

When Private Settlement Agreements are Valid and Enforceable under Ohio Law

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Trust administration may lead to conflict between the interested parties. Litigation of such conflict is costly and can amplify division between those involved. However, whether prior to or following the commencement of litigation, depending upon the nature of the dispute and proposed resolution, Ohio Revised Code Section 5810.10 permits parties to resolve such conflicts privately and without judicial intervention or approval.

Generally, parties may enter into a private settlement agreement regarding any matter concerning the construction of, administration of, or distributions under the terms of the trust, the investment of income or principal held by the trustee, or other matters related to the trust. For example, a private settlement agreement may provide for, without limitation: (1) the determination of classes of creditors, beneficiaries, heirs, next of kin, or other persons; (2) modification of the terms of the trust, so long as such modification is not inconsistent with the terms of the trust; or (3) the granting of new powers to the trustee to the extent that such powers either are consistent with the provisions or purposes of the trust or are necessary for the administration of the trust.

Although the enforceability of private settlement agreements is generally favored, the legislature placed limitations upon such agreements to ensure consistency with Ohio law. Specifically, private settlement agreements are neither valid nor enforceable when they purport to effectuate a termination of the trust before the date specified for the trust's termination in the terms of the trust, change the interests of the beneficiaries in the trust except as necessary to effect a modification expressly permitted by the Ohio law, or include terms and conditions that could not properly be approved by the court under Ohio law. For example, as a court cannot properly approve of a term of a trust relieving a trustee from liability for breach of trust committed in bad faith, such a term within a private settlement agreement is similarly unenforceable.

Moreover, a private settlement agreement is neither valid nor enforceable where it attempts to deprive the trial court of its jurisdiction or discretion. For example, the Eleventh District held that a trial is not required to award attorney fees simply because a private settlement agreement provides for them. However, given the strong policy favoring validity and enforceability, unenforceable provisions of a private settlement agreement are severable from the remainder of the agreement. Otherwise, the law governing private settlement agreements is construed liberally in favor of the validity and enforceability of such agreements.

Private settlement agreements offer several benefits. They allow parties to keep settlement terms confidential, reduce litigation costs, and remain flexible while negotiating solutions. Crucially, they may preserve familial relationships by resolving disputes through compromise rather than judicial order.

Before entering into a private settlement agreement, it is imperative that the parties thereto seek competent and experienced counsel. Such counsel can help the parties determine whether the issue that they seek to resolve may be settled through a carefully-drafted private settlement agreement. Thereafter, the parties may have peace-of-mind knowing that their resolution is enforceable and they may leave the controversy behind them.

This article provides an overview and summary of the matters described therein. It is not intended to be and should not be construed as legal advice on the particular subject.