

ESTATE PLANNING UPDATE

- A. **You may be a fiduciary.** Jamie Hopkins, in the May issue of *Trusts and Estates* magazine, cautions that estate-planning attorneys may now be considered a “fiduciary” because they provide investment advice. The Department of Labor (DOL) recently expanded the definition of “investment advice” for ERISA purposes. The new definition includes recommendations with respect to rollovers, transfers, or distributions from a plan or IRA, including whether, in what amount, in what form, and what destination such as a rollover, transfer or distribution should be made. This new definition marks the first time under ERISA that a recommendation, not related to a specific investment, can be considered investment advice. Have you ever?
1. Advised how an IRA or 401(k) should be distributed at a client’s passes death by suggesting appropriate beneficiaries and contingent beneficiaries? That is a “distribution recommendation.”
  2. Talked with a client about **RMD’s**? When, how, and how much to take, from which IRA to take? That could be investment advice.
  3. **Inherited IRA or 401(k).** Attorneys often assist beneficiaries or a deceased client as to take benefits. Do you advise a client or beneficiary about the tax benefits of the “stretch” option?
  4. **Conversion to Roth IRA.** Recommendations regarding Roth conversions would involve a “rollover.”
  5. **Medicaid spending.** Suggesting liquidation of an IRA or 401(k) to spend down assets to qualify Medicaid.
  6. What does it mean to say that an attorney is a fiduciary?
    - a) Must act with the client’s best interest first with prudence, that is with skill, care, diligence and good judgement of a professional.
    - b) Avoid conflicts of interest.
  7. **Privity/Who is your Client.** Ohio and Texas are the only strict “privity” states for legal malpractice. Does privity protect you as a fiduciary? Hypothetical: As part of a plan, you properly had now deceased client

complete new beneficiary designations for his IRA to take into account a deceased child, a divorce, a charitable contribution, and make unequal distributions to children because his daughter was a brand manager at P&G and did not need any of the IRA. The son, who is a beneficiary of 75% of the IRA, asks your advice about whether to elect “stretch,” or convert to a Roth. You advise because you are representing the son as trustee of your deceased client’s trust. Several years later, the son sues you because the Roth conversion turned sour. And the daughter sued you because she did not receive an equal share of the IRA. You defend by saying that father was your client, not the children, and more than a year has passed. Sorry, you are being sued as an “investment advisor” under ERISA, not an attorney under Ohio tort law. And, you failed to consider who was your client before you started advising the survivors.

8. Talk to your malpractice insurance carrier. Raise your limits? Does your policy cover you if you are sued under federal law as a fiduciary?

**B. After Death Surprises.** You help your client avoid probate by having all his assets pass through a trust, or by having your client designate beneficiaries for each category of asset, or some of each. The client dies. To the family’s surprise and unhappiness with you, a number of assets must go through probate because you failed to ask the right questions and your questionnaire is spotty.

1. Life insurance owned by decedent on another, such as a spouse or child.
2. Savings bonds, of which the decedent was a surviving joint owner or POD owner.
3. Cars and boats.
4. Life insurance, IRAs, annuity contracts, on which all beneficiaries are deceased.
5. Interests in closely held businesses, such as LLC’s, partnerships, and sub S corporations.
6. Long-term care insurance reimbursements.
7. Deupree House refund and deposit.
8. Private promissory notes.
9. Royalties, patents, copyrights, stock options.
10. Tax refunds.
11. Inheritances.
12. Unclaimed funds held in Columbus.
13. Did decedent take RMD?

**C. When and how to Fund the Trust.** Do it now by ownership change, or later by beneficiary designation, and some of each. Choice and timing depends upon nature of the asset. Making the trust the transfer on death beneficiary requires specific forms to match the asset.

