commence a derivative action in the right of
3589 the limited liability company, or a series thereof, until:

3590
3591 (A) a written demand has been made upon the limited liability company or the
3592 series, as the case may be, to take suitable action; and

3593
3594 (B) 90 days have expired from the date the demand was made unless:

3595
3596 (1) the member has earlier been notified that the demand has been rejected
3597 by the limited liability company or the series, as the case may be; or

3598
3599 (2) irreparable injury to the limited liability company or the series, as the
3600 case may be, would result by waiting for the expiration of the 90-day period.

3602 **1706.104 STAY OF PROCEEDINGS.** For the purpose of allowing the limited liability
3603 company or the series thereof, as the case may be, time to undertake an inquiry into the
3604 allegations made in the demand or complaint commenced pursuant to Sections 1706.101 to
3605 1706.109, the court may stay any derivative action for the period the court deems appropriate.

3606
3607 **1706.105 DISMISSAL.**

3608
3609 (A)

3610
3611 (1) A derivative action in the right of a limited liability company shall be
3612 dismissed by the court on motion by the limited liability company if one of the groups specified
3613 in paragraph (2) of this subsection has determined in good faith, after conducting a reasonable
3614 inquiry upon which its conclusions are based, that the maintenance of the derivative action is
3615 not in the best interests of the limited liability company.

3616
3617 (2) Subject to the requirements of paragraph (3) of this subsection, the
3618 determination whether the maintenance of a derivative action in the right of a limited liability
3619 company is in the best interests of the limited liability company shall be made by a majority
3620 vote of:

3621
3622 (a) the independent members of the limited liability company; or

3623
3624 (b) the committee members of a committee consisting of
3625 independent members appointed by a majority of the independent members.

3626
3627 (3) If the determination is not made pursuant to paragraph (1) of this
3628 subsection, the determination shall be made by the person, or, in the case of more than one
3629 person, by a majority of the persons, sitting upon a panel of one or more persons appointed by
3630 a court upon motion filed with the court by the limited liability company for those purposes.

3631
3632 (B)

3633
3634 (1) A derivative action in the right of a series of a limited liability company
3635 shall be dismissed on motion by the series if one of the groups specified in paragraph (2) of
3636 this subsection has determined in good faith, after conducting a reasonable inquiry upon which
3637 its conclusions are based that the maintenance of the derivative action is not in the best interests
3638 of the series.

3639
3640 (2) Subject to the requirements of paragraph (3) of this subsection, the
3641 determination whether the maintenance of a derivative action on behalf of a series of a limited
3642 liability company is in the best interests of the series shall be made by a majority vote of:

3643
3644 (a) the independent members associated with the series; or

(b) the committee members of a committee consisting of independent members associated with the series appointed by a majority of the independent members associated with the series.

(3) If the determination is not made pursuant to paragraph (1) of this subsection, the determination shall be made by the person, or, in the case of more than one person, by a majority of the persons, sitting upon a panel of one or more persons appointed by a court upon motion filed with the court by the series for those purposes.

(C) The court shall appoint only independent persons to the panel described in subsection (A)(3) or subsection (B)(3) of this section.

(D) The presence of one or more of the following circumstances, without more, shall not prevent a person from being considered independent for purposes of subsection (A)(2)(a) or subsection (B)(2)(a) of this section:

(1) the naming of the person as a defendant in the derivative action or as a person against whom action is demanded;

(2) the approval by that person of the act being challenged in the derivative action or demand where the act did not result in personal benefit to that person; or

(3) the making of the demand pursuant to Section 1706.103 or the commencement of the derivative action pursuant to Sections 1706.101 to 1706.109.

(E) Subject to Section 1706.106, a panel appointed by the court pursuant to subsection (A)(3) or subsection (B)(3) of this section shall have the authority to continue, settle, or discontinue the derivative proceeding as the court may confer upon the panel.

(F) The plaintiff in the derivative action shall have the burden of proving that any of the requirements of subsections (A) and (B) of this section have not been met.

1706.106 DISCONTINUANCE OR SETTLEMENT. A derivative action may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of members of the limited liability company, or the interests of members associated with a series of the limited liability company, the court shall direct that notice be given to the members affected.

1706.107 PAYMENT OF EXPENSES. On termination of the derivative action the court may:

(A) order the limited liability company to pay the plaintiff's reasonable expenses, including attorney fees, incurred by the plaintiff in the derivative action if the court finds that the derivative action has resulted in a substantial benefit to the limited liability company;

3691 (B) order a series to pay the plaintiff's reasonable expenses, including attorney fees,
3692 incurred by the plaintiff in the derivative action if the court finds that the derivative action has
3693 resulted in a substantial benefit to the series;

3694
3695 (C) order the plaintiff to pay any defendant's reasonable expenses, including
3696 attorney fees, incurred by the defendant in defending the derivative action if it finds that the
3697 derivative action was commenced or maintained without reasonable cause or for an improper
3698 purpose; or

3699
3700 (D) order a party to pay an opposing party's expenses incurred because of the filing
3701 of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was
3702 not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith
3703 argument for the extension, modification, or reversal of existing law and was interposed for an
3704 improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost
3705 of litigation.

3706
3707 **1706.108 APPLICABILITY TO FOREIGN LIMITED LIABILITY COMPANIES.**

3708 In any derivative action in the right of a foreign limited liability company, or a series thereof,
3709 the right of a person to commence or maintain a derivative action in the right of a foreign
3710 limited liability company, or a series thereof, and any matters raised in the action covered by
3711 Sections 1706.101 to 1706.107 shall be governed by the law of the jurisdiction under which
3712 the foreign limited liability company was formed; except that any matters raised in the action
3713 covered by Sections 1706.104, 1706.106, and 1706.107 shall be governed by the law of this
3714 state.

3715
3716 **1706.109 DIRECT ACTIONS BY MEMBERS.**

3717
3718 (A) Subject to subsection (B), a member may maintain a direct action against
3719 another member or members or the limited liability company, or a series thereof, to enforce
3720 the member's rights and otherwise protect the member's interests, including rights and interests
3721 under the operating agreement or this chapter or arising independently of the membership
3722 relationship.

3723
3724 (B) A member maintaining a direct action under subsection (A) must plead and
3725 prove an actual or threatened injury that is not solely the result of an injury suffered or
3726 threatened to be suffered by the limited liability company, or series thereof.

3727
3728 (C)

3729
3730 (1) A member may maintain a direct action to enforce a right of a limited
3731 liability company if all members at the time of suit are parties to the action.

3732
3733 (2) A member associated with a series may maintain a direct action to
3734 enforce a right of the series if all members associated with the series at the time of suit are
3735 parties to the action.

3737 **1706.111 MERGER.**

3738
3739 (A) A limited liability company may merge with one or more other constituent
3740 entities pursuant to this section, Sections 1706.112 to 1706.114, and an agreement of merger,
3741 if:

- 3742
3743 (1) the governing statute of each of the other entities authorizes the merger;
3744
3745 (2) the merger is not prohibited by the law of a jurisdiction that enacted any
3746 of the governing statutes; and
3747
3748 (3) each of the other entities complies with its governing statute in effecting
3749 the merger.

3750
3751 (B) An agreement of merger must be in a record and must include:

- 3752
3753 (1) the name and form of each constituent entity;
3754
3755 (2) the name and form of the surviving entity and, if the surviving entity is
3756 to be created pursuant to the merger, a statement to that effect;
3757
3758 (3) the terms and conditions of the merger, including the manner and basis
3759 for converting the interests in each constituent entity into any combination of money, interests
3760 in the surviving entity, and other consideration as allowed in Section 1706.111(C);
3761
3762 (4) if the surviving entity is to be created pursuant to the merger, the
3763 surviving entity's organizational documents that are proposed to be in a record; and
3764
3765 (5) if the surviving entity is not to be created pursuant to the merger, any
3766 amendments to be made by the merger to the surviving entity's organizational documents that
3767 are, or are proposed to be, in a record.
3768

3769 (C) In connection with a merger, rights or securities of or interests in the constituent
3770 entity may be exchanged for or converted into cash, property, or rights or securities of or
3771 interests in the surviving entity, or, in addition to or in lieu thereof, may be exchanged for or
3772 converted into cash, property, or rights or securities of or interests in another entity or may be
3773 cancelled.

3774
3775 **1706.112 ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED**
3776 **LIABILITY COMPANY.**

3777
3778 (A) An agreement of merger must be consented to by all the members of a
3779 constituent limited liability company.
3780

(B) After the agreement of merger is approved, and at any time before a certificate of merger is delivered to the secretary of state for filing under Section 1706.113, a constituent limited liability company may amend the agreement or abandon the merger:

- (1) as provided in the agreement; or
- (2) except as otherwise prohibited in the agreement, with the same consent as was required to approve the agreement.

1706.113 FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.

(A) After each constituent entity has approved the agreement of merger, a certificate of merger must be signed on behalf of:

- (1) each constituent limited liability company, as provided in Section 1706.23(A); and
- (2) each other constituent entity, as provided in its governing statute.

(B) A certificate of merger under this section must include:

- (1) the name and form of each constituent entity and the jurisdiction of its governing statute;
- (2) the name and form of the surviving entity, the jurisdiction of its governing statute, and, if the surviving entity is created pursuant to the merger, a statement to that effect;
- (3) the date the merger is effective under the governing statute of the surviving entity;
- (4) if the surviving entity is to be created pursuant to the merger:
 - (a) if it will be a limited liability company, the limited liability company's articles of organization; or
 - (b) if it will be an entity other than a limited liability company, any organizational document that creates the entity that is required to be in a public record;
- (5) if the surviving entity exists before the merger, any amendments provided for in the agreement of merger for the organizational document that created the entity that are in a public record;
- (6) a statement as to each constituent entity that the merger was approved as required by the entity's governing statute;

(7) if the surviving entity is a foreign entity not authorized to transact business in this state, the street and mailing addresses of its statutory agent; and

(8) any additional information required by the governing statute of any constituent entity.

(C) Each constituent limited liability company shall deliver the certificate of merger for filing in the office of the secretary of state.

(D) A merger becomes effective under Sections 1706.111 to 1706.120:

(1) if the surviving entity is a limited liability company, upon the later of:

(a) compliance with subsection (C); or

(b) as specified in the certificate of merger; or

(2) if the surviving entity is not a limited liability company, as provided by the governing statute of the surviving entity.

Official Comment

Subsection 1706.113(D)(1)(b) is subject to the timing provisions of section 1706.25(D).

1706.114 EFFECT OF MERGER.

(A) When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each constituent entity that merges into the surviving entity ceases to exist as a separate entity;

(3) all property owned by each constituent entity, or series thereof, that ceases to exist vests in the surviving entity without reservation or impairment;

(4) all debts, obligations, or other liabilities of each constituent entity, or series thereof, that ceases to exist continue as debts, obligations, or other liabilities of the surviving entity;

(5) an action or proceeding pending by or against any constituent entity, or series thereof, that ceases to exist, continues as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent entity, or series thereof, that ceases to exist vest in the surviving entity;

(7) except as otherwise provided in the agreement of merger, the terms and conditions of the agreement of merger take effect;

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of Sections 1706.76 to 1706.81 and does not dissolve a series for purposes of Sections 1706.121 to 1706.136;

(9) if the surviving entity is created pursuant to the merger:

(a) if it is a limited liability company, the articles of organization become effective; or

(b) if it is an entity other than a limited liability company, the organizational document that creates the entity becomes effective; and

(10) if the surviving entity existed before the merger, any amendments provided for in the certificate of merger for the organizational document that created the entity become effective.

(B) A surviving entity that is a foreign entity consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent entity, if before the merger the constituent entity was subject to suit in this state on the debt, obligation, or other liability. Service of process on a surviving entity that is a foreign entity and not authorized to transact business in this state for the purposes of enforcing a debt, obligation, or other liability may be made in the same manner and has the same consequences as provided in Section 1706.14 as if the surviving entity was a foreign limited liability company.

