



Ohio Revised Code Section 5801.01 General definitions.

Effective: September 12, 2008

Legislation: House Bill 499 - 127th General Assembly

As used in Chapters 5801. to 5811. of the Revised Code:

- (A) "Action," with respect to an act of a trustee, includes a failure to act.
- (B) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.
- (C) "Beneficiary" means a person that has a present or future beneficial interest in a trust, whether vested or contingent, or that, in a capacity other than that of trustee, holds a power of appointment over trust property, or a charitable organization that is expressly designated in the terms of the trust to receive distributions. "Beneficiary" does not include any charitable organization that is not expressly designated in the terms of the trust to receive distributions, but to whom the trustee may in its discretion make distributions.
- (D) "Beneficiary surrogate" means a person, other than a trustee, designated by the settlor in the trust instrument to receive notices, information, and reports otherwise required to be provided to a current beneficiary under divisions (B)(8) and (9) of section 5801.04 of the Revised Code.
- (E) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in division (A) of section 5804.05 of the Revised Code.
- (F) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.
- (G) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.



(H) "Guardian of the estate" means a guardian appointed by a court to administer the estate of any individual or to serve as conservator of the property of an individual eighteen years of age or older under section 2111.021 of the Revised Code.

(I) "Guardian of the person" means a guardian appointed by a court to make decisions regarding the support, care, education, health, and welfare of any individual or to serve as conservator of the person of an individual eighteen years of age or older under section 2111.021 of the Revised Code.

"Guardian of the person" does not include a guardian ad litem.

(J) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended.

(K) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(L) "Jurisdiction," with respect to a geographic area, includes a state or country.

(M) "Mandatory distribution" means a distribution of income or principal, including a distribution upon termination of the trust, that the trustee is required to make to a beneficiary under the terms of the trust. Mandatory distributions do not include distributions that a trustee is directed or authorized to make pursuant to a support or other standard, regardless of whether the terms of the trust provide that the trustee "may" or "shall" make the distributions pursuant to a support or other standard.

(N) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental agency or instrumentality, public corporation, or any other legal or commercial entity.

(O) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee that is limited by an ascertainable standard or that is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(P) "Property" means anything or any interest in anything that may be the subject of ownership.

(Q) "Qualified beneficiary" means a beneficiary to whom, on the date the beneficiary's qualification



is determined, any of the following applies:

(1) The beneficiary is a distributee or permissible distributee of trust income or principal.

(2) The beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in division (Q)(1) of this section terminated on that date, but the termination of those interests would not cause the trust to terminate.

(3) The beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(R) "Revocable," as applied to a trust, means revocable at the time of determination by the settlor alone or by the settlor with the consent of any person other than a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a power of attorney, or a guardian of the person or estate of the settlor, is serving.

(S) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(T) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

(U) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(V) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.



(W) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust and any amendments to that instrument.

(X) "Trustee" includes an original, additional, and successor trustee and a cotrustee.

(Y)(1) "Wholly discretionary trust" means a trust to which all of the following apply:

(a) The trust is irrevocable.

(b) Distributions of income or principal from the trust may or shall be made to or for the benefit of the beneficiary only at the trustee's discretion.

(c) The beneficiary does not have a power of withdrawal from the trust.

(d) The terms of the trust use "sole," "absolute," "uncontrolled," or language of similar import to describe the trustee's discretion to make distributions to or for the benefit of the beneficiary.

(e) The terms of the trust do not provide any standards to guide the trustee in exercising its discretion to make distributions to or for the benefit of the beneficiary.

(f) The beneficiary is not the settlor, the trustee, or a cotrustee.

(g) The beneficiary does not have the power to become the trustee or a cotrustee.

(2) A trust may be a wholly discretionary trust with respect to one or more but less than all beneficiaries.

(3) If a beneficiary has a power of withdrawal, the trust may be a wholly discretionary trust with respect to that beneficiary during any period in which the beneficiary may not exercise the power. During a period in which the beneficiary may exercise the power, both of the following apply:

(a) The portion of the trust the beneficiary may withdraw may not be a wholly discretionary trust with respect to that beneficiary;



(b) The portion of the trust the beneficiary may not withdraw may be a wholly discretionary trust with respect to that beneficiary.

(4) If the beneficiary and one or more others have made contributions to the trust, the portion of the trust attributable to the beneficiary's contributions may not be a wholly discretionary trust with respect to that beneficiary, but the portion of the trust attributable to the contributions of others may be a wholly discretionary trust with respect to that beneficiary. If a beneficiary has a power of withdrawal, then upon the lapse, release, or waiver of the power, the beneficiary is treated as having made contributions to the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest 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 beneficiary'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 beneficiary'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.

(5) Notwithstanding divisions (Y)(1)(f) and (g) of this section, a trust may be a wholly discretionary trust if the beneficiary is, or has the power to become, a trustee only with respect to the management or the investment of the trust assets, and not with respect to making discretionary distribution decisions. With respect to a trust established for the benefit of an individual who is blind or disabled as defined in 42 U.S.C. 1382c(a)(2) or (3), as amended, a wholly discretionary trust may include either or both of the following:

(a) Precatory language regarding its intended purpose of providing supplemental goods and services to or for the benefit of the beneficiary, and not to supplant benefits from public assistance programs;



(b) A prohibition against providing food and shelter to the beneficiary.