1. Real estate. Transfer on death affidavit followed by affidavit or confirmation.
2. Bank accounts. POD beneficiary designation (only available at bank).
3. Broker accounts. (see Morgan Stanley TOD beneficiary designation form).
4. Mutual funds. (see Lord Abbett form).
5. Closely held business interests. (see attorney prepared TOD form).
6. Cars and boats for non-spouses, or for spouses if they are worth more than \$65,000.

#### D. Estate tax/portability revisited.

1. **“Future” missed portability elections.** IRS simplifies obtaining extension of time to elect portability in small estates. Executor has two years after the date of death to file a 706 to claim DSUE. Executor must state at the top of the form that the return is *Filed pursuant to Rev. Proc 2017-34 to elect portability under Section 2010 C-5 A*. This is a permanent automatic extension for time to file just to claim portability.
2. **“Past” missed portability elections.** In situations where a spouse died in 2011 or later and the portability return was not filed, the executor has a limited time to claim retroactive portability, **but only if the return is filed prior to January 2, 2018.**
3. **Closing Letter.** IRS no longer issues closing letters automatically.

The executor must request the closing letter, but must wait four months after the return has been filed and the tax paid to make the request. Therefore, an executor may decide to file a taxable return as soon as the six-month alternate valuation date has passed and pay the tax. The loss of the interest on the tax paid before the due date at today’s interest rates is nominal. The ability to obtain a closing letter promptly and distribute assets makes beneficiaries happy.

There are two ways to obtain a closing letter four months after the return has been filed. The executor can call 866-699-4084, provide the name of the decedent, the Social Security number, and the date of death or file form 4506-T on line.

4. **Current Exemption is \$5,490,000.** Couples may pass down \$10,980,000 during lifetime and at death of survivor. (Not counting all those annual exclusion gifts and cruises to Hawaii).
5. When should you advise the surviving spouse to pay for a 706 even though decedent had less than the exemption? Whenever she might die with more than \$5,490,000 by marrying or inheriting well, or by hitting lottery, or by

fracking on back 40, or by buying the next Facebook early. If she declines, cover your tracks.

## E. Odds and Ends.

1. **Presentment of Claims.** ORC 2117.6, claims against an estate, must be presented in writing directly to the executor within six months of the decedent's death. The process may be accelerated by notice to creditors from the executor to 30 days after receipt of the notice given. If an executor has not been appointed, the creditor must procure appointment of an administrator within six months of the decedent's death. *Best practice is to present the claim to the executor in a writing, and to the Court by filing a copy of the writing with it.*
2. **Record land interests every 40 years.** The Ohio Marketable Titles Act (MTA) enacted in 1961 pertains to preservation of real property interests. The purpose of the MTA is to simplify land transactions by allowing reliance on the record chain of title. The MTA requires that any person claiming a **reversionary interest** must file a notice of interest with the county recorder's office every 40 years to preserve the interest. If such a notice is not timely filed, the reversionary interest is extinguished in favor of the titleholder. ORC 5301.48 states that any person who has an unbroken chain of title of record to any interest in land for 40 years or more has a marketable record title to such interest. Easements, restrictions, rights of entry or powers of termination for breach of condition subsequent, are preserved by filing a notice for record during the 40 year period immediately following the effective date of the **root of title** and within every 40 year period thereafter.
3. **New Military Retirement Plan.** The United States military no longer requires 20 years of service to receive retirement benefits. The new blended retirement system introduces matching contributions to a 401(k) type savings plan while downsizing the traditional pension benefit. Under the new plan 85% of those serving in the future will leave the service with a retirement benefit, which compares with less than 19% currently. The shift kicks in January 1, 2018. Those who enroll after the date with more than 12 years of service will remain under the old system. Anyone with less than 12 years of service on that date will have one year to make an irrevocable choice between the two programs.
4. Use **savings bonds to help pay for college.** Interest on EE and I bonds used to pay for education may be tax-free. Bonds must have been purchased after 1989 by taxpayers who were at least 24 years old. The bonds may be used to pay for college or graduate school tuition and fees and for the taxpayer's spouse or dependents. Vocational schools also

qualify. Room and board costs are not eligible expenses. The bonds must be in the taxpayer's name, not the name of the child. The tax break disappears when the parents AGI tops \$148,000.

