

Real Property Transfers 101

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Akron Bar Association

Real Property and Environmental Law Section

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Introduction

- ▶ Cedarville University, B.A.
- ▶ Case Western Reserve University School of Law, J.D.
- ▶ Clerked at McCarthy, Lebit, Crystal & Liffman Co., L.P.A., in Cleveland.
- ▶ Associate at Stark & Knoll Co., L.P.A., in Fairlawn.
 - ▶ Areas of focus:
 - ▶ Real Estate (commercial and residential)
 - ▶ Corporate/Business (formation, maintenance, succession planning, M&A, non-profit)
 - ▶ Limited Intellectual Property (trademarks, copyrights, trade secrets)

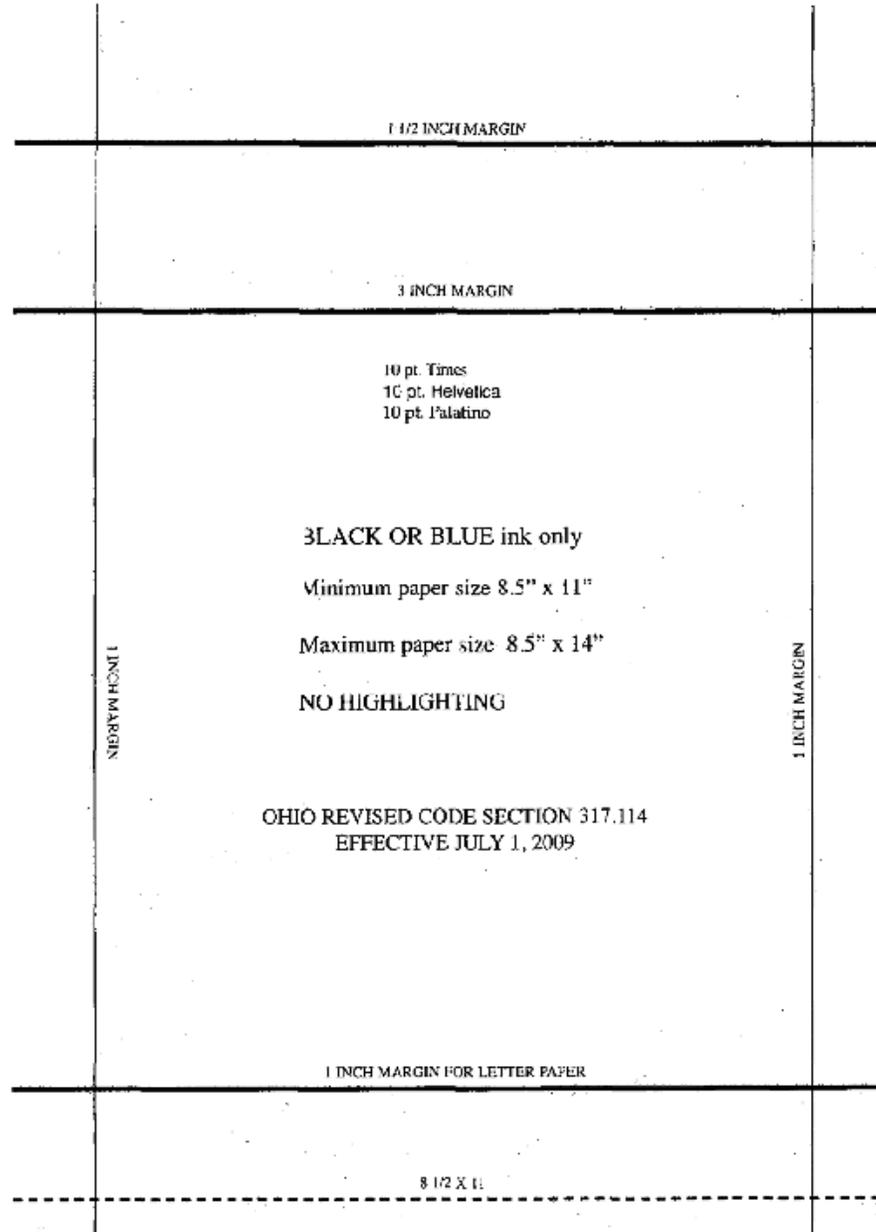
Conveyance Basics

- ▶ Broadly defined as the transfer of an interest in real property from one entity capable of holding title to another such entity, including the transfer of both legal and equitable interests and fractional interests.
- ▶ Most common vehicles for conveying property: deeds.
- ▶ Other vehicles: land contracts, leases, licenses, and easements.