Official Comment

Under section 1706.114, the survivor in a merger and the parties that merge into the survivor become one. The survivor automatically becomes the owner of all real and personal property and becomes subject to all the liabilities, actual or contingent, of each party that is merged into it. A merger is not a conveyance, transfer, or assignment. It does not give rise to claims of reverter or impairment of title based on a prohibited conveyance, transfer, or assignment. It does not give rise to a claim or defense on the ground of nonassignability, unless the contract specifically provides that it does not survive a merger. All pending proceedings involving either the survivor or a party whose separate existence ceased as a result of the merger are continued.

3916 **1706.115 CONVERSION.**

3917
3918 (A) An entity other than a limited liability company may convert to a limited
3919 liability company, and a limited liability company may convert to an entity other than a limited
3920 liability company pursuant to this section, Sections 1706.116 to 1706.118, and a written
3921 declaration of conversion, if:

3922
3923 (1) the governing statute of the entity that is not a limited liability company
3924 authorizes the conversion;

3925
3926 (2) the law of the jurisdiction governing the converting entity and the
3927 converted entity does not prohibit the conversion; and

3928
3929 (3) the converting entity and the converted entity comply with its respective
3930 governing statute and organizational documents in effecting the conversion.

3931
3932 (B) A written declaration of conversion must be in a record and must include:

3933
3934 (1) the name and form of the converting entity before conversion;

3935
3936 (2) the name and form of the converted entity after conversion;

3937
3938 (3) the terms and conditions of the conversion, including the manner and
3939 basis for converting interests in the converting entity into any combination of money, interests
3940 in the converted entity, and other consideration allowed in Section 1706.115(C); and

3941
3942 (4) the organizational documents of the converted entity that are, or are
3943 proposed to be, in a record.

3944
3945 (C) In connection with a conversion, rights or securities of or interests in the
3946 converting entity may be exchanged for or converted into cash, property, or rights or securities
3947 of or interests in the converted entity, or, in addition to or in lieu thereof, may be exchanged
3948 for or converted into cash, property, or rights or securities of or interests in another entity or
3949 may be cancelled.

3950
3951 Official Comment

3952
3953 Subsection (A)(1) is a default provision that attempts to insure that both the laws of this
3954 state and, in a case where the converting or converted entity is governed by the law of another
3955 jurisdiction, the laws of that other jurisdiction authorize a conversion to allow for the vesting
3956 of rights and assets and the continuation of debts and other matters in both jurisdictions.

3957
3958 **1706.116 ACTION ON DECLARATION OF CONVERSION BY CONVERTING**
3959 **LIMITED LIABILITY COMPANY.**

3961 (A) A declaration of conversion must be consented to by all the members of a
3962 converting limited liability company.

3963
3964 (B) After a conversion is approved, and at any time before the certificate of
3965 conversion is delivered to the secretary of state for filing under Section 1706.117, a converting
3966 limited liability company may amend the declaration or abandon the conversion:

3967
3968 (1) as provided in the declaration; or

3969
3970 (2) except as otherwise prohibited in the declaration, by the same consent
3971 as was required to approve the declaration.

3972
3973 **1706.117 FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.**

3974
3975 (A) After a declaration of conversion is approved:

3976
3977 (1) a converting limited liability company shall deliver to the secretary of
3978 state for filing a certificate of conversion which must be signed as provided in Section
3979 1706.23(A) and must include:

3980
3981 (a) a statement that the converting limited liability company has
3982 been converted into the converted entity;

3983
3984 (b) the name and form of the converted entity and the jurisdiction of
3985 its governing statute;

3986
3987 (c) the date the conversion is effective under the governing statute
3988 of the converted entity;

3989
3990 (d) a statement that the conversion was approved as required by this
3991 chapter;

3992
3993 (e) a statement that the conversion was approved as required by the
3994 governing statute of the converted entity; and

3995
3996 (f) if the converted entity is a foreign entity not authorized to
3997 transact business in this state, the address of its statutory agent for the purposes of Section
3998 1706.118(B); and

3999
4000 (2) if the converted entity is a limited liability company, the converting
4001 entity shall deliver to the secretary of state for filing articles of organization, which must
4002 include, in addition to the information required by Section 1706.21(A):

4003
4004 (a) a statement that the converted entity was converted from the
4005 converting entity;

4007 (b) the name and form of the converting entity and the jurisdiction
4008 of the converting entity's governing statute; and

4009
4010 (c) a statement that the conversion was approved as required by the
4011 governing statute of the converting entity.

4012
4013 (B) A conversion becomes effective:

4014
4015 (1) if the converted entity is a limited liability company, when the articles
4016 of organization take effect; and

4017
4018 (2) if the converted entity is not a limited liability company, as provided by
4019 the governing statute of the converted entity.

4020
4021 **1706.118 EFFECT OF CONVERSION.**

4022
4023 (A) When a conversion takes effect:

4024
4025 (1) all property owned by the converting entity, or series thereof, remains
4026 vested in the converted entity;

4027
4028 (2) all debts, obligations, or other liabilities of the converting entity, or
4029 series thereof, continue as debts, obligations, or other liabilities of the converted entity;

4030
4031 (3) an action or proceeding pending by or against the converting entity, or
4032 series thereof, continues as if the conversion had not occurred;

4033
4034 (4) except as prohibited by law other than this chapter, all of the rights,
4035 privileges, immunities, powers, and purposes of the converting entity, or series thereof, remain
4036 vested in the converted entity;

4037
4038 (5) except as otherwise provided in the plan of conversion, the terms and
4039 conditions of the declaration of conversion take effect;

4040
4041 (6) except as otherwise agreed, for all purposes of the laws of this state, the
4042 converting entity, and any series thereof, shall not be required to wind up its affairs or pay its
4043 liabilities and distribute its assets, and the conversion shall not be deemed to constitute a
4044 dissolution of the converting entity, or series thereof;

4045
4046 (7) for all purposes of the laws of this state, the rights, privileges, powers,
4047 and interests in property of the converting entity, and all series thereof, as well as the debts,
4048 liabilities, and duties of the converting entity, and all series thereof, shall not be deemed, as a
4049 consequence of the conversion, to have been assigned to the converted entity;

4050
4051 (8) if the converted entity is a limited liability company, for all purposes of
4052 the laws of this state, the limited liability company shall be deemed to be the same entity as

the converting entity, and the conversion shall constitute a continuation of the existence of the converting entity in the form of a limited liability company; and

(9) if the converted entity is a limited liability company, the existence of the limited liability company shall be deemed to have commenced on the date the converting entity commenced its existence in the jurisdiction in which the converting entity was first created, formed, organized, incorporated, or otherwise came into being.

(B) A converted entity that is a foreign entity consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company, or series thereof, is liable if, before the conversion, the converting limited liability company, or series thereof, was subject to suit in this state on the debt, obligation, or other liability. Service of process on a converted entity that is a foreign entity and not authorized to transact business in this state for purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the same manner and has the same consequences as provided in Section 1706.14, as if the converted entity were a foreign limited liability company.

1706.119 RESTRICTIONS ON APPROVAL OF MERGERS AND CONVERSIONS.

(A) If a member of a constituent or converting limited liability company will have personal liability with respect to a surviving or converted entity, approval or amendment of a plan of merger or a declaration of conversion are ineffective without the consent of the member, unless:

(1) the limited liability company's operating agreement provides for approval of a merger or conversion with the consent of fewer than all the members; and

(2) the member has consented to the provision of the operating agreement.

(B) A member does not give the consent required by subsection (A) merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

1706.120 SECTIONS NOT EXCLUSIVE. Sections 1706.111 to 1706.120 do not preclude an entity from being merged or converted under law other than this chapter.

1706.121 SERIES ASSETS.

(A) An operating agreement may establish or provide for the establishment of one or more designated series of assets that has:

(1)

(a) separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations; or

(b) a separate purpose or investment objective; and

(2) at least one member associated with each series.

(B) A series established in accordance with subsection (A) may carry on any activity, whether or not for profit.

1706.122 ENFORCEABILITY OF OBLIGATIONS AND EXPENSES OF SERIES AGAINST ASSETS.

(A) Subject to subsection (B):

(1) the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series thereof; and

(2) none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof shall be enforceable against the assets of a series.

(B) subsection (A) applies only if:

(1) the records maintained for that series account for the assets of that series separately from the other assets of the company or any other series;

(2) the operating agreement contains a statement to the effect of the limitations provided in subsection (A); and

(3) the limited liability company's articles of organization contains a statement that the limited liability company may have one or more series of assets subject to the limitations provided in subsection (A).

1706.123 ASSETS OF SERIES.

(A) Assets of a series may be held directly or indirectly, including being held in the name of the series, in the name of the limited liability company, through a nominee, or otherwise.

(B) If the records of a series are maintained in a manner so that the assets of the series can be reasonably identified by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any

assets, or by any other method in which the identity of the assets can be objectively determined, the records are considered to satisfy the requirements of Section 1706.122(B)(1).

1706.124 STATEMENT OF LIMITATION ON LIABILITIES OF SERIES. The statement of limitation on liabilities of a series required by Section 1706.122(B)(3) is sufficient regardless of whether:

(A) the limited liability company has established any series under this chapter when the statement of limitations is contained in the articles of organization; and

(B) the statement of limitations makes reference to a specific series of the limited liability company.

1706.125 MEMBER'S POWER TO DISSOCIATE AS A MEMBER ASSOCIATED WITH A SERIES; WRONGFUL DISSOCIATION.

(A) A person may not voluntarily dissociate as a member associated with a series.

(B) A person's dissociation from a series is wrongful only if:

(1) it is in breach of an express provision of the operating agreement; or

(2) the person is expelled as a member associated with the series by determination of a tribunal under Section 1706.126(E); or

(3) the person is dissociated as a member associated with a series by becoming a debtor in bankruptcy or making a general assignment for the benefit of creditors.

(C) A person that wrongfully dissociates as a member associated with a series is liable to the series and, subject to Section 1706.101, to the other members associated with that series for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the member associated with a series to the series or the other members associated with that series.

1706.126 EVENTS CAUSING DISSOCIATION OF A MEMBER ASSOCIATED WITH A SERIES. A person is dissociated as a member associated with a series when:

(A) an event stated in the operating agreement as causing the person's dissociation from the series occurs;

(B) the person is dissociated as a member of the limited liability company pursuant to Section 1706.62;

(C) the person is expelled as a member associated with that series pursuant to the operating agreement;

4190 (D) the person is expelled as a member associated with the series by the unanimous
4191 consent of the other members associated with that series if:

4192 (1) it is unlawful to carry on the series' activities with the person as a
4193 member associated with that series;

4194 (2) the person is an entity and, within 90 days after the series notifies the
4195 person that it will be expelled as a member associated with that series because the person has
4196 filed a certificate of dissolution or the equivalent, or its right to transact business has been
4197 suspended by its jurisdiction of formation, the certificate of dissolution or the equivalent has
4198 not been revoked or its right to transact business has not been reinstated; or
4199

4200 (3) the person is an entity and, within 90 days after the series notifies the
4201 person that it will be expelled as a member associated with that series because the person has
4202 been dissolved and its activities are being wound up, the entity has not been reinstated or the
4203 dissolution and winding up have not been revoked or cancelled;
4204

4205 (E) on application by the series, the person is expelled as a member associated with
4206 that series by tribunal order because the person:

4207 (1) has engaged, or is engaging, in wrongful conduct that has adversely and
4208 materially affected, or will adversely and materially affect, that series' activities;
4209

4210 (2) has willfully or persistently committed, or is willfully or persistently
4211 committing, a material breach of the operating agreement or the person's duties or obligations
4212 under this chapter or other applicable law; or
4213

4214 (3) has engaged, or is engaging, in conduct relating to that series' activities
4215 that makes it not reasonably practicable to carry on the activities with the person as a member
4216 associated with that series;
4217

4218 (F) in the case of a person who is an individual, the person dies, there is appointed
4219 a guardian or general conservator for the person, or there is a determination of a tribunal that
4220 the person has otherwise become incapable of performing the person's duties as a member
4221 associated with a series under this chapter or the operating agreement,
4222

4223 (G) the person becomes a debtor in bankruptcy, executes an assignment for the
4224 benefit of creditors, or seeks, consents, or acquiesces to the appointment of a trustee, receiver,
4225 or liquidator of the person or of all or substantially all of the person's property but this
4226 subsection (G) shall not apply to a person who is the sole remaining member associated with
4227 a series;
4228

4229 (H) in the case of a person that is a trust or is acting as a member associated with a
4230 series by virtue of being a trustee of a trust, the trust's entire membership interest associated
4231 with the series is distributed, but not solely by reason of the substitution of a successor trustee;
4232

(I) in the case of a person that is an estate or is acting as a member associated with a series by virtue of being a personal representative of an estate, the estate's entire membership interest associated with the series is distributed, but not solely by reason of the substitution of a successor personal representative; or

(J) in the case of a member associated with a series that is not an individual, the legal existence of the person otherwise terminates.

