



Ohio Revised Code

Section 5816.07 Restrictions on actions, remedies, and claims.

Effective: March 27, 2013

Legislation: House Bill 479 - 129th General Assembly

(A) Notwithstanding any provision of law to the contrary but subject to division (G) of section 5816.10 of the Revised Code, no creditor may bring an action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, an action at law or in equity, or an action for an attachment or other final or provisional remedy, against any person who made or received a qualified disposition, against or involving any property that is the subject of a qualified disposition or is otherwise held by or for any trustee as part of a legacy trust, or against any trustee of a legacy trust, except that a creditor, subject to this section and section 5816.08 of the Revised Code, may bring an action to avoid any qualified disposition of an asset on the ground that a transferor made the qualified disposition with the specific intent to defraud the specific creditor bringing the action.

(B) A creditor's cause of action or claim for relief under division (A) of this section to avoid any qualified disposition of an asset is extinguished unless that action is brought by a creditor of a transferor who meets one of the following requirements:

(1) The creditor is a creditor of the transferor before the relevant qualified disposition, and the action is brought within the later of the following periods:

(a) Eighteen months after the qualified disposition;

(b) Six months after the qualified disposition is or reasonably could have been discovered by the creditor if the creditor files a suit against the transferor, other than an action under division (A) of this section to avoid the qualified disposition, or makes a written demand for payment on the transferor that in either case asserts a claim based on an act or omission of the transferor that occurred before the qualified disposition, and that suit is filed, or the written demand is delivered to the transferor, within three years after the qualified disposition.

(2) The creditor becomes a creditor after the qualified disposition, and the action under division (A)



of this section to avoid the qualified disposition is brought within eighteen months after the qualified disposition.

(C) In any action to avoid the qualified disposition under this section, the burden is upon the creditor to prove the matter by clear and convincing evidence. This division is construed as providing a substantive rather than a procedural rule or right under the law of this state.

(D) Notwithstanding any provision of law to the contrary but subject to division (G) of section 5816.10 of the Revised Code, a creditor or any other person shall have only the rights and remedies with respect to a qualified disposition that are provided in this section and section 5816.08 of the Revised Code, and the creditor or other person shall have no claim or cause of action against any trustee or advisor of a legacy trust or against any person involved in the counseling in connection with, or the drafting, preparation, execution, administration, or funding of, a legacy trust.

(E) Notwithstanding any provision of law to the contrary but subject to division (G) of section 5816.10 of the Revised Code, and in addition to any other limitations, restrictions, or bars imposed by this section, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a legacy trust or against any person involved in the counseling in connection with, or the drafting, preparation, execution, administration, or funding of, a legacy trust if and to the extent that, in connection with the qualified disposition that forms the basis of that action, the time in which a creditor could sue to avoid that qualified disposition would have expired under this section.

(F) If more than one qualified disposition is made in connection with the same legacy trust, all of the following apply:

(1) Each qualified disposition will be separately evaluated, without regard to any subsequent qualified disposition, to determine whether a creditor's claim regarding that particular qualified disposition is extinguished as provided in division (B) of this section.

(2) The following apply when determining the order in which property is paid, applied, or distributed from a legacy trust:



(a) Any payment, application, or distribution of money is considered to have been made from or with the money most recently received or acquired by any trustee of a legacy trust except to the extent that it is proven otherwise beyond a reasonable doubt. As used in division (F)(2)(a) of this section:

(i) "Money" means cash or cash equivalents.

(ii) "Cash" means the coins or currency of the United States or any other nation.

(iii) "Cash equivalent" includes certified or uncertified checks; money orders; bank drafts; any electronic transfer of funds; negotiable instruments; instruments indorsed in blank or in bearer form; securities issued or guaranteed by the United States, any state of the United States, or any state or federal agency; funds on deposit in any savings or checking account or any similar account; funds on deposit in any money market account or similar account; any demand deposit account, time deposit account, or savings deposit account at any bank, savings and loan association, brokerage house, or similar institution; or any other monetary instrument or device that is commonly or routinely accepted as a cash equivalent. Division (F)(2)(a)(iii) of this section shall be liberally construed and applied.

(b) Any payment, application, or distribution of fungible assets other than money is considered to have been made from or with the fungible assets most recently received or acquired by any trustee of a legacy trust except to the extent that it is proven otherwise by clear and convincing evidence. For purposes of division (F)(2)(b) of this section:

(i) Any asset that can be classified as either money or a fungible asset shall be classified as money.

(ii) "Fungible assets" means any assets, other than money, that are interchangeable for commercial purposes and the properties of which are essentially identical. Division (F)(2)(b)(ii) of this section shall be liberally construed and applied.

(c) Division (F)(2) of this section is construed as providing a substantive rather than a procedural rule or right under the law of this state.



(G) For purposes of this section, the counseling in connection with, or the drafting, preparation, execution, administration, or funding of, a legacy trust includes the counseling in connection with, or the drafting, preparation, execution, administration, or funding of, any limited partnership, limited liability company, corporation, or similar or comparable entity if the limited partnership interests, limited liability company interests, stock, or other similar or comparable ownership interests in the relevant entity are subsequently transferred to any trustee of any trust that is, was, or becomes a legacy trust.