5. Annual **gift tax exclusion** increases from \$14,000 to \$15,000 in 2018. So what? Unless you started a dot.com, your family won't pay gift/estate tax. Q: Have you ever given a child more than \$14,000 and not bothered to file a gift tax return to report the excess?

Q.E.F.

Lewis Gatch  
8050 Hosbrook, Suite 102  
Cincinnati, OH 45236-2907  
513-984-3587

lew@gatchlawoffice.com

Lewis Gatch  
412 South Union St.  
Traverse City, MI 49684  
231-947-7900

**Disclaimer:** The seminar materials and the seminar presentation are intended to stimulate thought and discussion, and to provide those attending the seminar with useful ideas and guidance in the areas of estate planning and administration. The materials and the comments made by the presenter during the seminar or otherwise do not constitute and should not be treated as legal advice regarding the use of any particular estate planning or other technique, device or suggestion or any of the tax or other consequences associated with them. Each seminar attendee should verify independently all statements made in the materials and in association with the seminar before applying them to a particular fact pattern and should determine independently the tax and other consequences of using any particular device, technique or suggestion before recommending the same to a client or implementing the same on a client's or his or her own behalf.

AFFIDAVIT OF CONFIRMATION [ORC 5302.222]

STATE OF FLORIDA, COUNTY OF SARASOTA

I, Janet SMITH being duly cautioned and sworn, state as follows:

1. Betty SMITH, the owner of the property described below which is subject to a Transfer on Death Affidavit, died on \_\_\_\_\_, 2017. Her death certificate is attached.

2. The real property affected by this Affidavit, known as 22 HAPPY Drive, Cincinnati, OH \_\_\_\_\_-000 \_\_\_\_\_, is described as follows:

*Situate in Military \_\_\_\_\_ being more particularly described as follows:*

*\_\_\_\_\_ sion, as recorded in P \_\_\_\_\_ of the Registered Land Records of Hamilton County, Ohio.*

*Together with and subject to easements, restrictions and conditions as recorded in Deed Book \_\_\_\_\_ the Registered Land Records, Hamilton County, Ohio.*

*Being the same premises conveyed to Betty SMITH \_\_\_\_\_ l recorded in Deed Book \_\_\_\_\_ Registered Land Certificate Title \_\_\_\_\_ the Hamilton County, Ohio*

3. The beneficiary of the Transfer on Death Affidavit is Janet SMITH \_\_\_\_\_ Sarasota, Florida 34238.

\_\_\_\_\_  
Janet SMITH

Sworn to before me, a Notary Public, and signed in my presence by Janet \_\_\_\_\_ is 7<sup>th</sup> day of August, 2017.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

For Internal Use Only

Branch No. Account No. FA/PWA No.

Morgan Stanley

JTWROS TAXABLE ACCOUNT

TOD Beneficiary Designation and Signature Page

Please complete and sign where indicated and return this page only (keep a copy of this page for your records). Retain pages 1-6 for your records. The Account Owner(s) whose signature(s) appears hereon, hereby agrees to the terms of the Morgan Stanley TOD Agreement ("TOD Agreement") as set forth on the preceding pages 1-6 and designates transfer on death (TOD) beneficiary(ies) listed below for the Morgan Stanley account currently carried under the account number stated above. This TOD Agreement and Beneficiary Designation revokes all prior TOD Agreements and Beneficiary Designations made in relation to this account. A percentage must be entered for each beneficiary named, and the total MUST equal 100%.