1706.127 EFFECT OF PERSON'S DISSOCIATION AS A MEMBER OF A SERIES.

(A) A person who has dissociated as a member associated with a series shall have no right to participate in the activities and affairs of that series and is entitled only to receive the distributions to which that member would have been entitled if the member had not dissociated from that series.

(B) A person's dissociation as a member associated with a series does not of itself discharge the person from any debt, obligation, or liability to that series, the limited liability company or the other members that the person incurred while a member associated with that series.

(C) A member's dissociation from a series does not, in itself, cause the member to dissociate from any other series or require the winding up of the series.

(D) A member's dissociation from a series does not, in itself, cause the member to dissociate from the limited liability company.

1706.128 DISSOLUTION AND WINDING UP OF SERIES. A series may be dissolved and its activities and affairs may be wound up without causing the dissolution of the limited liability company. The dissolution and winding up of a series does not abate, suspend, or otherwise affect the limitation on liabilities of the series provided by Section 1706.122.

1706.129 EVENTS REQUIRING DISSOLUTION. A series is dissolved and its activities and affairs shall be wound up upon the first to occur of the following:

(A) the dissolution of the limited liability company under Section 1706.76;

(B) an event or circumstance that the operating agreement states causes dissolution of the series;

(C) the consent of all of the members associated with the series;

(D) the passage of 90 days after the occurrence of the dissociation of the last remaining member associated with the series; or

4281 (E) on application by a member associated with the series, the entry by the
4282 appropriate court of an order dissolving the series on the grounds that it is not reasonably
4283 practicable to carry on the series' activities in conformity with the operating agreement.
4284

4285 **1706.130 EFFECT OF DISSOLUTION ON SERIES.**
4286

4287 (A) A dissolved series continues its existence as a series but may not carry on any
4288 activities except as is appropriate to wind up and liquidate its activities and affairs, including:
4289

- 4290 (1) collecting the assets of the series;
4291
4292 (2) disposing of the properties of the series that will not be distributed in
4293 kind to persons owning membership interests associated with the series;
4294
4295 (3) discharging or making provisions for discharging the liabilities of the
4296 series;
4297
4298 (4) distributing the remaining property of the series in accordance with
4299 Section 1706.134; and
4300
4301 (5) doing every other act necessary to wind up and liquidate the series'
4302 activities and affairs.
4303

4304 (B) In winding up a series' activities, a series may:
4305

- 4306 (1) preserve the series' activities and property as a going concern for a
4307 reasonable time;
4308
4309 (2) prosecute, defend, or settle actions or proceedings whether civil,
4310 criminal or administrative;
4311
4312 (3) make an assignment of the series' property; and
4313
4314 (4) resolve disputes by mediation or arbitration.
4315

4316 (C) A series' dissolution, in itself:
4317

- 4318 (1) is not an assignment of the series' property;
4319
4320 (2) does not prevent the commencement of a proceeding by or against the
4321 series in the series' name;
4322
4323 (3) does not abate or suspend a proceeding pending by or against the series
4324 on the effective date of dissolution; or
4325

(4) does not abate, suspend, or otherwise alter the application of Section 1706.134.

1706.131 RIGHT TO WIND UP BUSINESS AND ACTIVITIES OF SERIES.

(A) Subject to Section 1706.130(C), after dissolution of a series, the remaining members associated with the series, if any, and if none, a person appointed by all holders of the membership interest last assigned by the last person to have been a member associated with the series, may wind up the series' activities.

(B) The appropriate tribunal may order supervision of the winding up of a dissolved series, including the appointment of a person to wind up the series' activities:

(1) on application of a member associated with the series, if the applicant establishes good cause;

(2) on the application of an assignee associated with a series, if:

(a) there are no members associated with the series; and

(b) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (A); or

(3) in connection with a proceeding under Section 1706.129(E).

1706.132 KNOWN CLAIMS AGAINST DISSOLVED SERIES.

(A) A dissolved series may dispose of any known claims against it by following the procedures described in subsection (B), at any time after the effective date of the dissolution of the series.

(B) A dissolved series may give notice of the dissolution in a record to the holder of any known claim. The notice must:

(1) identify the limited liability company and the dissolved series;

(2) describe the information required to be included in a claim;

(3) provide a mailing address to which the claim is to be sent;

(4) state the deadline, which may not be fewer than 120 days from the effective date of the notice, by which the dissolved series must receive the claim; and

(5) state that if not sooner barred, the claim will be barred if not received by the deadline.

(C) Unless sooner barred by any other statute limiting actions, a claim against a dissolved series is barred:

(1) if a claimant who was given notice under subsection (B) does not deliver the claim to the dissolved series by the deadline; or

(2) if a claimant whose claim was rejected by the dissolved series does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejected notice.

(D) For purposes of this section, “known claim” or “claim” includes unliquidated claims, but does not include a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

(E) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

1706.133 OTHER CLAIMS AGAINST DISSOLVED SERIES.

(A) A dissolved series may publish notice of its dissolution and request that persons with claims against the dissolved series present them in accordance with the notice.

(B) The notice authorized by subsection (A) must:

(1) be posted prominently on the principal website then maintained by the limited liability company, if any, and provided to the secretary of state to be posted on the website maintained by the secretary of state in accordance with Section 1706.80(J) which shall constitute the publishing of such notice within the meaning of subsection (A);

(2) describe the information that must be included in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that if not sooner barred, a claim against the dissolved series will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

(C) If a dissolved series publishes a notice in accordance with subsection (B), unless sooner barred by any other statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved series within two years after the publication date of the notice:

(1) a claimant who was not given notice under Section 1706.132(B);

(2) a claimant whose claim was timely sent to the dissolved series but not acted on by the dissolved series; and

4418
4419 (3) a claimant whose claim is contingent at the effective date of the
4420 dissolution of the series or is based on an event occurring after the effective date of the
4421 dissolution of the series.

4422
4423 (D) A claim that is not barred under this section, any other statute limiting actions,
4424 or Section 1706.132 may be enforced:

4425
4426 (1) against a dissolved series, to the extent of its undistributed assets
4427 associated with the series; and

4428
4429 (2) except as provided in subsection (H), if the assets of a dissolved series
4430 have been distributed after dissolution, against a member or assignee associated with the series
4431 to the extent of that person's proportionate share of the claim or of the assets of the series
4432 distributed to the member or assignee after dissolution, whichever is less, but a person's total
4433 liability for all claims under this subsection (D) may not exceed the total amount of assets of
4434 the series distributed to the person after dissolution of the series.

4435
4436 (E) A dissolved series that published a notice under this section may file an
4437 application with the appropriate court in the county in which the limited liability company's
4438 principal office is located or, if it has none in this state, in the county in which the limited
4439 liability company's statutory agent is or was last located, for a determination of the amount
4440 and form of security to be provided for payment of claims that are contingent or have not been
4441 made known to the dissolved series or that are based on an event occurring after the effective
4442 date of the dissolution of the series but that, based on the facts known to the dissolved series,
4443 are reasonably estimated to arise after the effective date of the dissolution of the series.
4444 Provision need not be made for any claim that is or is reasonably anticipated to be barred under
4445 subsection (C).

4446
4447 (F) Within ten days after the filing of the application provided for in subsection (E),
4448 notice of the proceeding shall be given by the dissolved series to each potential claimant as
4449 described in subsection (E).

4450
4451 (G) The appropriate court may appoint a guardian ad litem to represent all
4452 claimants whose identities are unknown in any proceeding brought under this section. The
4453 reasonable fees and expenses of the guardian, including all reasonable expert witness fees,
4454 shall be paid by the dissolved series.

4455
4456 (H) Provision by the dissolved series for security in the amount and the form
4457 ordered by the appropriate court under subsection (E) shall satisfy the dissolved series'
4458 obligation with respect to claims that are contingent, have not been made known to the
4459 dissolved series, or are based on an event occurring after the effective date of the dissolution
4460 of the series, and those claims may not be enforced against a person owning a membership
4461 interest to whom assets have been distributed by the dissolved series after the effective date of
4462 the dissolution of the series.

(I) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

1706.134 APPLICATION OF ASSETS IN WINDING UP SERIES' ACTIVITIES.

(A) Upon the winding up of a series, payment, or adequate provision for payment, shall be made to creditors of the series, including, to the extent permitted by law, members who are associated with the series and who are also creditors of the series, in satisfaction of liabilities of the series.

(B) After a series complies with subsection (A), any surplus shall be distributed:

(1) first, to each person owning a membership interest associated with the series that reflects contributions made on account of that membership interest and not previously returned, an amount equal to the value of the person's unreturned contributions; and

(2) then to each person owning a membership interest associated with the series in the proportions in which the owners of membership interests associated with the series share in distributions prior to dissolution of the series.

(C) If the series does not have sufficient surplus to comply with subsection (B)(1), any surplus must be distributed among the owners of membership interests associated with the series in proportion to the value of their respective unreturned contributions.

1706.135 REINSTATEMENT AFTER DISSOLUTION OF A SERIES.

(A) A series that has been dissolved may be reinstated upon compliance with the following conditions:

(1) the affirmative vote or consent shall have been obtained from the members or other persons associated with the series entitled to vote or consent at the time that is:

(a) required for reinstatement under its operating agreement; or

(b) if its operating agreement does not state the vote or consent required for reinstatement of that series, sufficient for dissolution of a series under this chapter, or such greater or lesser vote or consent as is required for dissolution of a series under its operating agreement;

(2) the members and other persons associated with a series having authority under this chapter and under its operating agreement to bring about or prevent dissolution of a series shall not have, before or at the time of the vote or consent required by paragraph (1) of this subsection (A), voted against reinstatement of a series or delivered to the limited liability company their written objection to reinstatement of a series; and

(3) in the case of a series dissolved in a proceeding initiated by one or more of the members associated with the series, the affirmative vote or consent of each such member shall have been obtained and shall be included in the vote or consent required by paragraph (1) of this subsection (A).

(B) To the extent that an operating agreement provides for the voting rights of members or other persons associated with a series, for the calling of meetings, for notices of meetings, for consents and actions of members and other persons associated with the series without a meeting, for establishing a record date for meetings, or for other matters concerning the voting or consent of members and other persons associated with the series, those provisions shall govern the vote or consent required by paragraph (1) of subsection (A) of this section with respect to the series and the vote or objection of members and other persons associated with the series provided for in paragraph (2) of subsection (A) of this section with respect to the series.

1706.136 EFFECT OF REINSTATEMENT.

(A) Subject to subsection (B) of this section, upon reinstatement, a series shall be deemed for all purposes to have continued its activities as if dissolution had never occurred; each right inuring to, and each debt, obligation, and liability incurred by, the series after the dissolution shall be determined as if the dissolution had never occurred.

(B) The rights of members and other persons associated with a series arising by reason of reliance on the dissolution of the series before those persons had notice of the reinstatement shall not be adversely affected by the reinstatement.

1706.137 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

1706.138 INTERSTATE APPLICATION. A limited liability company formed and existing under this chapter may conduct its activities and affairs, carry on its operations, and have and exercise the powers granted by this chapter in any state, foreign country, or other jurisdiction.

