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Ohio House Bill 432 and its Impacts

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Recently, the Ohio Legislature passed House Bill 432, which became effective on April 6, 2017. Sometimes referred to as the "Omnibus bill" by those in the profession, the bill made numerous revisions to Ohio statutes that have an effect on tax and estate planning. Below we will cover a few of the more immediately relevant changes.

Digital Assets

With Amended Substitute House Bill 432 becoming effective, Ohio adopted the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA), as well as specific provisions relating to access to a principal's "digital assets" by executors, trustees and agents under powers of attorney (fiduciaries).

Under the RUFADAA, there is now a distinction between access to a "**catalogue** of electronic communications sent or received by the principal" and access to the "**content** of electronic communications sent or received by the principal." A "catalogue of electronic communications" consists of information that identifies each person with which a user has had an electronic communication, the time and date of the communication and the person's electronic address. In contrast, the "content of an electronic communication" means information concerning the substance of the communication. As a general matter, a fiduciary has access to the "catalogue" without special authorization, but has access to "content" only if specifically authorized.

In today's world, with technology being such a large part of our lives, it is important for clients to consider granting to their fiduciaries general authority with respect to the client's digital assets, which would include access to a catalogue of electronic communications sent or received by the client and to weigh whether they would like to specifically authorize their fiduciaries to have access to the actual content of electronic communications sent or received by the principal. Conversely, for various reasons, the client may instead wish to specifically limit the content, and possibly even the catalogue, of electronic communications that a fiduciary may access.

If clients decide to grant their fiduciary access to their digital assets, it is critical that, as a practical matter, they maintain a secure list of their digital assets and passwords.

Automobile Allowance Increase

Prior to the enactment of H.B. 432, Ohio Revised Code §2106.18(A) gave a surviving spouse the right to take two automobiles, having a combined value of $40,000 or less, without being required to open a formal probate administration, provided that the automobiles had not been specifically devised in the decedent's will and were not titled with a survivorship or transfer-on-death interest. While for many couples, the two automobile/$40,000 limit caused no issues, for others it meant that one or more vehicles of the decedent had to "go through probate" in order for title to be transferred to the surviving spouse.

Two recent estates we have administered highlight the problems the two automobile/$40,000 limit created:

> **Case No. 1:** Decedent and his wife both drove late model luxury cars, titled in husband's name. Husband drove an Audi, valued at $29,000 and wife drove a BMW that was valued at $25,000. Because the combined value of the two cars exceeded $40,000, the surviving spouse could only take one of the two cars outside of probate and had transfer the other vehicle through probate court.
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> **Case No. 2:** Husband and wife both drove modest cars, but the cars their two college-aged children drove were also titled in husband's name for insurance purposes. Husband's car was valued at $15,000, wife's was valued at $10,000, and both of children's cars were worth about $5,000 each. Combined, the four cars were worth $35,000. In this case, the surviving spouse could only transfer two of the four cars as non-probate assets, while the other two had to be transferred through probate court.

H.B. 432 eliminated the two-car automobile allowance for surviving spouses and also increased the maximum total value that may be transferred from $40,000 to $65,000. Now, a surviving spouse can transfer an unlimited number of vehicles, without court administration, so long as their combined value does not exceed $65,000. In both of the cases illustrated above, with the enactment of H.B. 432, the surviving spouse would be able to transfer all of the deceased spouse's vehicles to herself, without the need to treat them as probate assets.

Delaying Mandatory Distributions under the Transfers to Minors act from age 21 to 25

Under prior law, assets held in custodianship must be distributed outright to the minor person by the time the minor attains age 21. The new law now permits delaying distribution of property to the minor until the age of 25, if the instrument creating the custodianship so provided.

In the case of a custodianship that would continue after age 21, the new law, however, provides the donee with an automatic right of withdrawal over the property for the 60 day period after reaching 21 , **unless** the donor specifically negates the existence of the right of withdrawal in the instrument. If a right of withdrawal would not exist at age 21, creation of an account by gift (as opposed to an account created by a will or trust), would then be treated as a gift of a future interest, which does not qualify for the annual gift tax exclusion, presently $14,000 per year. By including the automatic right of withdrawal language in the statute, the minor is charged with knowledge of the withdrawal power, which eliminates the requirement that express notification of the withdrawal must actually be given and allows the gift to be considered a gift of present interest, which does qualify for the annual exclusion.

This, however, means that anyone who wishes to take advantage of this new simplified format (as opposed to the actual creation of a separate trust) for extending the mandatory distribution age beyond 21 and still qualifying for the annual gift tax exclusion must face the possibility that the beneficiary could force a withdrawal at age 21, or the assets becoming reachable by the beneficiaries creditors between age 21 and the age designated by the transferor as the withdrawal age. Negating the withdrawal right, however, remains a possibility for those who are not concerned about the potential gift tax implications, such as those making a non-gift transfer at death or those whose estate is not likely to exceed the lifetime exemption amount (presently $5,490,000 for single persons and $11,980,000 for married couples).

Please feel free to contact your Vorys attorney if you have any questions regarding any of the above topics and how they may relate to your estate plan.