VANCE + IRMA BOODE PLANNERS

ACCOUNT TITLE

Percent Ownership of Account Assets: Equal Shares Are Assumed if Left Blank

Information About Beneficiaries (All required information for each beneficiary must be provided)

Table with 3 beneficiary rows. Each row includes fields for Beneficiary's Full Name, Address, Phone Number (Optional), Beneficiary Relationship to Account Owner, Name of Custodian, Social Security Number (individual) or Tax ID (organization), and Names of Trustees (trusts) or Authorized Officers (other legal entities). Beneficiary 1 is listed with 100% ownership.

If a sole Account Owner is married and is a resident of Alaska, Arizona, California, Idaho, Nevada, New Mexico, Texas, Washington or Wisconsin, and the spouse is not designated as the sole beneficiary, the spouse must sign the following consent in the presence of a Notary Public.

CONSENT OF SPOUSE:

By signing below, I declare that I am the spouse of the Account Owner of the Morgan Stanley TOD Account identified above, and I hereby consent to the current designation of beneficiary(ies) of this Account. This Spousal Consent must be signed in the presence of a Notary Public.

SPOUSE'S SIGNATURE DATE Signed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Notary Public \_\_\_\_\_

ACCOUNT OWNER'S SIGNATURE

I understand that my accounts at Morgan Stanley, including this TOD Account, are governed by a predispute arbitration clause set forth in the TOD Agreement starting at page 4 paragraph 8.

PRINT NAME OF ACCOUNT OWNER Vance Planners DATE 10/6/17 ACCOUNT OWNER SIGNATURE PRINT NAME OF ACCOUNT OWNER Irma Boode Planners DATE 10/6/17 ACCOUNT OWNER SIGNATURE

© 2016 Morgan Stanley Smith Barney LLC. Member SIPC.

TRANSFER ON DEATH ("TOD") AGREEMENT AND BENEFICIARY DESIGNATION 03/2016 GWMTODA



Sign and Return Keep a Copy for Your Records



Use this form in cases where the shareholder is deceased in order to transfer and/or redeem a mutual fund account. Please read the accompanying Step-by-Step Instruction Page before completing this form.



Important information about procedures for opening a new account required by the U.S.A. PATRIOT ACT: To help the government fight the funding of terrorism and money-laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.



Mail completed form to: Lord Abbett Service Center, PO Box 219336, Kansas City, MO 64121-9336
Overnight mail: Lord Abbett Distributor LLC, 330 West 9th Street, Kansas City, MO 64105-1514
Fax: 816-843-7248 (Advisors are permitted to fax in paperwork provided the Medallion Signature Guarantee is legible.)
Please note: If you are sending in original documentation, it must be mailed to the address indicated on the form.
Call Lord Abbett for assistance: 888-522-2388 (Monday-Friday between 8:30 a.m. and 6:00 p.m. Eastern Time)

- For a Mutual Fund Distribution Due to Death Form that is Medallion Signature Guaranteed, no additional documentation is required, unless specifically requested in one of the sections below.
For a Mutual Fund Distribution Due to Death Form that is not Medallion Signature Guaranteed, the following information is required: a Mutual Fund Distribution Due to Death Form that is Signature Guaranteed, certified copy of the Death Certificate, and Letters of Testamentary dated within 60 days. Additional information may be requested in one of the sections below.
A tax waiver is required if the decedent tax residency is one of the following: Indiana, Louisiana, New Jersey, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, or Tennessee. This requirement is not waived when a Medallion Guarantee is provided.
An Affidavit of Domicile is required if the value of the account is greater than \$100,000. This requirement is not waived when a Medallion Signature is Guaranteed.

STEP 1: ACCOUNT REGISTRATION INFORMATION

Decedent Owner Name (First Name, MI, Last Name) Decedent Social Security Number Date of Death (MM/DD/YYYY)
Decedent Owner Address City State Zip Code
Joint Owner Name (First Name, MI, Last Name) (if applicable)

STEP 2: TRANSFER AND/OR REDEMPTION REQUEST (Choose one option.)

- Transfer: Request to transfer account(s) to a new Lord Abbett account.
Transfer: Request to transfer to an existing Lord Abbett account number:
Redemption: Request to close a Lord Abbett account(s) (requires transfer to a new account).