1706.139 SAVINGS CLAUSE. The repeal of a statute by this chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

1706.140 APPLICATION TO EXISTING RELATIONSHIPS.

(A) Prior to [all-inclusive date], this chapter governs the following limited liability companies:

(1) a limited liability company formed on or after **[one year before the all-inclusive date]**, except a limited liability company that is continuing the business of a dissolved limited liability company under Section 1705.44 of the Revised Code; and

(2) a limited liability company formed before **[one year before the all-inclusive date]** that elects pursuant to subsection (C) of this section to be governed by this chapter.

(B) On and after **[all-inclusive date]** this chapter governs all limited liability companies, including every foreign limited liability company that files an application for registration as a foreign limited liability company on or after **[all-inclusive date]**, every foreign limited liability company that registers a name in this state on or after **[all-inclusive date]**, every foreign limited liability company that has registered a name in this state prior to **[all-inclusive date]**, and every foreign limited liability company that has filed an application for registration as a foreign limited company prior to **[all-inclusive date]** pursuant to Chapter 1705 of the Revised Code.

(C) On and after **[one year before the all-inclusive date]**, but prior to **[all-inclusive date]**, a limited liability company may elect, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

1706.141 RESERVED POWER OF THE STATE TO ALTER OR REPEAL CHAPTER. All provisions of this chapter may be altered from time to time or repealed and all rights of members and agents are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to limited liability companies and members and agents whether or not existing as such at the time of the enactment of any such amendment.

1706.142 SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid by a tribunal of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.

1706.143 EFFECTIVE DATE. This chapter takes effect on **[the effective date of this chapter]**.

4592 **REPORT OF THE ESTATE PLANNING, TRUST AND PROBATE LAW SECTION**

4593
4594 *To the Council of Delegates*

4595
4596 The Estate Planning, Trust and Probate Law (“EPTPL”) Section hereby respectfully requests
4597 your favorable consideration of the five following legislative proposals:
4598

- 4599 1. To amend RC 2111.50 to broaden guardians’ authority to create estate plans for
4600 their wards, with the approval of the probate court.
4601
4602 2. To add Section 2131.14 to Chapter 21 of the Revised Code to allow transfer on
4603 death beneficiary designations for tangible personal property.
4604
4605 3. To amend Ohio Revised Code Section 2106.13(A) to clarify that a surviving spouse
4606 is entitled to receive the spousal share of the allowance of support and one
4607 automobile without reducing the value of the allowance, consistent with Ohio law
4608 since 1990.
4609
4610 4. To repeal division (B)(2) of RC 5805.06 in its entirety to terminate a creditor’s
4611 rights to trust assets after the lapse of powers of withdrawal held by the trust
4612 beneficiary.
4613
4614 5. To amend RC 5804.11(B) to clarify that the nomination of an individual or corporate
4615 entity in a trust agreement as a future or successor trustee may be changed by the
4616 court or by a private settlement agreement.
4617

4618 Respectfully submitted,

4619
4620 **Patricia D. Laub, Cincinnati**
4621 Chair, EPTPL Section Council
4622

4623 **PROPOSAL 1: To amend RC 2111.50 to broaden guardians’ authority to create estate**
4624 **plans for their wards, with the approval of the probate court.**
4625

4626 **Summary and Rationale of Proposal**

4627
4628 Under current Ohio guardianship law, a guardian may, with probate court approval, engage in
4629 certain types of estate planning for the ward. With probate court approval, the guardian may:
4630

- 4631 • Convey or release the present, contingent, or expectant interests in real or personal
4632 property of the ward, including, but not limited to, dower and any right of survivorship
4633 incident to a survivorship tenancy, joint tenancy, or tenancy by the entireties
4634
4635 • Create revocable trusts of property of the estate of the ward that may not extend beyond
4636 the minority, disability, or life of the ward
4637

- Exercise rights to elect options under annuities and insurance policies, and to surrender an annuity or insurance policy for its cash value

Although RC 2111.50 states that, subject to the duty to act in the ward's best interest, the court has all the powers that relate to the person and estate of the ward that the ward could exercise if present and not a minor or under a disability, except the power to make or revoke a will, the powers enumerated in the statute do not include several common estate planning techniques that often will benefit the ward and his estate.

For instance, current law does not allow a guardian to disclaim a ward's interest in property, create transfer on death beneficiary designations for the ward, or change beneficiary designations for the ward's insurance policies, retirement plans, or annuities. Further, while current law allows a guardian to create a revocable trust for a ward, with probate court approval, the revocable trust cannot extend beyond the life of the ward. That limitation on the duration of the trust precludes many estate planning techniques that could provide federal estate tax savings or asset protection for the ward's beneficiaries.

The proposed additions to RC 2111.50 will allow a guardian to seek probate court approval to disclaim a ward's interest in property, create transfer on death beneficiary designations for the ward, change beneficiary designations for the ward's insurance policies, retirement plans, or annuities, and create a revocable trust for a ward which may extend beyond the life of the ward.

The proposed additions to RC 2111.50 do not change current Ohio law that imposes no duty on a guardian to engage in estate planning for the ward. Rather, the proposed amendments to RC 2111.50 augment the estate planning tools already available to guardians and enhance the guardian's ability to protect, preserve, and efficiently administer the ward's estate for the ward's beneficiaries.

Text of the Proposal

2111.50 Probate court is superior guardian of wards.

(A)(1) At all times, the probate court is the superior guardian of wards who are subject to its jurisdiction, and all guardians who are subject to the jurisdiction of the court shall obey all orders of the court that concern their wards or guardianships.

(2)(a) Subject to divisions (A)(2)(b) and (c) of this section, the control of a guardian over the person, the estate, or both of the guardian's ward is limited to the authority that is granted to the guardian by the Revised Code, relevant decisions of the courts of this state, and orders or rules of the probate court.

(b) Except for the powers specified in division (E) of this section and unless otherwise provided in or inconsistent with another section of the Revised Code, the probate court may confer upon a guardian any power that this section grants to the probate court in connection with wards. Nothing in this section is intended to create or imply a duty upon a guardian to apply for authority to exercise any power authorized herein and no inference of impropriety or

liability of the guardian or others associated therewith shall arise as a result of a guardian not applying for authority to exercise a power authorized herein.

(c) For good cause shown, the probate court may limit or deny, by order or rule, any power that is granted to a guardian by a section of the Revised Code or relevant decisions of the courts of this state.

(B) In connection with any person whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian, the court has, subject to divisions (C) to (E) of this section, all the powers that relate to the person and estate of the ward and that the ward could exercise if present and not a minor or under a disability, except the power to make or revoke a will. These powers include, but are not limited to, the power to do any of the following:

(1) Convey, ~~or release, or disclaim~~ the present, contingent, or expectant interests in real or personal property of the ward, including, but not limited to, dower and any right of survivorship incident to a transfer on death designation, payable on death designation, survivorship tenancy, joint tenancy, or tenancy by the entireties;

(2) Exercise, ~~or release, or disclaim~~ powers as a trustee, personal representative, custodian for a minor, guardian, or donee of a power of appointment;

(3) Subject to division (B)(4), enter into contracts, or create revocable trusts of property of the estate of the ward, that may not extend beyond the minority, disability, or life of the ward;

(4) Create, amend, or revoke revocable trusts of property of the estate of the ward that may extend beyond the minority, disability, or life of the ward;

(5) Exercise options to purchase securities or other property;

(6) Exercise rights to elect options under annuities and insurance policies, including changing beneficiaries of insurance policies, retirement plans, and annuities, and to surrender an annuity or insurance policy for its cash value;

(7) Exercise the right to an elective share in the estate of the deceased spouse of the ward pursuant to section ~~2106.08~~ 2106.01 et seq. of the Revised Code;

(8) Make gifts, in trust or otherwise, to relatives of the ward and, consistent with any prior pattern of the ward of giving to charities or of providing support for friends, to charities and friends of the ward.

(C) Except for the powers specified in division (D) of this section, all powers of the probate court that are specified in this chapter and that relate either to any person whom it has found to be an incompetent or a minor subject to guardianship and for whom it has appointed a guardian and all powers of a guardian that relate to the guardian's ward or guardianship as described in division

(A)(2) of this section, shall be exercised in the best interest, as determined in the court's or guardian's judgment, of the following:

(1) The ward whom the probate court has found to be an incompetent or a minor subject to guardianship;

(2) The dependents of the ward;

(3) The members of the household of the ward.

(D) If the court is to exercise or direct the exercise, pursuant to division (B) of this section, of the power to make gifts in trust or otherwise, the following conditions shall apply:

(1) The exercise of the particular power shall not impair the financial ability of the estate of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian, to provide for the ward's foreseeable needs for maintenance and care;

(2) If applicable, the court shall consider any of the following:

(a) The estate, income, and other tax advantages of the exercise of a particular power to the estate of a ward whom the probate court has found to be an incompetent or a minor subject to guardianship and for whom the court has appointed a guardian;

(b) Any pattern of giving of, or any pattern of support provided by, the ward prior to the ward's incompetence;

(c) The disposition of property made by the ward's will or revocable trust;

(d) If there is no knowledge of a will or revocable trust of the ward, the ward's prospective heirs;

(e) Any relevant and trustworthy statements of the ward, whether established by hearsay or other evidence.

(E)(1) The probate court shall cause notice as described in division (E)(2) of this section to be given and a hearing to be conducted prior to its exercise or direction of the exercise of any of the following powers pursuant to division (B) of this section:

(a) The exercise, disclaimer, or release of powers as a donee of a power of appointment;

(b) Unless the amount of the gift is no more than one thousand dollars, the making of a gift, in trust or otherwise;

(c) The power to create, amend, or revoke revocable trusts described in division (B)(4) of this section.

(d) The power to modify and surrender annuities, retirement plans, individual retirement accounts, and insurance described in division (B)(6) of this section.

(2) The notice required by division (E)(1) of this section shall be given to the following persons:

(a) Unless a guardian of a ward has applied for the exercise of a power specified in division (E)(1) of this section, to the guardian;

(b) To the ward whom the probate court has found to be an incompetent or a minor subject to guardianship;

(c) If known, to a guardian who applied for the exercise of a power specified in division (E)(1) of this section, to the prospective heirs of the ward whom the probate court has found to be an incompetent or a minor subject to guardianship under section 2105.06 of the Revised Code, to the beneficiaries under the known last will of the ward or under a then existing revocable trust, and any person who has a legal interest in property that may be divested or limited as the result of the exercise of a power specified in division (E)(1) of this section;

(d) To (i) the heirs at law and next of kin of the ward, (ii) to the beneficiaries under any then existing will or revocable trust of the ward, (iii) the beneficiaries of any life insurance policies, retirement plans, individual retirement accounts, and annuities on the life of the ward or owned by the ward, and (iv) the beneficiaries under the proposed revocable trust and to proposed beneficiaries under any changes in the designation of beneficiaries under any such life insurance, retirement plans, individual retirement plans, or annuity policies;

~~(d)~~ (e) To any other persons the court orders.

(f) When considering any question related to, and issuing orders for, medical or surgical care or treatment of incompetents or minors subject to guardianship, the probate court has full parens patriae powers unless otherwise provided by a section of the Revised Code.

PROPOSAL 2: To add Section 2131.14 to Chapter 21 of the Revised Code to allow transfer on death beneficiary designations for tangible personal property.

Summary and Rationale of Proposal

The EPTPL Section Council recognizes that many Ohio residents seek to avoid a probate administration for their assets at their deaths. Current Ohio law allows Ohioans to designate beneficiaries for real estate, bank accounts, brokerage accounts, motor vehicles, watercraft and outboard motors, thereby avoiding probate for those assets. The proposed legislation will add tangible personal property, such as jewelry, artwork, household goods and furnishings to the categories of assets that can pass free of probate through the use of beneficiary designations.