Formalities

- ▶ Formatting requirements
- ▶ Execution and acknowledgment
- ▶ Delivery and acceptance
- ▶ Recording

Formalities— Formatting



Formalities—Execution and Acknowledgement

- ▶ Must be executed by the grantor(s); and any spouse, if dower release is made.
- ▶ Must be acknowledged before a notary public or other officer authorized to take acknowledgements. R.C. § 5301.01.
 - ▶ Officer taking the acknowledgment CANNOT be a party to the instrument. *Amick v. Woodworth*, 58 Ohio St. 86, 50 N.E. 437 (1898).
 - ▶ This ensures a disinterested party's involvement in case testimony is later needed.
 - ▶ Notaries, be careful—incorrect certification could result in damages. *See Keck v. Keck*, 375 NE.2d 1256 (Ohio App. 1977).
 - ▶ Acknowledgment outside of Ohio is valid, provided it is done according to Ohio law, or the law of the jurisdiction in which the instrument is executed.
- ▶ Practice pointer: scilicet must identify the ***location of the acknowledgment***. Please correct the venue if it is incorrect.

Formalities—Delivery and Acceptance

- ▶ There must be delivery AND acceptance of the instrument to be valid. Without (1) grantor’s intent to convey, and (2) grantee’s corresponding intent to accept the conveyance, then title does not transfer.
 - ▶ *See Kniebbe v. Wade*, 161 Ohio St. 294, 118 N.E. 2d 833 (1954) (deed not operative until delivered); *Lemley v. Shafer*, 14 Ohio App. 362 (4th Dist., Lawrence Cty. 1921) (grantee must accept deed in order to vest title).
- ▶ **Normally, delivery and acceptance is presumed.**
 - ▶ R.C. § 5301.07(B)(1)—when an instrument is recorded, the following presumptions are raised:
 - ▶ A rebuttable presumption that the instrument conveys, encumbers, or is enforceable against the interest of the person who signed the instrument.
 - ▶ A rebuttable presumption that the instrument is valid, enforceable, and effective as if in all respects the instrument was legally made, executed, acknowledged, and recorded.
 - ▶ *Mitchell's Lessee v. Ryan*, 3 Ohio St. 377 (1854) (“The record of a deed is prima facie evidence of its delivery. Such prima facie case may be rebutted by proof.”).

Formalities—Recording

- ▶ Recording is not necessary to transfer title; but it's recommended.
- ▶ It is protection of the grantee's interest in the property conveyed.
 - ▶ R.C. § 5301.01(B)(1)(b)
 - ▶ The recording of the instrument in the office of the county recorder of the county in which the subject property is situated is constructive notice of the instrument to all persons, including without limitation, a subsequent purchaser in good faith or any other subsequent holder of an interest in the property, regardless of whether the instrument was recorded prior to, on, or after February 1, 2002.
- ▶ Recording raises the following presumptions concerning the instrument:
 - ▶ A rebuttable presumption that the instrument conveys, encumbers, or is enforceable against the interest of the person who signed the instrument. R.C. § 5301.07(B)(1)(a).
 - ▶ A rebuttable presumption that the instrument is valid, enforceable, and effective as if in all respects the instrument was legally made, executed, acknowledged, and recorded. R.C. § 5301.07(B)(1)(b).

Essentials of Conveying Instrument

- ▶ Essentials:
 - ▶ Names
 - ▶ Legal description
- ▶ Major hang-ups:
 - ▶ Marital status
 - ▶ Dower release

Essentials of Conveying Instrument— Names

- ▶ Use proper legal names for the grantor(s) and grantee(s).
- ▶ Match up the grantor's name with the grantee's name on the prior instrument.