Table with 3 columns: Fund Name, Account Number, Number of Shares or Percentage. Rows 1, 2, 3.

To list more funds, please attach a separate page.
Please note: Effective November 29, 2013, the Lord Abbett Diversified Income Strategy Fund changed its name to Lord Abbett Multi-Asset Income Fund, the Lord Abbett Balanced Strategy Fund changed its name to Lord Abbett Multi-Asset Balanced Opportunity Fund, the Lord Abbett Growth & Income Strategy Fund changed its name to Lord Abbett Multi-Asset Growth Fund, and the Lord Abbett Global Allocation Fund changed its name to Lord Abbett Multi-Asset Global Opportunity Fund.

Cost-Basis Method Selection: Please select one of the following six cost-basis method options.
Average Cost Last-In, First-Out Low Cost
First-In, First-Out High Cost Loss/Gain Utilization

To view definitions for any of the above options, please see our Q&A cost-basis document on our Tax Center page at lordabbett.com. If you do not choose a method listed above, the fund's default method of average cost will be used.

**IRREVOCABLE STOCK/BOND POWER**

Dated \_\_\_\_\_

**FOR VALUE RECEIVED**, the undersigned does (do) hereby sell and transfer to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If **STOCK**  
Complete  
This  
Portion

{ \_\_\_\_\_ Shares of the \_\_\_\_\_ stock of \_\_\_\_\_  
Represented by Certificate(s) No.(s) \_\_\_\_\_  
Standing in the name of the undersigned on the books of said company

If **BONDS**  
Complete  
This  
Portion

{ \_\_\_\_\_ Bonds of the \_\_\_\_\_  
In the Principal Amount of \$ \_\_\_\_\_ No.(s) \_\_\_\_\_  
Standing in the name of the undersigned on the books of said company

The undersigned does (do) hereby irrevocably constitute and appoint \_\_\_\_\_  
\_\_\_\_\_ Attorney to Transfer the said Stock or Bond(s) as the case may  
be on the book of said company with full power of substitution in the premises.

(RELEASE POWER OF ATTORNEY BELOW)

X \_\_\_\_\_  
(person executing this power signs here)

**SIGNATURE GUARANTEED**

**IMPORTANT** - The signature(s) to this power must correspond with the name(s) as written upon the face of the Stock Certificate(s) or Bond(s) in every particular without alteration or enlargement or any change whatever and must be guaranteed by a Commercial Bank or a Trust Company having its principal office or a correspondent in the City of New York or by a firm having membership in the New York or Midwest Stock Exchange.

# Stock Power Form For transferring shares, changing names, or adding a beneficiary



Please print clearly. Alterations, corrections, or white-out will render the Stock Power Form invalid.

### A. Tell Us About: The account you are transferring from Use a new form for each account and company of stock you are transferring.

1. Account Number:  2. Company of stock to be transferred:

3. Current Registration:

Please print the full registration/names/ownership title as it reads on statements, certificates and tax forms.

### B. Tell Us About: The shares you would like to transfer

4.  Transfer ALL shares (If checked, leave boxes 5, 6, and 7 blank.)\*

If you are not transferring all shares, enter the specific number of shares to transfer from each share type:

5. Direct Registration:  6. Plan:  7. Certificates:\*

\*The original certificates must be included with your request. If they are lost, please write the number of lost shares or write ALL in box 8.

8. I lost the certificate(s) for  shares and require assistance replacing them.

There is a \$75 processing fee to replace lost certificates. There may be additional fees and documents required, see FAQs.