The proposed new statute is loosely based on Indiana’s Transfer on Death Property Act (IC 32-17-14). This Act includes provisions for the transfer of real estate, vehicles, bank accounts and brokerage accounts to transfer on death beneficiaries similar to what already has been enacted in Ohio, but it also specifically allows tangible personal property to be transferred on death to beneficiaries. (IC 32-17-14-12). Oklahoma and Missouri have enacted similar statutes, using the Indiana statute as a model.

The proposed new statute will follow §2131.13 which permits the designation of motor vehicles, watercraft and outboard motors in beneficiary form. Section A of the proposed statute provides the definitions for various terms used in the new statute. Section B of the statute provides the details for making a valid designation in beneficiary form for tangible personal property. Some highlights of the proposed statute are as follows:

1. To be valid, a transfer on death beneficiary form must be in writing, be dated and executed by the present owner, and acknowledged before a Notary Public. §2131.14 (B) (1) (5) and (6)
2. Under §2131.14(A), a transfer on death beneficiary will include a class of persons specified in a designation in beneficiary form. Thus, the owner can simply designate his children to receive a tangible item after his death.
3. §2131.14 (F) and (H) allows an owner to name primary and contingent transfer on death beneficiaries; if no primary or contingent beneficiaries survive the owner, the property will be included in the deceased owner’s probate estate.
4. Under §2131.14(A)(6), the statute defines a “transferring person” as the individual who delivers or conveys the tangible personal property to a transfer on death beneficiary.
5. §2131.14(J), (K), (L), (M) and (O) are designed to provide protection to the “transferring person” who transfers the property to the designated beneficiaries and to provide him with the opportunity to petition the probate court for instructions in the event a problem or issue develops. The proposed statute does not require that a transferring person be named by the owner to effectuate the transfer or delivery of the property but does provide protection for whoever takes it upon himself to deliver the property to the intended transferee.
6. §2131.14(O) gives the transferring person protection from all claims and liability for the property transferred so long as he has acted in good faith and in reliance on information the transferring person reasonably believes to be accurate. The remedy of the rightful transferee of tangible personal property transferred under a designation in beneficiary form is limited to an action against the improper transferee of the property.
7. §2131.14 (N) terminates a transfer on death beneficiary designation to a former spouse of the owner when a divorce, dissolution of marriage or annulment of the marriage occurs after the designation of beneficiary form had been executed by the owner,

similar to current Ohio law governing TOD deeds, death benefits, trust provisions, etc. which name former spouses as beneficiaries.

The EPTPL Section Council strongly believes that the enactment of this statute will provide another useful tool to the residents of Ohio for transferring items of tangible personal property in an efficient and economical manner consistent with beneficiary designations Ohio residents can make for brokerage accounts, bank accounts, motor vehicles and real estate.

Text of the Proposal

2131.14 Designation of Tangible Personal Property in Beneficiary Form

(A) As used in this section:

(1) "Designate" or "designation in beneficiary form" means to designate, or the designation of, tangible personal property, with the intention to transfer ownership upon death of the present owner, to one or more persons as the transfer-on-death beneficiary or beneficiaries, who will become the owner or owners of the tangible personal property upon death of the present owner.

(2) "Beneficiary form" is shown by the words "transfer-on-death" or the abbreviation "TOD" after the item or items of tangible personal property and before the name of the transfer-on-death beneficiary or beneficiaries, or shown by any other words or statements to indicate intent to transfer ownership of tangible personal property upon the death of the present owner.

(3) "Person" or "persons" means an individual, a corporation, an organization, a trust or other legal entity.

(4) "Tangible personal property," for purposes of this section, shall mean objects that may be touched and moved (and animals) and shall include tangible personal property that is acquired after the execution of a designation in beneficiary form, but shall not include money other than coin collections or any registered or certificated tangible personal property, such as motor vehicles, watercrafts and outboard motors.

(5) "Transfer-on-death beneficiary" or "beneficiaries" means a person or persons, or class of persons, specified in a designation in beneficiary form who will become the owner or owners of the tangible personal property upon the death of the present owner. If a class of persons is named as the transfer-on-death beneficiary, only those members in the class who survive the death of the present owner shall receive an interest in the tangible personal property. Each surviving member in the class shall receive an equal interest in the tangible personal property being transferred unless otherwise specified in the designation in beneficiary form. A designation in beneficiary form that designates a class by description and not by naming the members of the class, such as, but not limited to, designating the children or descendants of the owner or another shall include all members of such class, whether born, adopted or existing before or after the beneficiary designation is made.

(6) "Transferring person" means any person who delivers or conveys tangible personal property to a transfer-on-death beneficiary or beneficiaries in accordance with a designation in beneficiary form which satisfies the requirements under Paragraph B.

(B) A designation in beneficiary form shall:

(1) Be in writing;

(2) Contain a general statement of disposition of all tangible personal property and/or describe the specific item or items of tangible personal property;

(3) Identify a specified part of the interest to be transferred, if less than the entire interest;

(4) Identify the name or class of the transfer-on-death beneficiary or beneficiaries in beneficiary form;

(5) Be dated; and

(6) Be executed by the present owner and acknowledged before a Notary Public.

(C) A designation in beneficiary form is not required to be supported by any consideration or be delivered to the transfer-on-death beneficiary or beneficiaries in order for the designation in beneficiary form to be effective.

(D) A designation in beneficiary form has no effect on the ownership of the tangible personal property until the death of the present owner. The present owner may revoke or change the designation in beneficiary form at any time without the consent of the transfer-on-death beneficiary or beneficiaries by a subsequently executed designation in beneficiary form or by a subsequently executed written instrument which is dated, executed by the present owner and acknowledged before a Notary Public.

(E) Upon the death of the present owner of tangible personal property designated in beneficiary form, the ownership of said tangible personal property shall pass to the transfer-on-death beneficiary or beneficiaries who survive the deceased owner or are in existence on the date of death of the deceased owner.

(F) A designation in beneficiary form may include primary and contingent transfer-on-death beneficiaries.

(G) If there are inconsistent designations in beneficiary form, the most recent designation in beneficiary form controls.

(H) If no primary or contingent transfer-on-death beneficiary or beneficiaries survive the deceased owner, the tangible personal property shall be included in the probate estate of the deceased owner.

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4960 (I) The beneficiary or beneficiaries of tangible personal property (pursuant to a
4961 designation in beneficiary form that was improperly distributed by a transferring person or
4962 otherwise) are liable to return to the rightful beneficiary or beneficiaries the tangible
4963 personal property improperly received by the beneficiary or beneficiaries. If a beneficiary
4964 who improperly received the tangible personal property no longer has the property interest
4965 or has imposed an encumbrance on the tangible personal property improperly received, the
4966 beneficiary is liable to return the value of the property as of the date of disposition.

4967
4968 (J) The owner, in making provision for a non-probate transfer under the provisions of this
4969 statute, gives to any transferring person acting hereunder the protections provided in this
4970 section for executing the owner's beneficiary designation.

4971
4972 (K) A transferring person may rely and act on a certified or authenticated copy of a death
4973 certificate issued by an official or agency of the place where the death occurred as showing the
4974 fact, place, date, time of death and the identity of the decedent, or a certified or authenticated
4975 copy of a report or record of any governmental agency that a person is deceased.

4976
4977 (L) A transferring person shall have no duty:

4978
4979 (1) To give notice to any person of the date, manner and persons to whom transfer will be
4980 made under the beneficiary designation;

4981
4982 (2) To attempt to locate any beneficiary;

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4984 (3) To locate a trustee or custodian, obtain appointment of a successor trustee or custodian,
4985 or discover the existence of a trust instrument or will that creates an express trust; and

4986
4987 (4) To determine any fact or law that would cause the beneficiary designation to be revoked,
4988 in whole or in part, as to any person or that would qualify or disqualify any person to receive
4989 a share under the non-probate transfer, or that would vary the distribution provided in the
4990 beneficiary designation.

4991
4992 (M) In the event there is an issue or problem with respect to the transfer of the tangible
4993 personal property to the transfer-on-death beneficiary or beneficiaries, a transferring person
4994 will have the right to petition the Probate Court having jurisdiction with respect to the deceased
4995 owner's estate for instructions.

4996
4997 (N) If, after the execution of a designation of beneficiary form under which the present
4998 owner of the tangible personal property's spouse is designated the transfer on death
4999 beneficiary, the present owner of the tangible personal property and such present owner's
5000 spouse are divorced, obtain a dissolution of marriage or have the marriage annulled, then the
5001 designation of the present owner's spouse as a transfer on death beneficiary on such instrument
5002 shall be terminated and the spouse shall be deemed to have predeceased the present owner of
5003 the tangible personal property.

(O) A transfer by the transferring person (in accordance with the provisions of this statute and pursuant to the beneficiary designation, in good faith and in reliance on information the transferring person reasonably believes to be accurate) discharges the transferring person from all claims and liability for the property transferred, regardless of any negligence in determining the proper transferees. The remedy of the rightful transferees of tangible personal property transferred under a designation in beneficiary form executed in conformities with this statute shall be limited to an action against the improper transferees.

(P) This section does not preclude other methods of transferring ownership of tangible personal property that are permitted by law and have the effect of postponing enjoyment of the tangible personal property until after the death of the present owner.

Proposal 3: To amend Ohio Revised Code Section 2106.13(A) to clarify that a surviving spouse is entitled to receive the spousal share of the allowance of support and one automobile without reducing the value of the allowance, consistent with Ohio law since 1990.

Summary and Rationale of Proposal

Prior to changes made by HB 432 in 2017, the previous version of Section 2106.13(A) permitted a surviving spouse to claim up to two of the deceased spouse's automobiles. The language was clear that the spouse's support allowance would only be reduced if more than one automobile was selected by the surviving spouse as follows:

PREVIOUS Sec. 2106.13(A) If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive, subject to division (B) of this section, in money or property the sum of forty thousand dollars as an allowance for support. **If the surviving spouse selected two automobiles under section 2106.18 of the Revised Code, the allowance for support prescribed by this section shall be reduced by the value of the automobile having the lower value of the two automobiles so selected.** The money or property set off as an allowance for support shall be considered estate assets. (*Emphasis added.*)

House Bill 432 amended Section 2106.18(A) on April 6, 2017 to the current statute permitting more than two automobiles to be selected by a surviving spouse if the total value of the vehicles does not exceed \$65,000. In conjunction with that change, House Bill 432 amended Section 2106.13 to eliminate the reference to "two automobiles" and replaced it with the current language referencing "one or more automobiles." The current statute is as follows:

CURRENT Sec. 2106.13(A) If a person dies leaving a surviving spouse and no minor children, leaving a surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive, subject to division (B) of this section, in money or property the sum of forty thousand dollars as an allowance for

support. **If the surviving spouse selected one or more automobiles** under section 2106.18 of the Revised Code, **the allowance for support prescribed by this section shall be reduced by the value of the automobile having the lowest value if more than one automobile is so selected.** The money or property set off as an allowance for support shall be considered estate assets. *(Emphasis added for discussion below.)*

The Estate Planning, Trust and Probate Law Section of the Ohio State Bar Association is proposing to amend Ohio Revised Code Section 2106.13(A) to clarify that a surviving spouse is entitled to receive the spousal share of the allowance of support **and** one automobile without reducing the value of the allowance, consistent with Ohio law since 1990. This clarification is desired to eliminate a perceived ambiguity in the current 2017 version of Section 2106.13(A) which suggests that the election of a single automobile by a surviving spouse might result in a reduction in the allowance for support.

A probate magistrate recently argued that this statute requires a reduction of the spousal allowance if even a single automobile is selected by a surviving spouse since the legislature references “one or more automobiles” in the statute. The contrary response to that argument is two-fold. First, that reading ignores the balance of the sentence conditioning the reduction on selecting “more than one automobile.” Second, the legislative history of Section 2106.13 indicates a continuing legislative intent to provide to a surviving spouse both the full allowance for support **and** an automobile without reducing the value of the support allowance.