- ▶ E.g.

- Prior deed: Benjamin Rector grants to David Barnes

- New deed: David P. Barnes grants to John Mayer.

- ▶ E.g.

- Prior deed: Garcia Homes, LLC, grants to Thomas A. Harris and Emily Smith

- New deed: Thomas A. Harris and Emily Harris grant to Daniel Radcliffe.

Essentials of Conveying Instrument— Names

- ▶ Remedy for this mismatch is the use of:
 - ▶ “also known as” or “a.k.a.”
 - ▶ “formerly known as” or “f.k.a.”
 - ▶ “now known as” or “n.k.a.”
- ▶ This is also a great way to signal to the County Auditor of exempt transfers.
 - ▶ E.g., Emily Smith is transferring her interest to her trust, but following a name change.
 - ▶ DO NOT use “Emily Smith grants to Emily Harris, Trustee of the Emily Harris Revocable Trust Dated January 1, 2018.” The County Auditor might not know what's going on here.
 - ▶ Instead, use “Emily Smith, n.k.a. Emily Harris, grants to Emily Harris, Trustee of the Emily Harris Revocable Trust Dated January 1, 2018.”
 - ▶ Affidavits of facts are often helpful—and sometimes mandatory—for transfers such as this.

Essentials of Conveying Instrument— Legal Description

- ▶ Types:
 - ▶ Metes and bounds (e.g., S 89° 00' 00" E 500 feet)
 - ▶ Lot (e.g., Lot 5 in Fairlawn Heights Allotment, Plat Book 8, Page 25)
 - ▶ Section, township, range (e.g., SE quarter of S1 T8 R5)
 - ▶ Chains and links (same as metes and bounds, but with different measurement)
- ▶ Key inquiry: can a purchaser for value determine what is being conveyed?
- ▶ Generally, minor typographical errors are acceptable. Sometimes, however, minor deficiencies are unacceptable. *See Eggleston v. Bradford*, 10 Ohio 312 (1840).

Essentials of Conveying Instrument— Legal Description

- ▶ Legal description describes property being conveyed—not the parcel number or the street address. It is essential to the conveyance.
- ▶ Should NOT be substituted with parcel numbers or street addresses.
- ▶ Should NOT be modified (except for minor errors) without survey of the property and new legal description.
- ▶ Do NOT re-file deed from the owner to himself in order to “correct” the legal description. Instead, (1) have the grantor re-sign original deed to fix any errors, or (2) have the grantee deed back property received, and have the grantor re-convey the correct property. Use affidavit of facts relating to title to provide support in the chain of title.

Essentials of Conveying Instrument— Major Hang-Ups

- ▶ Marital status of the grantor.
 - ▶ Make sure this is stated on document in two places: granting clause as well as acknowledgement.
 - ▶ Use “married” (only in limited circumstances), “husband and wife”, “spouses”, “single”, “unmarried”, “widowed”.
 - ▶ If using “divorced”, also use “and not remarried”.
 - ▶ Make sure you look at prior deed(s) to see if dower is an issue or if it was properly released.
- ▶ Release of dower interest.
 - ▶ Dower is the right of a surviving spouse to a life estate in an undivided one-third interest in the real property owned by their spouse.
 - ▶ To release this interest, unnamed spouse must sign on instrument at time of conveyance.
 - ▶ Get the spouse's signature on the instrument rather than via a separate instrument.
 - ▶ Look in root instrument for any issues pertaining to dower.

Types of Deeds

- ▶ Quitclaim
- ▶ Limited warranty
- ▶ General warranty
- ▶ Fiduciary

Quitclaim Deed

- ▶ Most basic deed.
- ▶ Includes no covenants whatsoever; there is no guarantee of title.
- ▶ Basically says, “I transfer any interest I have—if any—in Blackacre to you.”
- ▶ R.C. § 5302.11 Quit-claim deed form.
 - ▶ A deed in substance following the form set forth in this section, when duly executed in accordance with Chapter 5301. of the Revised Code, has the force and effect of a deed in fee simple to the grantee, the grantee's heirs, assigns, and successors, and to the grantee's and the grantee's heirs', assigns', and successors' own use, but without covenants of any kind on the part of the grantor.

