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# **ADVANCED ISSUES IN PROBATE LAW:**

## **Omnibus Probate Bill**

**Magistrate Paula D. Haas**

**OMNIBUS PROBATE BILL**  
**House Bill 432 (SB 358)**  
**Effective April 6, 2017**

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Paula Haas, Magistrate  
Summit County Probate Court

**COMPUTERIZATION FEE INCREASES  
REMOVED**

- The bill was amended prior to enactment to remove the computerization fee increases for county, domestic relations, juvenile, municipal, and probate courts.
- The fee increases would have given fee parity to those courts with the common pleas courts.

## UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (RUFADAA)

- Prior to enactment, the bill was amended to include Senate Bill 358, the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA).
- Provides fiduciaries with specific authority to access, control, or copy digital assets and accounts.
- Applies the same legal standards to fiduciaries managing tangible property.
- Definitions for dozens of relevant terms are provided under R.C. 2137.01.

## FRANKLIN COUNTY GUARDIANSHIP SERVICE BOARD

- Grants the director of the Franklin County Guardianship Service Board (or designee) authority to act on behalf of the board.
- Allows the board to charge reasonable fees for services to wards.
- R.C. 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. (R.C. 2105.02)
- 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. (R.C. 2105.02)
- No descendant can inherit from an intestate unless the descendant survives the intestate by at least 120 hours, or are born within 300 days after the intestate’s death and live for at least 120 hours after birth. (R.C. 2105.14)

## AUTOMOBILE ALLOWANCE FOR SURVIVING SPOUSE

- The bill changes the automobile allowance for a surviving spouse by eliminating the two car limit. (R.C. 2106.13)
- Increases the maximum total value of automobiles that may be transferred to the surviving spouse from \$40,000 to \$65,000 (R.C. 2106.18)

## WILLS AND WILL DEPOSITS

- 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 clarifies that a deposited will is not a public record until probated. (R.C. 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. (R.C. 2107.10)

## GUARDIANSHIP LAND SALES

- The bill adds a new method for a guardian to sell real estate from a guardianship estate:
  1. The ward’s spouse and all persons in the next estate of inheritance all file written consent;
  2. The sale price is at least 80% of the appraised value, based on an appraisal within two years of the filing of consents;
  3. Neither the ward’s spouse or next of kin are minors; and
  4. The guardian provides a sufficient bond to the Court which is in addition to any other bond in the estate. (R.C. 2127.012)

## OHIO TRUST CODE CHANGES

- The bill specifies that an action brought under the Ohio Trust Code (Chapter 5801 to 5811) is a civil action subject to the Rules of Civil Procedure unless it involves a testamentary or other trust already subject to court supervision. (R.C. 5802.04)
- The bill authorizes the holder of a limited testamentary power of appointment to also represent persons whose interests as possible appointees are subject to the power, to the extent no conflict of interest exists between the holder and the persons represented with respect to the particular question. (R.C.5803.02)

## OHIO TRUST CODE CHANGES

- The bill authorizes an agent under a power of attorney to 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 R.C. 1337.21 to 1337.64 (The Uniform Power of Attorney Act) (R.C. 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. (R.C. 5814.01 and R.C. 5814.09)

## OHIO TRANSFERS TO MINORS ACT (OTMA)

- 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. (R.C. 5814.09)
- The bill increases the transfer amount requiring court authorization from \$10,000 to \$25,000. (R.C. 5814.01)
- The OTMA provisions allow a donor or transferor of a gift to a minor to designate one or more successor custodians. (R.C. 5814.01)
- Allows for custodians themselves to also designate one or more successor custodians. (R.C. 5814.06)