



Ohio Revised Code

Section 5804.02 General requirements for creation of trust.

Effective: April 6, 2017

Legislation: House Bill 432 - 131st General Assembly

(A) A trust is created only if all of the following apply:

(1) Subject to division (F) of this section, the settlor of the trust, other than the settlor of a trust created by a court order, has capacity to create a trust.

(2) Subject to division (F) of this section, the settlor of the trust, other than the settlor of a trust created by a court order, indicates an intention to create the trust.

(3) The trust has a definite beneficiary or is one of the following:

(a) A charitable trust;

(b) A trust for the care of an animal, as provided in section 5804.08 of the Revised Code;

(c) A trust for a noncharitable purpose, as provided in section 5804.09 of the Revised Code.

(4) The trustee has duties to perform.

(5) The same person is not the sole trustee and sole beneficiary.

(B) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(C) A power in a trustee or other person to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails, and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(D) A trust is valid regardless of the existence, size, or character of the corpus of the trust. This



division applies to any trust instrument that was executed prior to, or is executed on or after, January 1, 2007.

(E) A trust is not invalid because a person, including, but not limited to, the creator of the trust, is or may become the sole trustee and the sole holder of the present beneficial enjoyment of the corpus of the trust, provided that one or more other persons hold a vested, contingent, or expectant interest relative to the enjoyment of the corpus of the trust upon the cessation of the present beneficial enjoyment. A merger of the legal and equitable titles to the corpus of a trust described in this division does not occur in its creator, and, notwithstanding any contrary provision of Chapter 2107. of the Revised Code, the trust is not a testamentary trust that is required to comply with that chapter in order for its corpus to be legally distributed to other beneficiaries in accordance with the provisions of the trust upon the cessation of the present beneficial enjoyment. This division applies to any trust that satisfies the provisions of this division, whether the trust was executed prior to, on, or after October 10, 1991.

(F) An agent under a power of attorney may create a trust for the principal, whether or not the principal has capacity to create the trust and indicates an intention to create the trust, but only as provided in sections 1337.21 to 1337.64 of the Revised Code, including sections 1337.42 and 1337.58 of the Revised Code and their limitations on creation of trusts and on gifts of property of the principal and the duty of the agent to attempt to preserve the principal's estate plan.