Limited Warranty Deed

- ▶ Covenants against claims by, through, or under the grantor, except those excepted.
- ▶ Basically says, “I will defend against claims stemming from my ownership of Blackacre.”
- ▶ R.C. § 5302.07 Limited warranty deed form.
 - ▶ A deed in substance following the form set forth in this section, when duly executed in accordance with Chapter 5301. of the Revised Code, has the force and effect of a deed in fee simple to the grantee, the grantee’s heirs, assigns, and successors, to the grantee’s and the grantee’s heirs’, assigns’, and successors’ own use, with covenants on the part of the grantor with the grantee, the grantee’s heirs, assigns, and successors, that, at the time of the delivery of that deed the premises were free from all encumbrances made by the grantor, and that the grantor does warrant and will defend the same to the grantee and the grantee’s heirs, assigns, and successors, forever, ***against the lawful claims and demands of all persons claiming by, through, or under the grantor, but against none other.***

Limited Warranty Deed

- ▶ R.C. § 5302.08 Limited warranty covenants meaning and effect.
 - ▶ In a conveyance of real estate, or any interest therein, the words “limited warranty covenants” have the full force, meaning, and effect of the following words: “The grantor covenants with the grantee, his heirs, assigns, and successors, that the granted premises are free from all encumbrances made by the grantor, and that he does warrant and will defend the same to the grantee and his heirs, assigns, and successors, forever, ***against the lawful claims and demands of all persons claiming by, through, or under the grantor, but against none other.***”

General Warranty Deed

- ▶ Covenants against all claims except those excepted.
- ▶ Basically says, “I will defend against any claims, stemming from my ownership or any prior owner's ownership of Blackacre.”
- ▶ R.C. § 5302.05 General warranty deed form.
 - ▶ A deed in substance following the form set forth in this section, when duly executed in accordance with Chapter 5301. of the Revised Code, has the force and effect of a deed in fee simple to the grantee, the grantee's heirs, assigns, and successors, to the grantee's and the grantee's heirs', assigns', and successors' own use, with covenants on the part of the grantor with the grantee, the grantee's heirs, assigns, and successors, that, at the time of the delivery of that deed the grantor was lawfully seized in fee simple of the granted premises, that the granted premises were free from all encumbrances, that the grantor had good right to sell and convey the same to the grantee and the grantee's heirs, assigns, and successors, and that the grantor does warrant and will defend the same to the grantee and the grantee's heirs, assigns, and successors, forever, ***against the lawful claims and demands of all persons.***

General Warranty Deed

- ▶ R.C. § 5302.06 General warranty covenants meaning and effect.
 - ▶ In a conveyance of real estate, or any interest therein, the words “general warranty covenants” have the full force, meaning, and effect of the following words: “The grantor covenants with the grantee, his heirs, assigns, and successors, that he is lawfully seized in fee simple of the granted premises; that they are free from all encumbrances; that he has good right to sell and convey the same, and that he does warrant and will defend the same to the grantee and his heirs, assigns, and successors, forever, ***against the lawful claims and demands of all persons.***”

Fiduciary Deed

- ▶ Covenants only as to matters related to authority or appointment of the grantor, and not to title.
- ▶ Essentially a quitclaim deed for fiduciaries, trustees, executors, etc.
- ▶ R.C. § 5302.09 Deed of executor, administrator, trustee, guardian, receiver, or commissioner form.
 - ▶ A deed in substance following the form set forth in this section, when duly executed in accordance with Chapter 5301. of the Revised Code, has the force and effect of a deed in fee simple to the grantee, the grantee's heirs, assigns, and successors, to the grantee's and the grantee's heirs', assigns', and successors' own use, with covenants on the part of the grantor with the grantee, the grantee's heirs, assigns, and successors, that, at the time of the delivery of that deed, the grantor was duly appointed, qualified, and acting in the fiduciary capacity described in that deed, and was duly authorized to make the sale and conveyance of the premises; that in all of the grantor's proceedings in the sale of the premises the grantor has complied with the requirements of the statutes in such case provided.

