



Ohio Revised Code

Section 5816.05 Permissible retained rights of a transferor.

Effective: August 17, 2021

Legislation: House Bill 7

A legacy trust may allow or provide for any or all of the following rights, powers, interests, or provisions, none of which grants, or is considered to be, either alone or in any combination, a right or power to revoke a trust or to voluntarily or involuntarily transfer an interest in that trust:

- (A) A provision that, upon the happening of a defined event or a stated contingency, results in the termination of a transferor's right to mandatory income or principal;
- (B) The power of a transferor to veto a distribution from the trust;
- (C) A power of appointment, other than a power to appoint to a transferor, a creditor of the transferor, the estate of the transferor, or a creditor of the transferor's estate, that is exercisable by will or by other written instrument of a transferor effective upon the death of the transferor or during the lifetime of the transferor;
- (D) The right of a transferor to receive trust income as set forth in the trust instrument.
- (E) Both of the following:
 - (1) A transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in section 664 of the Internal Revenue Code;
 - (2) The transferor's right, at any time and from time to time by written instrument delivered to the trustee, to release the transferor's retained interest in that unitrust or annuity trust, in whole or in part, in favor of one or more charitable organizations that have a succeeding beneficial interest in that unitrust or annuity trust;
- (F) The power of a transferor to consume, invade, or appropriate property of the trust, but only if



limited in each calendar year to five per cent of the value of the trust principal at the time of the exercise of the power;

(G) A transferor's potential or actual receipt or use of principal or income of the trust if the potential or actual receipt or use is or would be the result of any of the following that applies with respect to one or more of the qualified trustees:

(1) A qualified trustee's acting in the trustee's discretion. For purposes of division (G)(1) of this section, a qualified trustee shall have discretion with respect to the distribution or use of principal or income unless the discretion is expressly denied to the trustee by the terms of the trust instrument.

(2) A qualified trustee's acting pursuant to a standard in the trust instrument that governs the distribution or use of principal or income;

(3) A qualified trustee's acting at the direction of an advisor who is acting in the advisor's discretion or pursuant to a standard in the trust instrument that governs the distribution or use of principal or income. If an advisor is authorized to direct that distribution or use, the advisor's authority shall be discretionary unless otherwise expressly stated in the trust instrument.

(H) The right of a transferor to remove any advisor and appoint a new advisor who satisfies the eligibility criteria set forth in division (A) of section 5816.11 of the Revised Code;

(I) The right of a transferor to remove any trustee and appoint a new trustee;

(J) A transferor's potential or actual use of real property or tangible personal property, including, but not limited to, property held under a qualified personal residence trust as described in section 2702(c) of the Internal Revenue Code and regulations promulgated under that section, or a transferor's possession and enjoyment of a qualified interest as defined in section 2702(b) of the Internal Revenue Code;

(K) Any provision requiring or permitting the potential or actual use of trust income or principal to pay, in whole or in part, income taxes due on the income of the trust, including, but not limited to, any provision permitting that use in the discretion of any one or more of the qualified trustees acting



in the qualified trustee's discretion or at the direction of an advisor who is acting in the advisor's discretion;

(L) The ability of a qualified trustee, whether pursuant to the qualified trustee's discretion or the terms of the legacy trust instrument or at the direction of an advisor, to pay after the death of a transferor all or any part of the debts of the transferor outstanding on or before the transferor's death, the expenses of administering the transferor's estate, or any estate, gift, generation skipping transfer, or inheritance tax;

(M) Any provision that pours back after the death of a transferor all or part of the trust property to the transferor's estate or any trust;

(N) A power held by a transferor allowing the transferor, while acting in a nonfiduciary capacity, to substitute property of equivalent value for any property that is part of the principal of the legacy trust;

(O) Any other rights, powers, interests, or provisions permitted or allowed by any other section of this chapter.