



## Ohio Revised Code

### Section 5816.06 Qualified affidavits and related rules.

Effective: March 27, 2013

Legislation: House Bill 479 - 129th General Assembly

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(A) Except as otherwise provided in this section, a transferor shall sign a qualified affidavit before or substantially contemporaneously with making a qualified disposition.

(B) A qualified affidavit shall be notarized and shall contain all of the following statements under oath:

- (1) The property being transferred to the trust was not derived from unlawful activities.
- (2) The transferor has full right, title, and authority to transfer the property to the legacy trust.
- (3) The transferor will not be rendered insolvent immediately after the transfer of the property to the legacy trust.
- (4) The transferor does not intend to defraud any creditor by transferring the property to the legacy trust.
- (5) There are no pending or threatened court actions against the transferor, except for any court action identified by the affidavit or an attachment to the affidavit.
- (6) The transferor is not involved in any administrative proceeding, except for any proceeding identified by the affidavit or an attachment to the affidavit.
- (7) The transferor does not contemplate at the time of the transfer the filing for relief under the Bankruptcy Code.

(C) A qualified affidavit is considered defective if it materially fails to meet the requirements set forth in division (B) of this section, but a qualified affidavit is not considered defective due to any one or more of the following:



- (1) Any nonsubstantive variances from the language set forth in division (B) of this section;
  - (2) Any statements or representations in addition to those set forth in division (B) of this section if the statements or representations do not materially contradict the statements or representations required by that division;
  - (3) Any technical errors in the form, substance, or method of administering an oath if those errors were not the fault of the affiant, and the affiant reasonably relied upon another person to prepare or administer the oath.
- (D)(1) A qualified affidavit is not required from a transferor who is not a beneficiary of the legacy trust that receives the disposition.
- (2) A subsequent qualified affidavit is not required in connection with any qualified disposition made after the execution of an earlier qualified affidavit if that disposition is a part of, is required by, or is the direct result of, a prior qualified disposition that was made in connection with that earlier qualified affidavit.
- (E) If a qualified affidavit is required by this section and a transferor fails to timely sign a qualified affidavit or signs a defective qualified affidavit, subject to the normal rules of evidence, that failure or defect may be considered as evidence in any proceeding commenced pursuant to section 5816.07 of the Revised Code, but the legacy trust or the validity of any attempted qualified disposition shall not be affected in any other way due to that failure or defect.