Fiduciary Deed

- ▶ R.C. § 5302.10 Fiduciary covenants meaning and effect.
 - ▶ In a conveyance of real estate, or any interest therein, the words “fiduciary covenants” have the full force, meaning, and effect of the following words: “The grantor covenants with the grantee, his heirs, assigns, and successors, ***that he is duly appointed, qualified, and acting in the fiduciary capacity described in such deed, and is duly authorized*** to make the sale and conveyance of the granted premises, and that in all of his proceedings in the sale thereof he has complied with the requirements of the statutes in such case provided.”

Survivorship / Joint Tenancy

- ▶ This language can be included in any of the foregoing deeds.
- ▶ Generally used to avoid probate.
- ▶ Upon one owner's death, title held by the deceased owner automatically transfers to and vests in the survivor(s).
- ▶ R.C. § 5302.17 Survivorship deed form.
 - ▶ A deed conveying any interest in real property to two or more persons, and in substance following the form set forth in this section, when duly executed in accordance with Chapter 5301. of the Revised Code, creates a survivorship tenancy in the grantees, and upon the death of any of the grantees, vests the interest of the decedent in the survivor, survivors, or the survivor's or survivors' separate heirs and assigns.

Survivorship / Joint Tenancy

- ▶ R.C. § 5302.20 Survivorship tenancy.
 - ▶ (A) Except as provided in section 5302.21 of the Revised Code, if any interest in real property is conveyed or devised to two or more persons for their joint lives and then to the survivor or survivors of them, those persons hold title as survivorship tenants, and the joint interest created is a survivorship tenancy. ***Any deed or will containing language that shows a clear intent to create a survivorship tenancy shall be liberally construed to do so.*** The use of the word “or” between the names of two or more grantees or devisees does not by itself create a survivorship tenancy but shall be construed and interpreted as if the word “and” had been used between the names.

Survivorship / Joint Tenancy

- ▶ R.C. § 5302.20 Survivorship tenancy.
 - ▶ (B) If two or more persons hold an interest in the title to real property as survivorship tenants, ***each survivorship tenant holds an equal share of the title during their joint lives unless otherwise provided in the instrument creating the survivorship tenancy.*** Upon the death of any of them, the title of the decedent vests proportionately in the surviving tenants as survivorship tenants. ***This is the case until only one survivorship tenant remains alive, at which time the survivor is fully vested with title to the real property as the sole title holder.*** If the last two or more survivorship tenants die under such circumstances that the survivor cannot be determined, title passes as if those last survivors had been tenants in common.

Survivorship / Joint Tenancy

- ▶ Upon death of one joint tenant, survivor(s) should record affidavit of survivorship to show transfer of decedent's interest.
- ▶ R.C. § 5302.17—requires the following elements in the affidavit:
 - ▶ The names of the other survivorship tenant or tenants.
 - ▶ The address of the other survivorship tenant or tenants.
 - ▶ The date of death of the decedent.
 - ▶ A description of the real property.
 - ▶ A certified copy of a death certificate.
- ▶ Recommendation: also add prior instrument reference.

Survivorship / Joint Tenancy

- ▶ Practice pointers:
 - ▶ Prior instrument reference in survivorship situations should include prior affidavits of survivorship AND original survivorship deed.
 - ▶ Dig deep into the records; don't accept anything at face value; push back to make sure you fully understand who owns what interest.
 - ▶ E.g., when surviving spouse claims they own 100%, but original deed did not contain survivorship language.
 - ▶ E.g., when form deed says “survivorship,” but language in deed omits mention of joint tenancy.