### C. Tell Us About: Cost Basis

Private Sale Date of Sale: \_\_\_\_\_ Cost Per Share: \_\_\_\_\_ US Dollars

Gift

Inheritance Date of Death: \_\_\_\_\_ Fair Market Value Per Share: \_\_\_\_\_ US Dollars

For shares jointly held: Enter the number of shares in which the decedent had an interest: \_\_\_\_\_

### D. Please Let Us Know: If you would like uncashed checks to be reissued (if applicable)

9. Reissue checks into (choose one):  New Owner's Name OR  Current Name on Account

When transferring to multiple accounts, the new replacement checks will be issued to the current name on the account. A stop payment will be placed on all uncashed checks prior to their replacement. Checks issued within the last 10 days will not be replaced.

### E. Medallion Signature Guarantee

All current owners or authorized individual(s) must sign their name and have the signature guaranteed by a member of a Medallion Stamp Program. An authorized individual must write their capacity (title) in the space below. The Medallion Guarantor may require additional documentation. The undersigned does (do) irrevocably constitute and appoint Wells Fargo Bank, N.A., attorney to transfer the said stock on the books of said Company with full power of substitution in the premises. Medallion Signature Guarantees can be obtained from financial institutions, including commercial banks, brokers, and credit unions. (See the FAQ Medallion Signature Guarantee for more information)

Signature of all registered owners or legal representatives

Note to Guarantor: Medallion Stamp must be fully legible and must **NOT** be dated or annotated.

X \_\_\_\_\_

X \_\_\_\_\_

Title of Legal Representatives, if applicable:

X \_\_\_\_\_

Alterations, corrections, or white-out will render the Stock Power Form invalid.

**F. Tell Us About: The account you want the shares transferred to** A separate page is needed for each new account

Enter the number of shares to transfer into the account indicated on this page. When transferring to multiple accounts, you must submit a separate copy of this page and indicate the number of shares to transfer into each new account.

If you are transferring to an existing Shareowner Services account, enter the 10-digit account number, and do not fill out registration for a new account. Skip to Section H.

**Registration for the New Account** check only one box below, complete the indicated lines, new address, and Tax ID

- Individual - Line 1
- Joint Tenancy - Lines 1 and 2a
- Tenants in Common - Lines 1 and 2a
- Estate - Lines 1 and 4a
- Trust - Lines 1, 4a, and 4b
- Tenants by Entirety - Lines 1 and 2a
- Custodian for Minor - Lines 1, 2a, and 2b
- TOD Beneficiary - Lines 1 and 4a
- Corporation - Line 1
- LLC C Corporation - Line 1
- LLC S Corporation - Line 1
- LLC Partnership - Line 1
- Other - Line 1 and enter type of registration: \_\_\_\_\_

Line 1. New Owner/Custodian/Trustee/Executor/Other (First Name, Middle Initial, Last Name)

Line 2a. Joint Owner/Minor/Second Trustee/Other (First Name, Middle Initial, Last Name)

2b. Minor's State of Residence

Line 3. Any additional Joint Owners/Trustees/Other (First Name, Middle Initial, Last Name)

Line 4a. Name of Trust/Estate/TOD Beneficiary

4b. Date of Trust (MM/DD/YY)

**Address for the New Account** Including City, State, and Zip Code

**Tax ID for the New Account**

Enter the Social Security Number OR Employer Identification Number (then check one box to identify type)

- SSN OR  EIN

**G. Substitute Form W-9** The New Owner's signature below **MUST** correspond to the Tax ID for the New Account above

Certification: Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and 2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3. I am a U.S. citizen or other U.S. person (defined in the instructions). 4. The FATCA code entered on this form (if any) indicating that the payee is exempt from FATCA reporting is correct. (This does not apply to accounts located in the U.S.)

