



## A Collaborative Approach to Modifying Non-Charitable Irrevocable Trusts Under R.C. 5804.11(B) Part 1:

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It may come as a surprise to learn that not all court proceedings within our Trust, Estate, and Probate Litigation practice are adversarial in nature. Indeed, the focus of this article is to discuss a collaborative approach to modifying a non-charitable irrevocable trust after the death of a settlor. Ohio Revised Code § 5804.11(B) provides for this form of relief, and this article is inspired by our recent retention in such a matter.

Ohio law allows the use of private agreements among consenting parties to a trust to modify a trust without court involvement. However, trustees and, notably, corporate trustees, may be uncomfortable moving forward with a proposed modification to a trust without court approval. In this instance, the Ohio Trust Code provides a number of provisions that allow for court modifications of irrevocable trusts.

If a settlor is not available in an action to modify or terminate their trust due to death, R.C. 5804.11(B) still allows a trust to be modified or terminated under certain circumstances. Specifically, under R.C. 5804.11(B), the court may modify an irrevocable trust without settlor involvement **if** all the beneficiaries consent to the proposed modification(s), and the court finds the proposed modification(s) not inconsistent with a material purpose of the trust.

As an example, in a recent matter that we handled, after the settlor passed, the trust by nature of its terms was not set to terminate for several years. The trustee, along with the beneficiaries, approached our firm. Both the trustee and beneficiaries were in agreement that certain terms of the trust should be modified to optimize the trust administration during this interim period prior to the natural termination of the trust.

And, while the trustee's approval of the proposed modification(s) to the trust is not required to initiate a court proceeding to modify a trust under R.C. 5804.11(B), it is certainly helpful to have an agreeable trustee to facilitate the process, such as in our example matter.

After review of the trust in our particular example matter, and consideration of the requirements under R.C. 5804.11(B), we determined that the proposed modifications to the trust at issue would not be inconsistent with a material purpose of the trust.

In such an instance, the next step is to prepare the relevant filings for court review and approval. Specifically, the necessary paperwork typically entails the drafting of a: (1) Complaint for Declaratory Judgment seeking modification of the trust under R.C. 5804.11(B); (2) Consent Agreement and General Release between the trustee and beneficiaries; (3) proposed Judgment Entry; and (4) Waiver of Service of Summons (to expedite the process). Before any filings are made with the court, if you have agreeable beneficiaries and an agreeable trustee, then all parties should review and consent to the court filings, including executing the Consent Agreement and General Release. If the beneficiaries and trustee are not in complete agreement, or if the court wishes for other concerns to be addressed, then an evidentiary hearing may be necessary to secure court approval of the proposed modification(s) to the trust.

Depending on the particular circumstances of each situation, modification or termination of a non-charitable irrevocable trust through the applicable court process is possible with counsel familiar with the Ohio Trust Code and its numerous provisions allowing for court modification and termination of various non-charitable and charitable trusts.

*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.*