



## Ohio Revised Code

### Section 5816.08 Avoidance of qualified dispositions.

Effective: March 27, 2013

Legislation: House Bill 479 - 129th General Assembly

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All of the following apply in connection with any action brought pursuant to this section or division (A) of section 5816.07 of the Revised Code:

(A) If a qualified disposition is wholly or partially avoided, all of the following apply:

(1) That specific qualified disposition shall be avoided only to the extent necessary to satisfy a transferor's debt to the creditor who brought the action pursuant to division (A) of section 5816.07 of the Revised Code, and any part of the qualified disposition that is not used to satisfy that debt shall remain subject to the legacy trust in question.

(2) All other qualified dispositions to any trustee of the legacy trust in question, including, but not limited to, any qualified disposition of a partial, co-ownership, or undivided interest in property by a transferor other than the transferor whose qualified disposition is avoided, together with the legacy trust itself, shall remain valid and effective.

(3) If the court is satisfied that a trustee has not acted in bad faith in accepting or administering the property that is the subject of the avoided qualified disposition, all of the following apply:

(a) The trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the qualified disposition.

(b) The qualified disposition shall be avoided subject to the proper fees, costs, and pre-existing rights, claims, and interests of the trustee and of any predecessor trustee that has not acted in bad faith.

(c) For purposes of division (A)(3) of this section, no trustee shall be considered to have acted in bad faith merely because the trustee accepted the property that is the subject of the qualified



disposition.

(4) If the court is satisfied that a beneficiary of a legacy trust has not acted in bad faith in receiving a distribution from that trust, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain that distribution if the distribution was made upon the exercise of a trust power or discretion vested in a trustee or advisor and that power or discretion was exercised prior to the creditor's commencement of the action to avoid the qualified disposition. For purposes of division (A)(4) of this section, no beneficiary, including a beneficiary who is also a transferor of the trust, shall be considered to have acted in bad faith merely because the beneficiary accepted a distribution made in accordance with the terms of the trust instrument.

(5) A creditor has the burden of proving by clear and convincing evidence that a trustee or a beneficiary acted in bad faith under division (A)(3) or (4) of this section. Division (A)(5) of this section is construed as providing a substantive rather than a procedural rule or right under the law of this state.

(B) The court shall award reasonable attorney's fees and costs to any prevailing party in any final judgment rendered in any action wholly or partially brought under this section or division (A) of section 5816.07 of the Revised Code.