Exempt Payee Code (if any): \_\_\_\_\_ (Codes are available with the official IRS Form W-9 available at [www.irs.gov](http://www.irs.gov))

Exemption from FATCA Reporting Code (if any): NOT APPLICABLE (codes are available with the official IRS Form W-9 available at [www.irs.gov](http://www.irs.gov))

Certification instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you failed to report all interest and dividends on your tax return.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(Rev. 12/14)

**NOTICE TO NON-U.S. PERSONS** (e.g. nonresident aliens individuals, foreign corporations, foreign partnerships or foreign trusts): DO NOT COMPLETE THE ABOVE SUBSTITUTE FORM W-9. NON-U.S. PERSONS MUST PROPERLY AND TIMELY COMPLETE AND RETURN THE APPLICABLE FORM W-8, (AVAILABLE AT [www.irs.gov](http://www.irs.gov)) AND RETURN THAT CERTIFICATION OF FOREIGN TAX STATUS. FAILURE TO DO SO COULD SUBJECT YOU TO EITHER U.S. FEDERAL BACKUP WITHHOLDING OF 28% OR FATCA/NRA WITHHOLDING OF 30%, AS APPLICABLE, OF THE REPORTABLE/WITHHOLDABLE AMOUNT.

**H. Sign up for Online Access:** If the new owner would like to receive instructions for online access

- Check the box to the left to send instructions for online access. An Authentication ID and sign up instructions will be mailed to the address in Section F. Some restrictions may apply. Online account access is not available for accounts registered in the name of a Corporation, Partnership, Investment Club, Bank, or Brokerage firm where multiple individuals are authorized to perform transactions.

**TRANSFER ON DEATH (T.O.D.) DESIGNATION FOR  
SMITH PROPERTIES, LLC**

We, MICHAEL SMITH and MARGARET SMITH, are the owners of SMITH PROPERTIES, LLC. We hereby designate the currently serving trustee of The MICHAEL SMITH TRUST dated January 20, 2011, as amended, as the transfer on death (T.O.D.) beneficiary of all of our interest -- including but not limited to, real estate, bank accounts, accounts receivable, equipment, vehicles, inventory and supplies of all kinds, work in progress and all insurance proceeds -- in SMITH PROPERTIES, LLC at the death of the survivor of us.

In the presence of:

\_\_\_\_\_

\_\_\_\_\_  
LEWIS G. GATCH

STATE OF MICHIGAN, COUNTY OF GRAND TRAVERSE

**SUBSCRIBED AND SWORN TO** before me by MICHAEL SMITH and MARGARET SMITH on September 29, 2015.

\_\_\_\_\_  
Lewis G. Gatch  
Notary Public, Grand Traverse County, MI  
My Commission Expires Nov. 24, 2019  
Acting in Grand Traverse County, MI

This instrument prepared by:  
Lewis G. Gatch, Attorney at Law  
412 South Union Street  
Traverse City, MI 49684



OHIO DEPARTMENT OF PUBLIC SAFETY  
OHIO BUREAU OF MOTOR VEHICLES

**AFFIDAVIT FOR DESIGNATION OF BENEFICIARY OR BENEFICIARIES BY THE  
SOLE OWNER FOR A MOTOR VEHICLE, WATERCRAFT OR OUTBOARD  
MOTOR CERTIFICATE OF TITLE. O.R.C. 2131.13(A)**

I being first duly sworn, state as follows:

I, \_\_\_\_\_ being the sole owner of the vehicle, watercraft  
or outboard motor described, Year \_\_\_\_\_ Make \_\_\_\_\_  
VIN / MIN \_\_\_\_\_ Title Number \_\_\_\_\_

Do designate this vehicle, watercraft or outboard motor to:

BENEFICIARY FULL LEGAL NAME		SSN	DATE OF BIRTH
STREET ADDRESS		CITY	STATE ZIP CODE

BENEFICIARY FULL LEGAL NAME		SSN	DATE OF BIRTH
STREET ADDRESS		CITY	STATE ZIP CODE

BENEFICIARY FULL LEGAL NAME		SSN	DATE OF BIRTH
STREET ADDRESS		CITY	STATE ZIP CODE

Sworn to before me in the State of \_\_\_\_\_ and county of \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

X \_\_\_\_\_  
APPLICANT / OWNER SIGNATURE

X \_\_\_\_\_  
NOTARY / DEPUTY SIGNATURE

My Commission Expires on \_\_\_\_\_

amended sections of the Revised Code are 2105.14, 2107.34, 2109.301, 5302.23, and 5302.24, and section 5801.12 is newly enacted.

