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EDITOR'S MESSAGE

The General Assembly has now adjourned. Among its last acts was enactment of two omnibus probate and trust law bills, HB 432 and SB 232, effective April 6, 2017 and March 14, 2017 respectively. Together they include eleven separate recommendations of the EPTPL Section of OSBA. This issue of PLJO includes an article identifying and explaining each of the eleven, authored in most cases by the chair of the EPTPL committee that prepared the recommendation and sheparded it to enactment. Those articles are listed in the table of contents of this issue, and are the first eleven articles following this message.

DRAFTING POWERS OF ATTORNEY UNDER UFADAA

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As discussed elsewhere in this issue, the Ohio General Assembly's lame-duck implementation of UFADAA (Uniform Fiduciary Access to Digital Assets Act) finally provides Ohio fiduciaries (including agents under powers of attorney) much-needed authority over digital assets. Ohio's enactment of UFADAA was accompanied by two important revisions to our earlier enactment of the Uniform Power of Attorney Act ("OPOAA"¹) to facilitate granting digital-asset powers to agents and ensuring that those agents do not run afoul of half-century-old federal computer-crime laws that still (inexplicably)

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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

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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.¹

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.² (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.³ 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.⁴ This suggested change did not make its way into the omnibus probate bill, so stay tuned for future reports on this possible change.

The final outcome of HB 432 will be reported in future editions of this Journal.

ENDNOTES:

¹ OSBA EPTPL Section, Minutes of Council Meeting September 18 and 19, 2015, Todd Book, OSBA Legislative Counsel.

² Am. Sub. H. B. No. 432, As Passed by the Senate.

³ OSBA EPTPL Section, Report of the Ohio Associate of Probate Judges submitted to the Section on April 29, 2016, Judge Jan Michael Long.

⁴ Id.

SB 181: EVERYTHING YOU NEED TO KNOW ABOUT THE CORPORATION LAW COMMITTEE'S NEWEST LEGISLATION

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INTRODUCTION¹

Ohio Senate Bill 181 ("SB 181") will become law on July 6, 2016. SB 181 makes significant adjustments to Ohio Revised Code ("ORC") Chapter 1701 (the Ohio General Corporation Law) and Chapter 1705 (the Ohio Limited Liability Company Act), primarily relating to corporate officer and LLC member, manager and officer fiduciary duties and liability standards. SB 181 is part of the ongoing effort to create a more competitive, pro-business statutory framework in Ohio. The SB 181 amendments were developed by the volunteer lawyers who serve on the Corporation Law Committee of the Ohio State Bar Association ("OSBA"). Special thanks are extended to the OSBA's Legislative Screening Committee and its Council of Delegates for endorsing the legislation, as well as to Todd Book, OSBA Director of Policy and Government Affairs, and primary SB 181 sponsors Ohio Senators Larry Obhof and Joe Schiavoni for their efforts in the enactment of SB 181.

All ORC references in this article are to the ORC as amended by SB 181.

AMENDMENTS TO THE OHIO GENERAL CORPORATION LAW (ORC CHAPTER 1701)

SB 181 seeks to fill a gap in existing Ohio statutory law regarding the default statutory duties and liability standards for persons who serve as officers of Ohio corporations. The Ohio General Corporation Law has long included detailed provisions regarding the fiduciary duties and liability standards for directors of Ohio corporations, but has been silent as to officers. It was generally assumed (with some supporting but general statements in Ohio case law) that officers owed the same duties as directors, but the law was not clear on what exactly that meant or as to whether the same statutory liability standards applicable to directors also applied to corporate officers. SB 181 provides much-needed clarification in this regard.

- A. Officer Fiduciary Duties. New ORC Section 1701.641 spells out the default fiduciary duties applicable to officers of Ohio corporations. Those fiduciary duties are essentially the same as the fiduciary duties owed by directors under ORC Section 1701.59. Officers thus owe a duty to act: (1) in good faith, (2) in a manner the officer reasonably believes to be in or not opposed to the best interests of the corporation (duty of loyalty), and (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances (duty of care). ORC Section 1701.641(B). Additional fiduciary duties may be added via the articles of incorporation or regulations of the corporation, or via written agreement with the officer. ORC Section 1701.641(A). As with directors, when making business decisions, an officer may reasonably rely on information, opinions, reports or statements provided by reliable and competent corporation personnel, advisors and experts, unless the officer has knowledge that makes reliance on that information unwarranted. ORC Section 1701.64(B), (C)(2).
- B. Officer Fiduciary Liability Standards. New ORC Section 1701.641 also establishes default liability standards for breaches and alleged breaches of an officer's fiduciary duties, which