Transfer Upon Death, Resignation, or Removal of Trustee

- ▶ Affidavit must be filed upon death, resignation, removal, or other terminating event of a trustee.
- ▶ Elements of affidavit:
 - ▶ Must be signed by a co-trustee or successor trustee.
 - ▶ Must name the immediately preceding trustee and any co-trustees, and their addresses.
 - ▶ Must refer to the deed or other instrument vesting title in the trustees.
 - ▶ Must provide a legal description of the real property.
- ▶ Not needed if original trust (or memorandum) containing a succession of trustees was recorded. R.C. § 5302.171.

Transfer-on-Death

- ▶ In 2000, Ohio became one of a few states to allow transfer-on-death designations.
- ▶ Until 2009, transfer-on-death designations were made via deeds (still effective).
- ▶ Now, transfer-on-death designations are made via affidavits.
- ▶ Procedure:
 - ▶ Step 1: Record Transfer-on-Death Affidavit of Designation
 - ▶ Step 2: Death of owner
 - ▶ Step 3: Record Transfer-on-Death Affidavit of Confirmation

Transfer-on-Death

- ▶ Keys to transfers upon death:
 - ▶ Recording
 - ▶ “. . . to be effective, that affidavit shall be recorded with the county recorder as described in this section *prior to the death of the individual who executed the affidavit.*” R.C. § 5302.22(F).
 - ▶ Beneficiary's Survival
 - ▶ “An interest of a deceased owner shall be transferred to the transfer on death beneficiaries who are identified in the affidavit by name *and who survive the deceased owner* or that are in existence on the date of the deceased owner’s death.” R.C. § 5302.23(B)(1).

Transfer-on-Death—Affidavit of Designation

▶ Elements:

- ▶ Must be made by owner.
- ▶ Must state owner's marital status.
- ▶ Must include a description of the real property affected by the affidavit.
- ▶ Must include a prior instrument reference.
- ▶ Must state the specific interest or part of the interest in the real property that is to be transferred, if less than 100% of the interest.
- ▶ If the owner is married, the affidavit must include a statement by the owner's spouse stating that the spouse's dower rights are subordinate to the vesting of title to the real property in the transfer-on-death beneficiary or beneficiaries.
- ▶ Must identify—by name—one or more persons as transfer on death beneficiary or beneficiaries.

Transfer-on-Death—Affidavit of Designation

- ▶ Default statutory provisions:
 - ▶ Multiple beneficiaries take interest as tenants in common (not as joint tenants).
 - ▶ Multiple beneficiaries take equal interests.
- ▶ Practice Pointers:
 - ▶ DO NOT add any information UNLESS it differs from the default provisions.
 - ▶ E.g., if there are 3 beneficiaries, owner indicates that each will get 1/3 interest upon his death. What happens if one beneficiary predeceases the owner? Do the others get 1/2; or do the others get 1/3 interest and the owner's estate gets the other 1/3 interest?
 - ▶ E.g., if there are multiple beneficiaries, owner indicates they take interests as tenants in common. This is pointless and clutters the affidavit.
 - ▶ MAKE SURE you inquire about marital status and inform the owner their spouse must sign as well.
 - ▶ Look out for sneaky spouses.

Transfer-on-Death—Affidavit of Designation

▶ Practice Pointers:

- ▶ It is permissible to name the owner—as trustee of their trust—as the transfer-on-death beneficiary. However, add, “or their successors in interest,” since the owner will be dead at time of transfer.
 - ▶ E.g., John Wayne identifies “John Wayne, Trustee, or his successor in interest, of the John Wayne Revocable Trust dated September 1, 1984” as the transfer-on-death beneficiary.
- ▶ REVOKE any prior designations, whether by deed or affidavit.

Transfer-on-Death—Affidavit of Confirmation

- ▶ After death of owner, transfer-on-death beneficiaries are required to record an affidavit of confirmation.
- ▶ Elements:
 - ▶ Must include the name and address of each transfer-on-death beneficiary who survived the owner.
 - ▶ Must state the date of death of the owner.
 - ▶ Must provide a description of the subject real property.
 - ▶ Must state the name of each transfer-on-death beneficiary who has not survived the owner.
 - ▶ Must be accompanied by a certified copy of the death certificate(s) of (1) the owner, and (2) any transfer-on-death beneficiary who has not survived the owner.

