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New Ohio Legislation Impacting Trusts and Estates Expected Before Year-End

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by John F. Furniss III

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The 132nd Ohio General Assembly's lame-duck session will run the day after the November 6 general election through the end of 2018. This session is expected to be very active. It is anticipated that legislation passed during this 55-day period will account for about 40 percent of the legislation enacted by this General Assembly over its two year existence.

Among the bills that are expected to pass during such period are several that may be of interest to financial institutions, especially those offering trust and estate services.

Probate Omnibus Bill (H.B. 595)

House Bill 595 is known as the Probate Omnibus Bill and includes a number of noteworthy proposals, including the following:

- *Arbitration for Trusts.* This proposal would clarify Ohio law by providing that a provision in the terms of a trust (other than a testamentary trust) that requires fiduciaries and beneficiaries to arbitrate disputes, other than disputes involving the validity of the trust, is enforceable. Arbitration of trust disputes may have particular appeal to corporate trustees who prefer that such disputes be resolved in a more private setting and in a manner that does not establish legally-binding precedent.
- *Pre-approval for Trusts.* This proposal would create a procedure for determining the validity of a trust during the lifetime of the person who created the trust (i.e., the settlor). This procedure would enable a settlor to take steps during his or her lifetime to avoid disputes that may arise after death regarding whether the settlor possessed the requisite testamentary capacity to create the trust and/or was being unduly influenced.

In addition, H.B. 595 may include some amendments that would enact proposals being advocated by the Ohio State Bar Association. One of these proposals is in response to a recent decision in Ohio's Eighth Appellate District that, to the surprise of many practitioners, suggests that the attorney-client privilege does not attach to communications between a fiduciary and the fiduciary's attorney. If this proposal is enacted, Ohio law would expressly state that a communication between a lawyer and a client acting as a fiduciary is privileged and protected from disclosure to third parties to whom the fiduciary owes fiduciary duties to the same extent as if the client were not acting as a fiduciary.

H.B. 595 passed the House by a vote of 91 to 0 and has been introduced in the Senate.

Elimination of Dower (H.B. 407)

House Bill 407 would change long-standing Ohio law by eliminating dower. Dower is a legal right that a married person has to the real property of his or her spouse, and its elimination will impact real estate transactions in the State of Ohio. This change would apply prospectively, and would not affect rights of married persons that are vested as of the effective date of H.B. 407.

H.B. 407 passed the House by a vote of 87 to 1 and has been introduced in the Senate.

Notary Public Modernization Act (S.B. 263)

S.B. 263 is the Notary Public Modernization Act. If adopted, this Act would make many changes to the notary public system in the State of Ohio. For one, it would authorize online notarizations under Ohio law, though subject to a number of conditions. It also would eliminate the current county-by-county registration system in favor of a centralized, uniform system. The Ohio Secretary of State would be required to oversee the entire process of appointing and commission notaries public. It would also adopt certain educational requirements for notaries public.

S.B. 263 passed the Senate by a vote of 33 to 1 and has been introduced in the House.

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These and other legislative proposals are likely to be enacted before year-end and become effective in 2019. If you have any questions about the status of these proposals and the potential impact on your institution, please contact your Vorys lawyer or John Furniss (614.464.5444).