Every iteration of Sections 2106.13(A) and 2106.18(A) since 1990 up until the current statutes clearly gave the surviving spouse BOTH the spousal allowance for support **and** one automobile without reducing the allowance. The 1990 legislation, adopted May 31, 1990 in Ohio House Bill 346, created the statutes for the spouse’s allowance for support (Section 2106.13) and the additional election to select a single automobile (Section 2106.18). After Section 2106.18 was expanded to permit a spouse to select two automobiles, the offset to the allowance for support was added in the PREVIOUS statute (printed above) requiring the value of the least expensive automobile to be deducted from the allowance for support. This still resulted in the right for the surviving spouse to select a single automobile without reducing the allowance for support. The EPTPL Section Council unanimously agrees that the current Section 2106.13(A) was intended to continue the option to receive both the spousal allowance for support **and** an automobile without reducing the allowance for support. The intention of 2017’s House Bill 432 was to reduce the spouse’s allowance for support **only if multiple automobiles are elected**, and then, only to reduce the allowance by the value of the least expensive automobile elected.

To eliminate this small ambiguity in the current statute, the EPTPL Section Council unanimously voted at the September 14, 2018 Section meeting to propose amending Ohio Revised Code Section 2106.13(A) as follows:

Text of the Proposal

(A) If a person dies leaving a surviving spouse and no minor children, leaving a

surviving spouse and minor children, or leaving minor children and no surviving spouse, the surviving spouse, minor children, or both shall be entitled to receive, subject to division (B) of this section, in money or property the sum of forty thousand dollars as an allowance for support. If the surviving spouse selected ~~one or more automobiles~~ **more than one automobile** under section 2106.18 of the Revised Code, the allowance for support prescribed by this section shall be reduced by the value of the automobile having the lowest value ~~if more than one automobile is~~ so selected. The money or property set off as an allowance for support shall be considered estate assets.

This proposed amendment definitively establishes that the allowance for support and an automobile are available to a surviving spouse without discounting the allowance. As historically provided in the previous statutes, the allowance for support in the proposed Section 2106.13(A) is discounted only if multiple automobiles are selected by a surviving spouse.

PROPOSAL 4: To repeal division (B)(2) of RC 5805.06 in its entirety to terminate a creditor's rights to trust assets after the lapse of powers of withdrawal held by the trust beneficiary.

Summary and Rationale of Proposal

Creditor rights after lapse of powers of withdrawal are to be terminated

RC 5805.06(A) subjects assets of revocable trusts to the rights of creditors of the settlor of the trust during the life of the settlor. RC 5805.06(B) treats beneficiaries who have the right to withdraw assets from the trust for a limited period of time as settlors with respect to the assets that can be withdrawn and treats beneficiaries who once had withdrawal rights as settlors to a limited extent.

The EPTPL Section Council recommends the repeal of RC 5805.06(B)(2). The result would be that, upon the lapse of the power of withdrawal, the trust interest of the former power holder would no longer be available to his creditors under RC 5805.06(B)(1). The EPTPL Section Council believes this appropriate since the trust property is no longer available to the power holder. The provision to be repealed was copied from the Uniform Trust Code. Many of the other states which have adopted the Uniform Trust Code also have deleted that provision.

Text of the Proposal

(B) For purposes of this section, all of the following apply:

(1) The holder of a power to withdraw is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power during the period the power may be exercised.

~~(2) Upon the lapse, release or waiver of the power of withdrawal, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the following amounts:~~

~~(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code;~~

~~(b) If the donor of the property subject to the holder's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in section 2503(b) of the Internal Revenue Code;~~

~~(c) If the donor of the property subject to the holder's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in section 2503(b) of the Internal Revenue Code.~~

(2) None of the following shall be considered an amount that can be distributed to or for the benefit of the settlor:

(a) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor only as a result of the exercise of a power of appointment held in a nonfiduciary capacity by any person other than the settlor;

(b) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor of a trust pursuant to the power of the trustee to make distributions or pursuant to the power of another in a fiduciary capacity to direct distributions, if and to the extent that the distributions could be made from trust property the value of which was included in the gross estate of the settlor's spouse for federal estate tax purposes under section 2041 or 2044 of the Internal Revenue Code or that was treated as a transfer by the settlor's spouse under section 2514 or 2519 of the Internal Revenue Code;

(c) Trust property that, pursuant to the exercise of a discretionary power by a person other than the settlor, could be paid to a taxing authority or to reimburse the settlor for any income tax on trust income or principal that is payable by the settlor under the law imposing the tax.

PROPOSAL 5: To amend RC 5804.11(B) to clarify that the nomination of an individual or corporate entity in a trust agreement as a future or successor trustee may be changed by the court or by a private settlement agreement.

Summary and Rationale of Proposal

Trustee removal bar is more clearly limited to currently serving trustees.

The Ohio Trust Code denies to a court power to remove a trustee except for cause, RC 5804.11(B) and 5807.06. Further, since under RC 5801.10(C), a private settlement agreement may contain only provisions that could be properly approved by a court, a private settlement agreement cannot be used to remove a trustee except for cause.

Some consider it uncertain whether a nomination of a future or successor trustee is subject to this bar, that is, whether a future or successor trustee can be “removed” even before he assumes office. For example, a trust may provide for the surviving spouse to be trustee and for a named bank to become successor trustee when the surviving spouse dies, resigns or is disabled. May the court or a private settlement agreement change that successor to a different bank, or to an individual?

The EPTPL Section Council recommends that the statute be clarified to confirm that a future or successor trustee named in a trust agreement may be changed by the court or by a private settlement agreement. To effect this change, the Council recommends a two-word addition to the statute as follows:

Text of the Proposal

RC 5804.11(B). A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified, but not to remove or replace the currently serving trustee, upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. A spendthrift provision in the terms of the trust may, but is not presumed to, constitute a material purpose of the trust. In determining what constitutes a material purpose of a trust, a court may but is not required to consider extrinsic evidence indicating a settlor’s intent at the time the instrument was executed.

The above sentence generating the uncertainty was added in the Ohio version of the Uniform Trust Code to limit the power of the court to remove currently serving trustees to removal for cause. It was not intended further to limit the power of the court or the use of private settlement agreements with respect those who had yet even become trustees (how would you remove a future or successor trustee only for cause, where he has never had an opportunity to misbehave, may not even know of his nomination and may never become trustee because he may die or decline to serve, or the trust may terminate prior to his taking office?). Further authority that a bar to removal of a trustee does not apply to one who has not yet become trustee is found in the celebrated case *Marbury v. Madison*, 1 Cranch (5 U.S.)137 (1803).

5224 **REPORT OF THE REAL PROPERTY LAW SECTION COUNCIL**

5225
5226 *To the Council of Delegates:*

5227
5228 The Real Property Law Section Council respectfully requests your favorable consideration of
5229 the following proposal:

5230
5231 A proposal to modify the Ohio Standards of Title Examination by amending Standards
5232 3.18, 3.19, 4.2, 4.4, 4.7, and 4.8, to clarify when a trust is a “disclosed trust,” to attempt
5233 to provide further clarification as to circumstances under which a deed containing
5234 errors may be corrected and re-recorded, to update the standard regarding the
5235 encumbrance of estate tax to reflect current statutes, to specifically address oil and gas
5236 leases separately from other types of recorded leases, to revise the standard regarding
5237 use restrictions or restrictions which entail the forfeiture of title and to reflect the effect
5238 of failure of a lienholder to join the statutory dedication of a subdivision plat. New
5239 Standard 4.12 is proposed to address whether an assignment of rents and/or leases may
5240 be treated as having been released, if the contemporaneously-filed mortgage is canceled
5241 or released of record. Amendments are further proposed with respect to Standards 5.3,
5242 5.5, 6.2, and 7.1 to simplify the standard with respect to certificates of transfer, to
5243 provide more detail as to when and what documents should be admitted to record in
5244 the county where the real property is situated if title is dependent upon out-of-county
5245 probate proceedings, to clarify identification of real property in service of process by
5246 publication, and to clarify wording with respect to verification of a pleading. Finally,
5247 new Standard 7.2 is proposed to address conditions affecting reliance upon a final order
5248 in court proceedings.

5249
5250 Respectfully submitted,

5251
5252 **John W. Waldeck, Jr., Cleveland**
5253 Chair, Real Property Law Section
5254

5255 **Rationale for Proposal**

5256
5257 The Ohio Standards of Title Examination are prepared by the Real Property Law Section
5258 Council of the Ohio State Bar Association, approved by the Council of Delegates, and
5259 promulgated by the OSBA for the primary purpose of promoting uniformity of practice
5260 pertaining to the marketability of title of real property in the State of Ohio. While not statutory,
5261 these standards establish a custom and practice regarding the examination of title and
5262 marketability of title based upon existing statutes and case law. This is typically done in the
5263 format of a question, the answer to the question establishing the standard, and comments
5264 regarding the standard.

5265
5266 Title Standard 3.18 has been amended by the addition of Comment A to clarify when a trust is
5267 a “disclosed trust” as that term is used in Problem A of the Standard.
5268

5269 Title Standard 3.19 has been substantially revised to attempt to provide additional guidance as
5270 to when it would be permissible to revise a previously-recorded deed without
5271 reacknowledgement by the grantor and when other steps would be necessary to correct errors
5272 in a recorded deed.
5273
5274 Title Standard 4.2 has been amended to take into account statutory changes regarding Ohio
5275 estate tax.
5276
5277 Title Standard 4.4 has been amended to set forth separate standards regarding when reference
5278 to a recorded lease may be omitted from a title opinion, based upon whether or not the lease is
5279 an oil or gas lease.
5280
5281 Title Standard 4.7 has been substantially revised to eliminate the previous Standard A and
5282 related Comment A that permitted the breach of a building and use condition or use restriction
5283 which entails a forfeiture of title may be disregarded after the breach has been existing for
5284 more than 30 years and to require that objection be made if the condition or restriction remains
5285 valid under the Marketable Title Act.
5286
5287 Title Standard 4.8 has been amended at Comment A to amplify that, if the statutory dedication
5288 of a subdivision plat is not joined by a lienholder, then any rights of the land owner that are
5289 dependent upon the plat and the dedication thereof are subordinate to the lien(s).
5290
5291 Proposed Title Standard 4.12 is a new standard to address the issue of when the cancelation or
5292 release of a mortgage that was recorded contemporaneously with an assignment of rents and/or
5293 leases instrument may be treated as also having released that assignment of rents and/or leases
5294 instrument.
5295
5296 Title Standard 5.3 has been amended to eliminate Problem B and Standard B which related, in
5297 part, to verified pleadings which were not believed to be helpful.
5298
5299 Title Standard 5.5 regarding documents to be admitted to record in the county where the real
5300 property is situated, when title is dependent on out-of-county estate administration proceedings
5301 has been amended to provide more details as to what documents should be filed in the county
5302 where the real property is situated.
5303
5304 Title Standard 6.2 has been amended to clarify how real property may be identified where
5305 service of process is had by publication in an action relating to title to real property.
5306
5307 Title Standard 7.1 has been minimally amended to clarify language.
5308
5309 Title Standard 7.2 is a new Standard proposed to provide guidance as to conditions under which
5310 a final order in proceedings affecting title to real estate may be relied upon.
5311
5312 It is further respectfully requested that appropriate reference to effective dates of the
5313 amendments be authorized to be added at the end of each Standard, as adopted.
5314

Text of Proposal

(New text is underlined and text to be deleted is stricken through.)

OTS 3.18

3.18 UNRECORDED DISCLOSED TRUSTS

Problem A:

Should objection be made to a title dependent upon a disclosed trust not of record?

Standard A:

Yes, unless there is placed of record either (1) excerpts of the operative provisions of the trust agreement, together with an affidavit that it is a true copy of the text in the trust agreement, or (2) a Memorandum of Trust in conformity with the requirements of R.C. 5301.255. (R.C. 5301.01, effective August 10, 1994; R.C. 5301.255, effective, as amended, January 17, 2008)

Comment A:

A disclosed trust is one in which some identifying information about the trust beyond the word “Trustee” or “Agent” is used to indicate that the property is held in trust. (ORC 5301.03 effective 10/1/1953).

