



# *ENACTMENT NEWS*

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## **House Bill 432** **Omnibus Probate Bill; SB 358** Effective April 2017

On January 4, 2017, the Governor signed House Bill 432, the “Omnibus Probate Bill,” which modifies the Franklin County Guardianship Service Board, the Uniform Simultaneous Death Act, the Ohio Trust Code, the Uniform Principal and Income Act, and the Ohio Transfers to Minors Act, and adopts guardianship land sale provisions and the Revised Uniform Fiduciary Access to Digital Assets Act. The bill will be effective in April, 2017.

### **Computerization Fee Increases Removed**

The bill had included an OJC Legislative Platform item meant to bring parity of computerization fees across jurisdictions; the bill was amended prior to enactment to remove the computerization fee increases for county, domestic relations, juvenile, municipal, and probate courts.

### **SB 358 (Revised Uniform Fiduciary Access to Digital Assets Act)**

Prior to enactment, the bill was amended to include Senate Bill 358, the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) which provides fiduciaries with specific authority to access, control, or copy digital assets and accounts and applies the same legal standards to fiduciaries managing digital assets as fiduciaries managing tangible property. Definitions for dozens of relevant terms are provided (RC 2137.01). The RUFADAA provisions do not apply to digital assets of an employer used by an employee in their business (RC 2137.02).

The RUFADAA provisions grant users of “online tools” the power to direct a custodian to disclose digital assets to designated recipients (an example of an online tool is Gmail’s “Inactive Account Manager” which sends out notices to designated recipients after specified periods of time, such as three months of inactivity). If the user does not have an online tool to give direction for digital assets, another method may be used, such as a will or power of attorney (RC 2137.03).

RUFADAA grants an account custodian discretion to grant full or partial account access to a fiduciary and no requirement to release digital assets deleted by the user. If segregation, per a request for some but not all assets, would pose an undue burden on the custodian, the custodian or fiduciary may seek a court order (RC 2137.05(D)) to release some, all, or no digital assets, or to release them in camera to the court.

If a deceased user consented to or a court directs disclosure of the contents of electronic communications of the user, the custodian must disclose the content of electronic communications, if the custodian receives from the estate: (1) A written request for disclosure in physical or electronic form; (2) A copy of the death certificate of the user; (3) A copy of the letter of appointment; (4) a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent (assume online tools are not used); and (5) certain other documents the custodian can request. (RC 2137.06) The same documents are required for a custodian to release the content of electronic communications to an agent, per a power of attorney. (RC 2137.08) The same documents are required for a custodian to release a catalogue of electronic communications (without content) to the estate, although the custodian cannot release such a catalogue if prohibited by the user or if otherwise ordered by the court. (RC 2137.07)

A custodian must comply with a request for digital asset information within 60 days after receipt of necessary documents under RC 2137.06 – 2137.13 (a request for disclosure, a death certificate, etc.). If a custodian fails to comply, the fiduciary may seek a court order directing compliance (RC 2137.15).

Any digital assets held in a trust must be disclosed by a custodian to a trustee that is an original user of an account (RC 2137.09). If the trustee is not an original user and wants access to electronic communication contents, the trustee must provide the custodian with (1) a written request and (2) a trust instrument or certification granting access to electronic communications contents (RC 2137.11). If a trustee is not an original user and wants access to digital assets and a catalogue of electronic communications (without content), the trustee must provide the custodian with 1) a written request, and 2) a trust instrument or certification (RC 2137.11).

A court may grant a guardian access to the digital assets of a ward, after the opportunity for a hearing. A guardian may then request the custodian to suspend or terminate a digital account of the ward (RC 2137.13).

The bill also updates Ohio's statutory power of attorney form for property to include digital assets and electronic communications (RC 1337.60).

### **Franklin County Guardianship Service Board**

The bill grants the director of the Franklin County Guardianship Service Board (or a designee) authority to act on behalf of the board and allows the board to charge reasonable fees for services to wards (RC 2101.026).