The passage of this Bill has been long-awaited for members of the EPTPL Section, who originally proposed these changes to the Council of Delegates in 2012. For the previous article pertaining to this proposal, please refer to 23 Oh PLJ, Issue 5 (May/June 2013).

## INCREASE IN VALUE AND NUMBER OF VEHICLES WHICH MAY BE SELECTED BY SURVIVING SPOUSE

*By M. Elizabeth Monihan, Esq.*

*Schneider Smeltz Spieth Bell LLP  
Cleveland, Ohio  
Member, PLJO Editorial Advisory Board*

and

*Maryann Fremion Thomas, Esq.*

*Schneider Smeltz Spieth Bell LLP  
Cleveland, Ohio*

House Bill 432, more commonly known as the "omnibus probate bill," contains numerous changes to the Ohio Revised Code. One provision in the bill expands a surviving spouse's rights regarding the selection of vehicles: it gives the surviving spouse the right to choose an unlimited number of vehicles so long as the total value does not exceed \$65,000. The current R.C. § 2106.18(A) provides that the surviving spouse may select up to two vehicles so long as the total value does not exceed \$40,000. The apparent source of the proposed change was a suggestion from several Ohio county Clerks of Court.<sup>1</sup>

As of December 8, 2016, an amended version of HB 432 had passed the Senate. We are told that Governor Kasich is expected to sign the bill, but as of this writing, that has not happened. If signed by the Governor, the provision will become effective ninety days after the date it is signed. The amended R.C. § 2106.18(A), if HB 432 is signed by the Governor, will read as follows:

Upon the death of a married resident who owned at least one automobile at the time of death, the inter-

est of the deceased spouse in one or more automobiles that are not transferred to the surviving spouse due to joint ownership with right of survivorship established under section 2131.12 of the Revised Code, that are not transferred to a transfer-on-death beneficiary or beneficiaries designated under section 2131.13 of the Revised Code, and that are not otherwise specifically disposed of by testamentary disposition may be selected by the surviving spouse. This interest shall immediately pass to the surviving spouse upon transfer of the title or titles in accordance with section 4505.10 of the Revised Code. The sum total of the values of the automobiles selected by a surviving spouse under this division, as specified in the affidavit that the surviving spouse executes pursuant to division (B) of section 4505.10 of the Revised Code, shall not exceed sixty-five thousand dollars. Each automobile that passes to a surviving spouse under this division shall not be considered an estate asset and shall not be included in the estate inventory.<sup>2</sup> (Emphasis added.)

R.C. § 2106.13(A) also is set to be amended, to make clear that if the surviving spouse does select multiple automobiles, the \$40,000 allowance for support will be reduced by the value of the automobile selected which has the lowest value. The current version of the statute refers to a reduction when the surviving spouse selects two automobiles. The revised version of R.C. § 2106.13 continues the requirement that in allocating the allowance for support among the surviving spouse and the children of the decedent under R.C. § 2106.13(C), a probate court must consider the benefit derived by the surviving spouse from the transfer of the vehicle having the lowest value.

At the April 29, 2016 OSBA Estate Planning, Trust and Probate Law Section meeting, a Report of the Ohio Association of Probate Judges was submitted, expressing some interest among the probate judges in raising the \$40,000 family allowance under R.C. § 2106.13 to \$65,000. The purpose of this increase would be to make the amount of the family allowance consistent with the amount of revised maximum vehicle(s) value that the surviving spouse may select.<sup>3</sup> The judges' proposal was made in the hope that by matching the family allowance with the maximum value of vehicles that the surviving spouse may select, the treatment of surviving spouses would be more equal.<sup>4</sup> This suggested change did not make its way into the omnibus probate bill, so stay tuned for future reports on this possible change.