(Comment added _____, 2019; eEffective as amended May 13, 2009; originally amended May 18, 1995; originally effective November 15, 1986)

OTS 3.19

3.19 RE-RECORDING OF DEFECTIVE DEED, AFTER CORRECTIONS

Problem A:

Under what circumstances may a deed containing errors of content or execution be corrected and re-recorded, and be acceptable for clearing of title?

Standard A:

The answer depends on the nature of the defect and whether the deed is acknowledged before recording. ~~In general, a change made to clarify or to complete a document may be accomplished by re-filing, but~~ A change made to alter the nature~~substance~~ of the document is ineffective.

Whenever a document is re-recorded to make a correction, the re-recorded document should contain on the face of the document a statement of the changes that were made.

Comment A:

The following are examples of changes that are permissible ~~to~~ without a reacknowledgment by the grantor: to correct a spelling or to add an initial in the name of the grantor who was in title or an initial of the name of the intended grantee; to show the correct tax-mailing address of the grantee; to make a minor correction in the legal description; to make a minor correction in the address or the tax parcel number of the subject real estate to conform such information to the legal description; to correct a minor defect in the attestation or acknowledgment.

If ~~the a grantors should~~ reacknowledges the instrument before it is ~~refiled~~ recorded, then a more significant error or omission may be corrected, such as; or a missing marital status may be recited,; or a correction may be made to correct serious errors or admissions omissions in a legal description.

In the event that an instrument erroneously conveys an interest owned by a grantor to a grantee, a corrective deed, even if reacknowledged, is insufficient to correct the error. The following are examples of changes that are impermissible and cannot be corrected by re-recording a prior document: to add or delete a grantee; to make major substantive changes in the legal description — for example: Lot 1 conveyed, whereas Lot 11 intended to be conveyed; to add or delete restrictive covenants or easements.

Particular circumstances ~~can~~ may alter generalities. A grantee may not confer good title on himself or herself by adding or deleting a few words to a deed and recording it; nor may a grantor diminish (although he or she may augment) a title previously conveyed.

(Effective as amended , 2019; originally effective May 18, 1994)

OTS 4.12

4.12 ENCUMBRANCES-ASSIGNMENT OF RENTS AND LEASES

Problem A:

When an assignment of rents and/or leases instrument has been recorded contemporaneously with a mortgage and the mortgage has been cancelled or released of record but not the corresponding assignment of rents or leases, should the assignment of rents and/or leases be treated as having been released?

Standard A:

Yes, unless other facts in the recorded instruments indicate a contrary intention and only if such release was recorded after the recording of the assignment of rents and/or leases and the legal description for the corresponding mortgage describes the same property set forth in the assignment of rents and/or leases.

(Effective , 2019)

5407
5408 **OTS 4.2**

5409
5410 **4.2 ENCUMBRANCES-ESTATE (~~INHERITANCE~~)-TAX**

5411
5412 **Problem A:**

5413
5414 Is a decedent's real property divested of the lien of the state estate (~~inheritance~~)-tax by a conveyance
5415 by an executor acting pursuant to a testamentary power of sale?
5416

5417 **Standard A:**

5418
5419 ~~No, if decedent died prior to April 1, 1972; y~~Yes, if decedent died on or after that date, provided
5420 the conveyance is to a bona fide purchaser for an adequate consideration.
5421

5422 **Comment A:**

5423
5424 See R.C. Sec. 5731.02 (A) as amended, the levy of an estate tax is limited to persons dying on or
5425 after July 1, 1968 and before January 1, 2013. As to the estates of persons who died prior to April
5426 1, 1972, there is not sufficient authority to justify omission of the lien from the title report. As to
5427 the estates of persons dying on or after that date, see R.C. Sec. 5731.37(A)(2), as amended,
5428 effective April 1, 1972. Further, tThe lien is divested generally after ten years from the date of
5429 decedent's death. ~~R.C. 5731.171 (Inheritance Tax); R.C. Sec. 5731.38 (Estate Tax).~~
5430

5431 *(Effective as amended _____, 2019; amended November 11, 1972; amended at various*
5432 *times; originally effective May 21, 1953-and amended at various times)*
5433

5434 **Problem B:**

5435
5436 Should a title be considered unmarketable in the hands of a purchaser, encumbrancer or lessee for
5437 value, as disclosed by the record, whose grantor acquired title by gift, the donor of which gift
5438 survived the gift, ~~if made prior to July 1, 1968 (R.C. Sec. 5731.04, Inheritance Tax), by more than~~
5439 ~~two years; and, if made after June 30, 1968 (R.C. Sec. 5731.05, Estate Tax), by more than three~~
5440 ~~years?~~
5441

5442 **Standard B:**

5443
5444 No. See R.C. Sec. 5731.05 (C) (1).
5445

5446 *(Effective as amended _____, 2019; amended November 13, 1971; originally effective*
5447 *November 16, 1957)*
5448

5449 **OTS 4.4**

5450
5451 **4.4 ENCUMBRANCES-LEASES**

5452
5453 **Problem A:**

~~Should an oil, gas or coal lease be shown when satisfactory evidence is furnished that rentals are in default and that minerals are not being produced? May an examiner omit from his opinion reference to a recorded lease, other than an oil or gas lease, when the term expressed in the lease has expired?~~

Standard A:

~~No, provided further that the primary term of the lease has expired. Yes, in the absence of notice of renewal arising from possession, record or otherwise.~~

Comment A:

~~See R.C. Sec. 5301.332.~~

~~(Effective as amended _____, 2019; amended May 20, 1965; originally effective May 21, 1953)~~

Problem B:

~~May an examiner omit from his opinion reference to a recorded lease when the terms expressed in the lease have expired? Should an oil or gas lease be shown even if satisfactory evidence is furnished that rentals are in default and that minerals are not being produced?~~

Standard B:

~~Yes, in the absence of notice of renewal arising from possession, record or otherwise. Yes.~~

Comment B:

~~See R.C. Sec. 5301.332~~

~~(Effective as amended _____, 2019; originally effective November 12, 1960)~~

OTS 4.7

4.7 ENCUMBRANCES-BUILDING AND USE RESTRICTIONS WITH FORFEITURE PROVISIONS

Problem A:

After what period of time should a breach of a building and use conditions or restriction which entails a forfeiture of title be disregarded?

Standard A:

~~A title should not be considered unmarketable because of a breach of a condition or conditions~~

as to building and use which entail a forfeiture of title if satisfactory proof is furnished that such breach has existed for more than thirty years. If the condition or restriction remains valid under the Marketable Title Act, objection should be made.

Comment A:

Satisfactory proof may be affidavits as to the facts of breach, recorded instruments in the chain of title, certificate of registered surveyor.

(Effective as amended , 2019; originally effective November 12, 1960)

OTS 4.8

4.8 ENCUMBRANCES-SUBSCRIPTION OF SUBDIVISION PLAT BY LIEN HOLDERS

Problem A:

Is the statutory dedication of a subdivision plat affected by the failure of lien holders to join in the dedication?

Standard A:

No.

Comment A:

~~However, the~~ The rights of the lien holders continue unaffected by the platting and dedication. As such, any rights of the landowner in and to the real property that are dependent upon the plat and the dedication thereof are subordinate to the lien(s).

(Effective as amended , 2019; originally effective May 8, 1969)

OTS 5.3

5.3 PROBATE COURT PROCEEDINGS-CERTIFICATES ~~FOR~~OF TRANSFER

Problem A:

Do errors in a certificate ~~for~~of transfer from probate court affect the title?

Standard A:

No. Objections on account of errors in a certificate ~~for~~of transfer should not be made (a) unless the errors are such as to cause future difficulties to a client in obtaining a transfer on the real estate tax records, or (b) unless the terms of the certificate raise a reasonable doubt of the facts

of ownership shown by other records of title.

(Effective as amended _____, 2019; originally effective May 21, 1953)

Problem B:

~~Should a recital as to heirship in an instrument, verified pleading or decree be accepted as proof of the facts stated in lieu of a certificate of transfer or an affidavit of transfer?~~

Standard B:

~~Yes; provided the instrument or verified pleading has been of record for more than thirty years and is not in conflict with other instruments of record.~~

~~*(Effective as amended November 17, 1956; originally effective May 21, 1953)*~~

OTS 5.5

5.5 PROBATE COURT PROCEEDINGS-RECORDING OF OUT-OF-COUNTY PROCEEDINGS

Problem A:

If administration proceedings in an Ohio estate are not admitted to record in the county where the real property is situated~~locally~~, should objection be made to the ~~record~~title evidenced by a certificate of transfer, or a deed of the executor or administrator of such out-of-county proceedings ~~if such proceedings are not required to be so admitted to record by statute or the Civil Rules?~~

Standard A:

Yes.

Comment A:

Before title can be considered to be marketable of record, it is necessary to admit to record in the probate court of the county where the real property is situated~~locally~~ at least those portions of the ~~out-of-county~~foreign proceedings which are necessary to show that the title which was derived through such deed or as noticed by such certificate of transfer~~proceedings~~ was at the time in question duly authorized, and with respect to any such deed, the executor or administrator was duly appointed, qualified, and acting in the fiduciary capacity described in the deed~~free from liens and defects resulting from or related to such proceedings~~. As a general matter, those portions of the proceedings necessary to evidence authority for a certificate of transfer or for the executor or administrator include authenticated copies of the admission to probate with copy of the will if testate pursuant to R.C. Sec. 2107.21 and the appointment of the executor or administrator. In the absence of a testamentary power of sale or an administrator

when there is no will annexed with power of sale, there should also be an appropriate order of court authorizing the sale by the fiduciary, or a power of sale by written consent pursuant to R.C. Sec. 2127.011.

(Effective as amended _____, 2019; amended November 13, 1971; prior conflicting Standard effective May 11, 1967)

OTS 6.2

6.2 SERVICE BY PUBLICATION-NECESSITY TO IDENTIFY REAL PROPERTY

Problem A:

Where service of process is had by publication in an action relating to title to real property, must the publication identify the real property?

Standard A:

Yes.

Comment A:

~~Neither Rule 4.4 Process: Service by Publication(a) of the Ohio Rules of Civil Procedure does not require~~ specifies that the publication contain a legal description of the real property to be subjected to the action. ~~To "identify" the real property does not make it mandatory for the party to set forth entire metes and bounds description. Metes and bounds descriptions are not required.~~ Other methods of identification may be used, and it is suggested that Reference to intersections, roads and streets, official municipal street numbers, postal addresses, or county designated house numbers, county auditor's permanent parcel numbers, or other like descriptions suffice would be sufficient.

(Effective as amended _____, 2019; Comment A was amended January 18, 1991; originally effective November 13, 1971. ~~Comment A was amended January 18, 1991)~~

OTS 7.1

~~Prepared by the Real Property Law Section of the Ohio State Bar Association~~

7.1 COURT PROCEEDINGS-VERIFICATION OF PLEADINGS

Problem A:

Does the omission or irregularity of a verification of a pleading render a title unmarketable ~~which~~ when title is based upon a subsequent ~~deed~~ order in the case?

Standard A:

No.

(Effective as amended _____, 2019; originally effective May 16, 1957)

OTS 7.2

7.2 COURT PROCEEDINGS-RELIANCE ON FINAL ORDERS

Problem A:

May a final order be relied upon as affecting title in whatever manner is stated in that order, without reviewing any of the other documents filed in the case?

Standard A:

No.

Comment A:

The documents filed in the case should be reviewed to confirm that the proceedings were in order and that there is a final order. For example, care should be taken to ensure that all parties that had an interest in the property were named and properly served, if the final order would have any effect on the interests of those individuals or entities. Consideration should also be given to whether the time to appeal from the final order has expired and whether a stay of execution of the final order has been sought or other execution has been made.

(Effective _____, 2019)

5668 **REPORT OF THE SENIOR LAWYERS SECTION COUNCIL**

5669
5670 *To the Council of Delegates*

5671
5672 The Senior Lawyers Section Council respectfully requests your favorable consideration of the
5673 following proposed amendment to Chapter 2305 of the Revised Code:

5674
5675 To amend sections 2305.11(A) and 2305.113 of the Revised Code to provide for the
5676 adoption in Ohio of a Legal Malpractice Statute of Repose.

