



New Ohio Asset Protection Statute

By Richard Harris

ON MARCH 27, 2013, the new Legacy Trust Act took effect in Ohio. The Act is significant as it provides for a new type of irrevocable trust that allows an unprecedented level of asset protection against almost every creditor, while allowing a grantor to retain certain rights and powers. Under current law, a creditor of a grantor trust can reach a trust's assets to the extent that a grantor can reach the assets. A legacy trust, however, will act as a shield against most creditors unless the creditor can prove that the conveyance to the trust was a fraudulent conveyance, or the claim relates to child support or spousal support for a current or former spouse.

A legacy trust is not limited to Ohio residents. Residents of any state may establish a legacy trust so long as the trust is created and administered in accordance with the requirements of the Act:

- + First, the trust must be irrevocable.

- + Second, the grantor must execute a "qualified affidavit" which states, among other things, that the assets transferred to the trust are not from an unlawful activity, the transfer is not intended to defraud creditors, the transfer will not make the grantor insolvent, and the grantor does not intend to file for bankruptcy.

- + Third, the trustee must be an Ohio resident or a corporate trustee authorized to act as a trustee in Ohio and must materially participate in administering the trust.

- + Finally, the trust must have a spendthrift provision applicable to a beneficiary's interests (including

the grantor if the grantor is a beneficiary), and expressly incorporate Ohio law.

Assuming all of these requirements are met, the trust's assets are protected against future creditors and the grantor is able to retain certain rights and powers. Included in those rights and powers are, among other things, the grantor's ability to withdraw up to five percent (5%) of the trust assets annually (in addition to any other distributions that are authorized by the trust agreement and distributed by the trustee), to remove and replace the trustee, to provide guidance regarding trust investments, and to continue to live in a residence held by the trust.

In addition to being one of the leading asset protection statutes in the nation, the Act is also touted as a jobs bill that will allow Ohio financial institutions and professional service firms to be very competitive with other states in trust administration and asset protection. The Act is expected to create and retain thousands of jobs in these areas and provide increased revenue to Ohio.

The Act is also expected to stem the flow of Ohio retirees who become residents of states like Florida due to attractive asset protection laws and lack of estate and income taxes. While Ohio still has income taxes, it repealed the estate tax as of January 1, 2013, and now has one of the best asset protection statutes in the country, making Ohio a much more attractive state for retirees and those concerned with asset protection.

Richard Harris is a partner in the Estate, Succession and Probate Administration practice group at Brouse McDowell in Akron.