



## Ohio Revised Code

### Section 5801.10 Agreement among interested parties regarding trust matters.

Effective: March 22, 2012

Legislation: Senate Bill 117 - 129th General Assembly

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(A) As used in this section, "creditor" means any of the following:

- (1) A person holding a debt or security for a debt entered into by a trustee on behalf of the trust;
- (2) A person holding a debt secured by one or more assets of the trust;
- (3) A person having a claim against the trustee or the assets of the trust under section 5805.06 of the Revised Code;
- (4) A person who has attached through legal process a beneficiary's interest in the trust.

(B)(1) Subject to division (B)(2) of this section, the parties to an agreement under this section shall be any two or more of the following, or their representatives under the representation provisions of Chapter 5803. of the Revised Code, except that only the settlor and any trustee are required to be parties to an amendment of any revocable trust:

- (a) The settlor if living and if no adverse income or transfer tax results would arise from the settlor's participation;
- (b) The beneficiaries;
- (c) The currently serving trustees;
- (d) Creditors, if their interest is to be affected by the agreement.

(2) In addition to the parties to an agreement under division (B)(1) of this section, the parties shall include the attorney general if an agreement described in division (C)(7) of this section is being made and either of the following applies:



(a) An organization with one or more purposes that are described in division (A) of section 5804.05 of the Revised Code is a beneficiary.

(b) The trust is a charitable trust.

(C) The persons specified in division (B) of this section may by written instrument enter into an agreement with respect to any matter concerning the construction of, administration of, or distributions under the terms of the trust, the investment of income or principal held by the trustee, or other matters. The agreement may not effect a termination of the trust before the date specified for the trust's termination in the terms of the trust, change the interests of the beneficiaries in the trust except as necessary to effect a modification described in division (C)(5), (6), or (7) of this section, or include terms and conditions that could not be properly approved by the court under Chapters 5801. to 5811. of the Revised Code or other applicable law. The invalidity of any provision of the agreement does not affect the validity of other provisions of the agreement. Matters that may be resolved by a private settlement agreement include, but are not limited to, all of the following:

(1) Determining classes of creditors, beneficiaries, heirs, next of kin, or other persons;

(2) Resolving disputes arising out of the administration or distribution under the terms of the trust, including disputes over the construction of the language of the trust instrument or construction of the language of other writings that affect the terms of the trust;

(3) Granting to the trustee necessary or desirable powers not granted in the terms of the trust or otherwise provided by law, to the extent that those powers either are not inconsistent with the express provisions or purposes of the terms of the trust or, if inconsistent with the express provisions or purposes of the terms of the trust, are necessary for the due administration of the terms of the trust;

(4) Modifying the terms of the trust, if the modification is not inconsistent with any material purpose of the trust;



(5) Modifying the terms of the trust in the manner required to qualify the gift under the terms of the trust for the charitable estate or gift tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by the Internal Revenue Code and regulations promulgated under it in any case in which the parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest;

(6) Modifying the terms of the trust in the manner required to qualify any gift under the terms of the trust for the estate tax marital deduction available to noncitizen spouses, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the Internal Revenue Code and regulations promulgated under it in any case in which the parties interested in the trust have submitted written agreements to the proposed changes or written disclaimer of interest;

(7) Construing or modifying the terms of a trust that refer to the federal estate tax, federal generation-skipping transfer tax, or Ohio estate tax, or that contain a division of property based on the imposition or amount of one or more of those taxes, to give effect to the intent of the settlor;

(8) Resolving any other matter that arises under Chapters 5801. to 5811. of the Revised Code.

(D) No agreement shall be entered into under this section affecting the rights of a creditor without the creditor's consent or affecting the collection rights of federal, state, or local taxing authorities.

(E) Any agreement entered into under this section that complies with the requirements of division (C) of this section shall be final and binding on the parties to the agreement or persons represented by the parties to the agreement whether by reason of Chapter 5803. of the Revised Code or otherwise, and their heirs, successors, and assigns, but shall have no effect on any trustee, settlor, beneficiary, or creditor who is not a party to the agreement or is not represented by a party to the agreement.

(F) Notwithstanding anything in this section, in division (D) of section 5803.03 of the Revised Code, or in any other rule of law to the contrary, a trustee serving under the terms of the trust shall only represent its own individual or corporate interests in negotiating or entering into an agreement



subject to this section. No trustee serving under the terms of the trust shall be considered to represent any settlor, beneficiary, or the interests of any settlor or beneficiary in negotiating or entering into an agreement subject to this section.

(G) Any party to a private settlement agreement entered into under this section may request the court to approve the agreement, to determine whether the representation as provided in Chapter 5803. of the Revised Code was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

(H) If an agreement entered into under this section contains a provision requiring binding arbitration of any disputes arising under the agreement, the provision is enforceable.

(I) Nothing in this section affects any of the following:

- (1) The right of a beneficiary to disclaim under section 5815.36 of the Revised Code;
- (2) The termination or modification of a trust under section 5804.10, 5804.11, 5804.12, 5804.13, 5804.14, 5804.15, or 5804.16 of the Revised Code;
- (3) The ability of a trustee to divide or consolidate a trust under section 5804.17 of the Revised Code;
- (4) The power of the trustee to make distributions pursuant to section 5808.18 of the Revised Code.

(J) Nothing in this section restricts or limits the jurisdiction of any court to dispose of matters not covered by agreements under this section or to supervise the acts of trustees appointed by that court.

(K) This section shall be liberally construed to favor the validity and enforceability of agreements entered into under it.

(L) A trustee serving under the trust instrument is not liable to any third person arising from any loss due to that trustee's actions or inactions taken or omitted in good faith reliance on the terms of an agreement entered into under this section.



(M) Subject to divisions (B)(2) and (C)(7) of this section, this section does not apply to any of the following:

(1) A charitable trust that has one or more charitable organizations as qualified beneficiaries;

(2) A charitable trust the terms of which authorize or direct the trustee to distribute trust income or principal to one or more charitable organizations to be selected by the trustee, or for one or more charitable purposes described in division (A) of section 5804.05 of the Revised Code, if any of the following apply:

(a) The distributions may be made on the date that an agreement under this section would be entered into.

(b) The distributions could be made on the date that an agreement under this section would be entered into if the interests of the current beneficiaries of the trust terminated on that date, but the termination of those interests would not cause the trust to terminate.

(c) The distributions could be made on the date that an agreement under this section would be entered into if the trust terminated on that date.

(N) This section does not prohibit some or all of the persons who could enter into an agreement under this section from entering into agreements that are not described in this section and are governed by other law, including the common law. Nothing in this section limits or negates any consents, releases, or ratifications, whether under section 5810.09 of the Revised Code or otherwise, relating to any agreement described in this section or governed by other law.