5677
5678 Respectfully submitted,

5679
5680 **Thomas Guillozet, Versailles**
5681 Chair, Senior Lawyer Section Council

5682
5683 **Rationale for Proposal**

5684
5685 In her article in the September/October 2018 edition of the *Ohio Lawyer* entitled **Lawyer's**
5686 **Estate Planning: Legal Malpractice Statute of Repose**, Sandra J. Dickinson notes that:

- 5687
5688 1. Managing professional liability poses a unique challenge for a lawyer's estate plan....The
5689 older lawyers get and the longer the practice, the more likely they are to face claims.
5690 Claims can be more than \$1 million, and defense costs are increasing. Half of solo
5691 practitioners likely practice in the top four areas of claims. Under Ohio's statute of
5692 limitations and "discovery rule" – a client may bring a legal malpractice claim against a
5693 lawyer any time after he or she retires for the rest of his or her life, and up to one year
5694 after he or she dies.
5695
5696 2. Under current Ohio law, estate planning is complicated, and lawyers must plan in an
5697 environment of uncertainty. If Ohio lawyers had a Statute of Repose, estate planning
5698 would be simplified and more certain. A Statute of Repose puts an absolute end to a
5699 lawyer's estate's exposure to a legal malpractice claim. Other Ohio professionals have a
5700 Statute of Repose (e.g., doctors), and lawyers in other states have a Statute of Repose,
5701 especially other states with a "discovery rule."
5702
5703 3. The Ohio Supreme Court has stated that the "discovery rule" is fair to medical defendants
5704 *only* because they are protected from indefinite liability by the Statute of Repose. **A legal**
5705 **malpractice statute of repose should evolve parallel to medical malpractice repose**
5706 **for the same policy reasons. Ohio lawyers have never had protection of repose. Ohio**
5707 **law without a statute of repose is, and has been since 1983, fundamentally unfair to**
5708 **legal defendants.**
5709
5710 4. Under current law, Ohio's retiring lawyers have to plan for indefinite exposure to
5711 professional liability after retirement/termination of attorney-client relationships for the

rest of a lawyer's life and up to one year after the attorney's death. If Ohio lawyers had a Statute of Repose, they would only have to plan for exposure after retirement/termination for the definite repose period. Ohio's aging legal profession needs a Statute of Repose now more than ever.

The Senior Lawyers Section Council believes that amendment to RC§2305.11 and 2305.113 would provide attorneys in Ohio with the security of knowing that their assets will be protected after a definite period of time.

Text of the Proposal

2305.11 Time limitations for bringing certain actions.

(A) An action for libel, slander, malicious prosecution, or false imprisonment, an action for malpractice other than an action upon a medical, legal, dental, optometric, or chiropractic claim, or an action upon a statute for a penalty or forfeiture shall be commenced within one year after the cause of action accrued, provided that an action by an employee for the payment of unpaid minimum wages, unpaid overtime compensation, or liquidated damages by reason of the nonpayment of minimum wages or overtime compensation shall be commenced within two years after the cause of action accrued.

(B) A civil action for unlawful abortion pursuant to section 2919.12 of the Revised Code, a civil action authorized by division (H) of section 2317.56 of the Revised Code, a civil action pursuant to division (B) of section 2307.52 of the Revised Code for terminating or attempting to terminate a human pregnancy after viability in violation of division (A) of section 2919.17 of the Revised Code, and a civil action for terminating or attempting to terminate a human pregnancy of a pain-capable unborn child in violation of division (E) of section 2919.201 of the Revised Code shall be commenced within one year after the performance or inducement of the abortion or within one year after the attempt to perform or induce the abortion in violation of division (A) of section 2919.17 of the Revised Code or division (E) of section 2919.201 of the Revised Code.

(C) As used in this section, "medical claim," "legal claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.

Amended by 131st General Assembly File No. TBD, SB 127, §1, eff. 3/14/2017.

Amended by 129th General Assembly File No.45, HB 78, §1, eff. 10/20/2011.

Effective Date: 04-11-2003.

2305.113 Medical and legal malpractice actions.

(A) Except as otherwise provided in this section, an action upon a medical, legal, dental, optometric, or chiropractic claim shall be commenced within one year after the cause of action accrued.

(B)

(1) If prior to the expiration of the one-year period specified in division (A) of this section, a claimant who allegedly possesses a medical, legal, dental, optometric, or chiropractic claim gives to the person who is the subject of that claim written notice that the claimant is considering bringing an action upon that claim, that action may be commenced against the person notified at any time within one hundred eighty days after the notice is so given.

(2) An insurance company shall not consider the existence or nonexistence of a written notice described in division (B)(1) of this section in setting the liability insurance premium rates that the company may charge the company's insured person who is notified by that written notice.

(C) Except as to persons within the age of minority or of unsound mind as provided by section 2305.16 of the Revised Code, and except as provided in division (D) of this section, both of the following apply:

(1) No action upon a medical, legal, dental, optometric, or chiropractic claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical, legal, dental, optometric, or chiropractic claim.

(2) If an action upon a medical, legal, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the medical, legal, dental, optometric, or chiropractic claim, then, any action upon that claim is barred.

(D)

(1) If a person making a medical claim, legal claim, dental claim, optometric claim, or chiropractic claim, in the exercise of reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within three years after the occurrence of the act or omission, but, in the exercise of reasonable care and diligence, discovers the injury resulting from that act or omission before the expiration of the four-year period specified in division (C)(1) of this section, the person may commence an action upon the claim not later than one year after the person discovers the injury resulting from that act or omission.

(2) If the alleged basis of a medical claim, dental claim, optometric claim, or chiropractic claim is the occurrence of an act or omission that involves a foreign object that is left in the body of the person making the claim, the person may commence an action upon the claim not later than one year after the person discovered the foreign object or not later than one year after the person, with reasonable care and diligence, should have discovered the foreign object.

(3) A person who commences an action upon a medical claim, legal claim, dental claim, optometric claim, or chiropractic claim under the circumstances described in division (D)(1) or (2) of this section has the affirmative burden of proving, by clear and convincing evidence,

that the person, with reasonable care and diligence, could not have discovered the injury resulting from the act or omission constituting the alleged basis of the claim within the three-year period described in division (D)(1) of this section or within the one-year period described in division (D)(2) of this section, whichever is applicable.

(E) As used in this section:

(1) "Hospital" includes any person, corporation, association, board, or authority that is responsible for the operation of any hospital licensed or registered in the state, including, but not limited to, those that are owned or operated by the state, political subdivisions, any person, any corporation, or any combination of the state, political subdivisions, persons, and corporations. "Hospital" also includes any person, corporation, association, board, entity, or authority that is responsible for the operation of any clinic that employs a full-time staff of physicians practicing in more than one recognized medical specialty and rendering advice, diagnosis, care, and treatment to individuals. "Hospital" does not include any hospital operated by the government of the United States or any of its branches.

(2) "Physician" means a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board or a person who otherwise is authorized to practice medicine and surgery or osteopathic medicine and surgery in this state.

(3) "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice registered nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following:

(a) Derivative claims for relief that arise from the plan of care, medical diagnosis, or treatment of a person;

(b) Claims that arise out of the plan of care, medical diagnosis, or treatment of any person and to which either of the following applies:

(i) The claim results from acts or omissions in providing medical care.

(ii) The claim results from the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment.

(c) Claims that arise out of the plan of care, medical diagnosis, or treatment of any person and that are brought under section 3721.17 of the Revised Code.

(d) Claims that arise out of skilled nursing care or personal care services provided in a home pursuant to the plan of care, medical diagnosis, or treatment.

5850 (4) "Podiatrist" means any person who is licensed to practice podiatric medicine and surgery
5851 by the state medical board.
5852

5853 (5) "Dentist" means any person who is licensed to practice dentistry by the state dental board.
5854

5855 (6) "Dental claim" means any claim that is asserted in any civil action against a dentist, or
5856 against any employee or agent of a dentist, and that arises out of a dental operation or the dental
5857 diagnosis, care, or treatment of any person. "Dental claim" includes derivative claims for relief
5858 that arise from a dental operation or the dental diagnosis, care, or treatment of a person.
5859

5860 (7) "Derivative claims for relief" include, but are not limited to, claims of a parent, guardian,
5861 custodian, or spouse of an individual who was the subject of any medical diagnosis, care, or
5862 treatment, dental diagnosis, care, or treatment, dental operation, optometric diagnosis, care, or
5863 treatment, or chiropractic diagnosis, care, or treatment, that arise from that diagnosis, care,
5864 treatment, or operation, and that seek the recovery of damages for any of the following:
5865

5866 (a) Loss of society, consortium, companionship, care, assistance, attention, protection, advice,
5867 guidance, counsel, instruction, training, or education, or any other intangible loss that was
5868 sustained by the parent, guardian, custodian, or spouse;
5869

5870 (b) Expenditures of the parent, guardian, custodian, or spouse for medical, dental, optometric,
5871 or chiropractic care or treatment, for rehabilitation services, or for other care, treatment,
5872 services, products, or accommodations provided to the individual who was the subject of the
5873 medical diagnosis, care, or treatment, the dental diagnosis, care, or treatment, the dental
5874 operation, the optometric diagnosis, care, or treatment, or the chiropractic diagnosis, care, or
5875 treatment.
5876

5877 (8) "Registered nurse" means any person who is licensed to practice nursing as a registered
5878 nurse by the board of nursing.
5879

5880 (9) "Chiropractic claim" means any claim that is asserted in any civil action against a
5881 chiropractor, or against any employee or agent of a chiropractor, and that arises out of the
5882 chiropractic diagnosis, care, or treatment of any person. "Chiropractic claim" includes
5883 derivative claims for relief that arise from the chiropractic diagnosis, care, or treatment of a
5884 person.
5885

5886 (10) "Chiropractor" means any person who is licensed to practice chiropractic by the state
5887 chiropractic board.
5888

5889 (11) "Optometric claim" means any claim that is asserted in any civil action against an
5890 optometrist, or against any employee or agent of an optometrist, and that arises out of the
5891 optometric diagnosis, care, or treatment of any person. "Optometric claim" includes derivative
5892 claims for relief that arise from the optometric diagnosis, care, or treatment of a person.
5893

5894 (12) "Optometrist" means any person licensed to practice optometry by the state vision
5895 professionals board.

(13) "Physical therapist" means any person who is licensed to practice physical therapy under Chapter 4755. of the Revised Code.

(14) "Home" has the same meaning as in section 3721.10 of the Revised Code.

(15) "Residential facility" means a facility licensed under section 5123.19 of the Revised Code.

(16) "Advanced practice registered nurse" has the same meaning as in section 4723.01 of the Revised Code.

(17) "Licensed practical nurse" means any person who is licensed to practice nursing as a licensed practical nurse by the board of nursing pursuant to Chapter 4723. of the Revised Code.

(18) "Physician assistant" means any person who is licensed as a physician assistant under Chapter 4730. of the Revised Code.

(19) "Emergency medical technician-basic," "emergency medical technician-intermediate," and "emergency medical technician-paramedic" means any person who is certified under Chapter 4765. of the Revised Code as an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, whichever is applicable.

(20) "Skilled nursing care" and "personal care services" have the same meanings as in section 3721.01 of the Revised Code.

(21) "Legal claim" means any claim that is asserted in a civil action against a licensed attorney, or against any employee or agent of a licensed attorney, and that arises out of the consultation or representation of any person in legal proceedings, drafting and execution of documents, and any other action for which an attorney may be retained.

(22) "Legal" means any person licensed to practice law by the Ohio Supreme Court.

Amended by 132nd General Assembly File No. TBD, HB 49, §130.11, eff. 1/21/2018.

Amended by 131st General Assembly File No. TBD, HB 216, §1, eff. 4/6/2017.

Amended by 131st General Assembly File No. TBD, SB 110, §1, eff. 10/15/2015.

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Amended by 129th General Assembly File No.194, HB 303, §1, eff. 3/20/2013.

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