Transfer-on-Death

- ▶ **BEWARE of risks:**
 - ▶ This is a blunt instrument; a more careful approach is a trust.
 - ▶ Look out for contingent beneficiaries.
 - ▶ When do they obtain interest? Upon death of ALL initial beneficiaries, or just one?
 - ▶ Disagreement among practitioners concerning transfer-on-death beneficiary who predeceases owner.
 - ▶ Does the predeceasing transfer-on-death beneficiary's interest (1) go to the other transfer-on-death beneficiaries, (2) go to their heirs, or (3) revert back to the owner's estate (and thus is probated)?
 - ▶ Survivorship/joint tenancy in root instrument requires all owners' signatures.
- ▶ **Practice pointer:**
 - ▶ If the matter is complex, draft a trust and (1) transfer property directly to trustee, or (2) designate the trustee as the transfer-on-death beneficiary.

Transferring Property to Entities

- ▶ Make sure entity is in existence before transfer takes place.
- ▶ Match up entity's name with the entity's name as recorded with the Secretary of State.
- ▶ Some auditors will request articles of organization/incorporation at time of recording.
- ▶ Often require affidavit of facts explaining transfer (especially if the transfer is exempt). County auditors are skeptical of these transfers.

Transferring Property to Entities— Proposed Legislation

- ▶ **WARNING:** County Auditors have long since been trying to close what they deem, the “LLC loophole,” which exists when transferring property.
 - ▶ “Single asset transfers avoid real estate conveyance tax fees and real estate tax valuation increases. The transfer price of the LLC assets is not recorded, unlike the transfer of real estate assets being disclosed as part of the public record. County Auditor does not have knowledge of the LLC transfer price for use in a property's tax valuation.”
 - ▶ “If this method of avoiding equal taxes has any long-term potential, we will see developers of single family residences, condominium units and all property types using LLC's as the ownership, investment and transfer entities to avoid disclosing the actual sale prices.”
 - ▶ “Several states have already closed the LLC loophole. From Michigan: unless otherwise exempt under this act, the conveyance of title to or other transfer of a present interest or beneficial interest or any other interest in real property by any method, including the interest in real property acquired through the acquisition of a controlling interest in any entity with an interest in the property (LLC) is a transfer of real property subject to transfer fee.”

Trust Conveyances and Conflicts of Interest

- ▶ Certain conveyances are voidable because of a conflict between the trustee's fiduciary and personal interests. R.C. § 5808.02(B).
- ▶ R.C. § 5808.02(C)—There is presumed to be a conflict between a trustee's fiduciary and personal interests if a conveyance is between the trustee and:
 - ▶ The trustee's spouse.
 - ▶ The trustee's descendant, sibling, or parent or the spouse of a trustee's descendant, sibling, or parent.
 - ▶ An agent or attorney of the trustee.
 - ▶ A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

Trust Conveyances and Conflicts of Interest

- ▶ To overcome this presumed conflict, execute and record a certification of trust.
- ▶ According to a local title agent: “A Certification of Trust, as opposed to a Memorandum of Trust, is preferable because R.C. § 5810.33 provides greater protection to persons relying on the information provided therein. As you know, we title people rely on information of record to determine insurability.”
- ▶ See <https://www.akronbar.org/wp-content/uploads/2017/05/Title-Insurance-Issues-2017-0519.pdf> for more information.
- ▶ If possible, obtain consent/signatures of beneficiaries, and append to the certification of trust.