### **Uniform Simultaneous Death Act (USDA)**

The bill changes the description of "living person" to a person who was living at the death of the intestate and survived the death of the intestate by at least 120 hours; and changes the description of "dead person" as a person having died before the intestate or failing to live at least 120 hours after the intestate (RC 2105.02). No descendant can inherit from an intestate unless the descendant survives the intestate by at least 120 hours, or is born within 300 days after the intestate's death and lives for at least 120 hours (RC 2105.14).

If a title or interest depends on surviving the death of an individual, and the survivor does not establish by clear and convincing evidence that the survivor outlived the other individual by 120 hours, the survivor is considered predeceased (RC 2105.32). If a co-owner with rights of survivorship in property or an account does not establish by clear and convincing evidence that the co-owner survived the other co-owner by 120 hours, then one-half of the property passes as if one co-owner survived the other by 120 hours and one-half passes as if the other co-owner survived the one by 120 hours; if there are more than two co-owners with right of survivorship in property or an account and it is not established by clear and convincing evidence that at least one co-owner survived the others by 120 hours, the property passes proportionally (RC 2105.32).

The definition of death in RC 2108.40, a cessation of the functions of the brain, is included in this section (RC 2105.35).

A “transfer-on-death designation affidavit” is a “governing instrument” (RC 2105.31), similar to a deed, will, trust, annuity, or pension, which determines the conveyance of property testate or intestate.

### **Automobile Allowance for Surviving Spouse**

The bill eliminates the two car limit automobile allowance for a surviving spouse (RC 2106.13) and increases the maximum total value of automobiles that may be transferred to the surviving spouse from \$40,000 to \$65,000 (RC 2106.18).

### **Wills and Will Deposits**

The bill creates conflicting statutory language on will deposit fees. Prior to enactment, language in the probate court fee statute that would have increased the will deposit fee from \$5 to \$25 was stricken, leaving the fee statute unchanged (RC 2101.16). But the bill modifies the will deposit statute to require payment of \$25 (RC 2107.07).

The bill amends the will deposit statute to clarify that a will may be deposited “before or after the death of the testator, and if deposited after the death of the testator, with or without applying for its probate.” If the will is not delivered or disposed of after 100 years, the judge may dispose of the will after making an electronic copy. The bill also clarifies that a deposited will is not a public record until probated (RC 2107.07).

If a beneficiary to a will is aware of the will and prevents or neglects to have it probated for one year after the testator’s death, property will pass as if that beneficiary predeceased the testator (RC 2107.10).

### **Guardianship Land Sales**

RC 2127.012 creates the option of selling real estate from a guardianship estate by filing the same type of consents as in the sale of a decedent’s estate, in other words: if all interested parties provide written consent; the sale price is at least 80% of a recent, appraised value; neither the ward’s spouse or next-of-kin are minors; and the guardian provides sufficient bond to the court (R.C. 2127.10).

## **Ohio Trust Code Changes**

To the extent there is no conflict of interest between the holder of a limited testamentary power of appointment or a presently exercisable limited power of appointment and the persons represented with respect to the particular question or dispute, the bill authorizes a holder may to also represent and bind persons whose interests as possible appointees are subject to the power. (RC 5803.02).

The bill also authorizes an agent under a power of attorney to create a trust for a 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 RC 1337.21 to 1337.64 (Uniform Power of Attorney Act) (RC 5804.02).

## **Ohio Transfers to Minors Act (OTMA)**

The bill amends the definition of “minor” within OTMA provisions to permit the holding of custodial property to be delayed until after the minor turns 21, if the later date is specified in the written instrument that provides for the gift or transfer. The specified time must be no later than the date the minor turns 25 (RC 5814.01 and RC 5814.09). If the minor dies after age 21, but prior to attaining the specified age, the custodian must deliver the property to the minor’s estate (RC 5814.09). The bill also increases the transfer amount requiring court authorization from \$10,000 to \$25,000 (RC 5814.01).

The OTMA provisions allow a donor or transferor of a gift to a minor to designate one or more successor custodians (RC 5814.01) and for custodians themselves to also designate one or more successor custodians (RC 5814.06).