

Publications

Client Alert: Ohio Senate Bill 232: Divorce Terminates Transfer-On-Death Deeds to Ex-Spouses Automatically and Inheritance Rights of the Pre-Gestated and Pre-Conceived are Limited

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Elizabeth E.W. Weinewuth

Lindsay Doss Spillman

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Mark E. Vannatta

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Last week, Governor Kasich signed into law Senate Bill 232, which makes changes to Ohio's statutes on intestacy, wills, and trusts. The legislation, which is a product of the Ohio State Bar Association Estate Planning, Trust, and Probate Law Section, updates and addresses two issues: transfer on death affidavits, and deeds and inheritance rights of children born with the use of assisted reproductive technologies. These amendments will take effect March 13, 2017.

Transfer-on-Death Affidavit or Deed

The legislation addresses the effect a divorce has on the validity of transfer-on-death affidavits and deeds for real estate, and brings this provision in line with other parts of the Ohio Revised Code. Currently, a transfer-on-death affidavit or deed that is executed by a person who later becomes divorced, obtains a dissolution, or obtains an annulment, must be specifically revoked to ensure that a former spouse has no claim to the property. Senate Bill 232 provides that termination of the marriage also terminates the designation of property under the transfer-on-death affidavit or deed to the ex-spouse and deems the ex-spouse to have predeceased the owner. The termination of the ex-spouse's interest applies to transfer-on-death affidavits and deeds executed and recorded before and after December 28, 2009. Notably, an automatic termination of rights of the ex-spouse upon divorce exists in similar contexts like life insurance policies, annuities and IRAs.

Assisted Reproductive Technology

The revisions to Ohio's intestacy, will, and trust statutes in S.B. 232 address the inheritance rights of children born with the use of assisted reproductive technologies (i.e. frozen eggs, sperm, or embryos). The revisions to these statutes consider the balance between the interest of a parent to include a child born with assisted reproductive technology in their estate planning, the timely administration of trusts and estates and burdens on the judicial system, and the interests of other

beneficiaries to understand their inheritance.

Intestacy

If a person dies without a will, a child who was conceived before the intestate's death may only inherit if the child is living at the time of the decedent's death or born within 300 days thereafter.

Wills

In the situation where a parent dies with a will, a child born more than 300 days after the death of the testator will not inherit, unless the will clearly provides otherwise. If the will allows posthumously-born children to inherit, those children inherit only if they are born one year and 300 days from the death of the testator.

The bill also adds an exception to the requirement that an administrator or executor must file a final and distributive account within six months after appointment if the will includes that a posthumously born child, including a child born with the use of assisted reproductive technology, inherits under the will.

Trust Code

Where a parent dies with a trust, a child of a settlor born more than 300 days after the settlor's death does not become a beneficiary under the trust unless the trust instrument clearly provides otherwise for their inclusion. The legislation also prevents a child born more than 300 days after an event that causes a class of beneficiaries to close from becoming a member of the class, unless the trust clearly provides otherwise.

However, even if the trust specifically provides for a child conceived by means of assisted reproductive technology and provides a time period for their birth, that period cannot extend beyond five years after the settlor's death. In contrast, when a trust contemplates posthumous children, but does not specify a time period for their subsequent birth, the child must be born within one year and 300 days after the death of the settlor to benefit under the trust.

Please contact your Vorys attorney if you have questions about this legislation or related issues.