Trust Conveyances and Conflicts of Interest—Certification of Trust

- ▶ Must include:
 - ▶ A statement that the trust exists and the date the trust instrument was executed.
 - ▶ The identity of the settlor.
 - ▶ The identity and address of the currently acting trustee.
 - ▶ The powers of the trustee.
 - ▶ The revocability or irrevocability of the trust and the person who can revoke.
 - ▶ The authority of co-trustees to sign/authenticate and the number required to exercise powers of the trustee.
 - ▶ A statement that the trust has not been revoked, modified, or amended in any manner that would cause statements in the certification of trust to be incorrect.
- ▶ Recommended: Input language directly from the trust, *especially* self-dealing or conflicts of interest provision(s).

Trust Conveyances and Conflicts of Interest

- ▶ Self-dealing and conflicts of interest provisions should be built into trusts.
 - ▶ “Self-Dealing. [The Trustee has the power]To deal with itself or other fiduciaries or persons in which the Trustee may have an interest.”
 - ▶ “Conflicts of Interest. I anticipate that the Trustee of any trust administered under this instrument may be a person or corporation in the investment business and that the Trustee may purchase and sell investments through itself or through a person or firm of which the Trustee is a partner, shareholder, associate, employee, owner, subsidiary or affiliate. I also anticipate that trust property may be invested in individual securities, mutual funds, partnerships, private placements or other forms of investments promoted, underwritten, managed or advised by the Trustee or a person or firm related to the Trustee. Any such purchases, sales or investments will not be deemed conflicts of interest by the Trustee and will not be deemed to violate any self-dealing rules otherwise applicable to such Trustee.”

Exempt Transfers

- ▶ Generally, each county auditor requires payment of conveyance fee on transfers of real property.
- ▶ 25 recognized exemptions codified in R.C. § 319.54(G)(3).
 - ▶ Common exemptions (references are to Form DTE 100(EX)):
 - ▶ (c) - Corrective deeds.
 - ▶ (d) - Gifts between husband and wife or parent and child, including spouses of either.
 - ▶ (m) - When no money is being transferred (usually into LLCs).
 - ▶ BEWARE of this—auditors are very skeptical of the use of this exemption.
 - ▶ (n) - Upon death of registered owner (to heir, surviving tenants, successor trustees).
 - ▶ (t) - Upon transfer to trustee of revocable trust.
 - ▶ (u) - Transfer to grantor upon revocation of a trust.
 - ▶ (v) - Transfer to beneficiaries of irrevocable trust.

Owner-Occupancy Credit and Homestead Exemption

▶ Owner-Occupancy Credit

- ▶ Provides owners 2.5% reduction in taxes on their residence.
- ▶ To receive the owner-occupancy tax reduction, you must own and occupy your home as your principal place of residence on January 1 of the year you file for the reduction.

▶ Homestead Exemption

- ▶ Eligible homeowners receive an exemption on the first \$25,000 of appraised value from taxation for a single family home.
- ▶ Who qualifies?
 - ▶ Homeowners over the age of 65.
 - ▶ Homeowners under the age of 65, who are permanently and totally disabled.
 - ▶ Military veterans who meet certain requirements.
 - ▶ Already-exempt homeowners who have recently changed residences.

County-Specific Issues

- ▶ Cuyahoga County
 - ▶ Fairly flexible.
- ▶ Medina County
 - ▶ Rigorous and stringent.
 - ▶ Use affidavit of facts for every transaction.
 - ▶ E.g., John Smith grants to John Smith, Trustee of the John Smith Revocable Trust dated January 1, 2018.
- ▶ Portage County
 - ▶ Fairly flexible.
 - ▶ Affidavit of facts recommended but not necessary for all transactions.

County-Specific Issues

- ▶ Summit County
 - ▶ Fairly flexible.
 - ▶ Affidavit of facts recommended but not necessary for all transactions.
- ▶ Wayne County
 - ▶ Very skeptical of transactions.
 - ▶ Use affidavit of facts for every transaction.
 - ▶ E.g., John Smith grants to John Smith, Trustee of the John Smith Revocable Trust dated January 1, 2018.
 - ▶ Call ahead to discuss with the auditor.

Real Property Transfers 101

Nathan B. Zion

Akron Bar Association

Real Property and Environmental Law Section

February 7, 2018