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## 2018 Changes to Ohio's Banking Statutes

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## Table of Contents

<b>Overview</b>	<b>1</b>
<b>Chapter 1101: Banks – General Provisions</b>	<b>3</b>
<b>Chapter 1103: State Banks – Corporate Governance</b>	<b>5</b>
<b>Chapter 1105: Banks – Board of Directors</b>	<b>6</b>
<b>Chapter 1107: State Banks – Capital and Securities</b>	<b>8</b>
<b>Chapter 1109: Bank Powers</b>	<b>9</b>
<b>Chapter 1113: Stock State Banks: Corporate Governance / Formation</b>	<b>13</b>
<b>Chapter 1114: Mutual State Banks</b>	<b>19</b>
Governance Structure (R.C. 1114.01)	19
Incorporation	20
Authorized Capital; Organization (R.C. 1114.05)	22
Certificate of Authority to Commence Business (R.C. 1114.06 & R.C. 1114.07)	22
Members; Proxies (R.C. 1114.08)	23
Amendment to Articles of Incorporation	23
By Members (R.C. 1114.11)	25
Liquidation and Dissolution (R.C. 1114.16)	26
<b>Chapter 1115: Banks – Acquisitions &amp; Reorganizations</b>	<b>27</b>

<b>Chapter 1116: Mutual Holding Companies</b>	<b>29</b>
Definitions (R.C. 1116.01)	29
Governing Law; Organization (R.C. 1116.02)	30
Reorganization of a Mutual State Bank into a Mutual Holding Company (R.C. 1116.05)	31
Reorganization Plan (R.C. 1116.07)	33
Approval of Reorganization Plan by Board and Members (R.C. 1116.05(C))	33
Amendment or Termination of Adopted Reorganization Plan (R.C. 1116.13)	34
Application to Superintendent (R.C. 1116.05(C))	34
Approval by Superintendent (R.C. 1116.06 & 1116.08)	34
Membership Rights (R.C. 1116.09)	35
Governance (R.C. 1116.10)	36
Assets and Liabilities (R.C. 1116.11)	37
Deposit Accounts (R.C. 1116.12)	37
Conversion of Foreign Mutual Holding Companies (R.C. 1116.16)	37
Powers and Duties of a Mutual Holding Company (R.C. 1116.18)	37
Distribution of Surplus (R.C. 1116.19)	38
Subsidiary Holding Company (R.C. 1116.20)	38
Conversion to a Stock Holding Company (R.C. 1116.21)	39
<b>Chapter 1117: Banks - Offices</b>	<b>40</b>
<b>Chapter 1121: Superintendent's Powers</b>	<b>41</b>
<b>Chapter 1125: Banks – Liquidations &amp; Conservatorships</b>	<b>43</b>
<b>Chapter 1181: Division of Financial Institutions</b>	<b>44</b>
<b>Meet the Authors</b>	<b>45</b>

# Overview

Last year, the Ohio Legislature made a number of important changes to Ohio's statutory banking code. These are the first comprehensive changes in more than twenty years. Most of the changes were effective January 1, 2018.

The heavy lifting of the new Ohio banking bill is language that consolidates a number of existing financial institution charters into one single charter. Going forward, Ohio-chartered banks, savings and loans and savings banks will be operating under one common form of charter.

So, generally speaking, the changes made by the new banking code can be summarized with two words: *consolidation* and *clarification*. The happy result is much needed modernization.

To accomplish *consolidation*, for example, the banking bill makes numerous changes to the sections of the Ohio Revised Code which deal with chartering matters, mostly in Chapter 1109 of the Ohio Revised Code. It also repeals eight former chapters of the Ohio Revised Code which dealt with specific financial institution charters such as society for savings, savings and loan associations and savings banks (old Ohio Revised Code Chapters 1133, 1151, 1153, 1155, 1157, 1161, 1163 and 1165).

A new chapter is introduced into the Code to deal with the mutual ownership structure of some thrift institutions (new Ohio Revised Code Chapter 1114). And a new chapter is introduced to deal with mutual holding companies (new Ohio Revised Code Chapter 1116).

The bill *clarifies* existing law by dealing with a number of issues that have arisen over time. While some are minor, some are critically important. For example, it clarifies the extent to which the general corporation statute applies to banks chartered under Title 11 (see new Ohio Revised Code Section 1113.01).

The bill also makes an important change to current law aimed at limiting the personal liability of individual bank directors. Under continuing banking law, a bank director is liable for damages if he or she knowingly violates, or knowingly permits any other officers or agents of the bank to violate, any provision of banking law. The new banking bill specifically incorporates the common defenses provided by Ohio corporate law to directors for actions taken to further the best interest of the bank or in reliance in good faith on the bank's management, staff or external experts (new Ohio Revised Code Section 1105.11(A) and (B)).

The bill also provides that Ohio banks should have “competitive parity” with other types of nationally-chartered financial institutions that operate in Ohio (new Ohio Revised Code Section 1101.02). The result is that generally speaking Ohio banks can undertake the same business activities of national banks, with some exceptions.

The bill also clarifies that the enforcement authority for Ohio banking law is limited to banking regulators and does not include private parties (new Ohio Revised Code Section 1101.05). It also creates a new privilege for a bank's self-assessment reports (new Ohio Revised Code Section 1121.19) to prevent the use of these reports against the bank in litigation.

The bill clarifies and modernizes the statutory treatment of a number of other subjects, such as, for example: (1) electronic banking (permitted with a customer's consent, new Ohio Revised Code Sections 1109.04(B) and (C)); (2) when supervisory information that is deemed to be privileged and confidential (new Ohio Revised Code Section 1121.18(A)); and (3) capital restoration in the event a bank becomes undercapitalized (new Ohio Revised Code Section 1121.52).

So the new legislation is broad in scope as the examples given in this brief description are intended to suggest. Ohio's bankers and bank customers should benefit from the changes it makes that are intended to clarify and consolidate Ohio's statutory banking law.

A more detailed description of the changes made by the new legislation follows.

# Chapter 1101: Banks – General Provisions

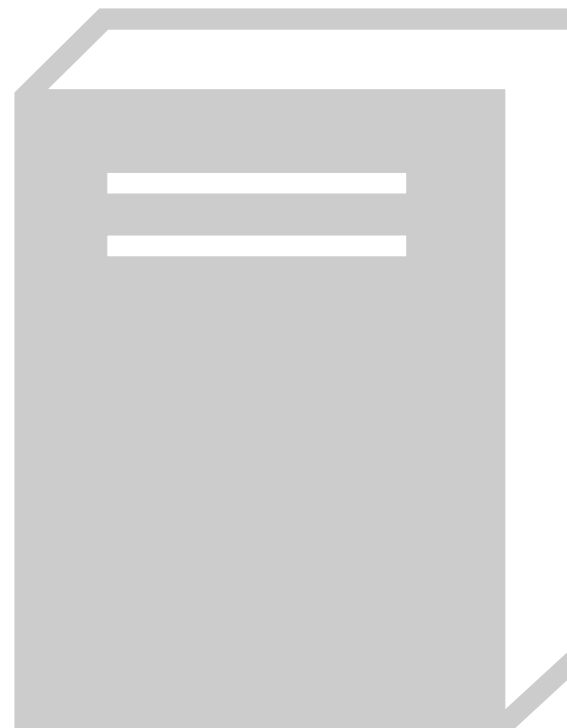
This is the introductory section to Ohio banking code and it contains a number of additions that describe the new law. Here, the additions made by the new law include new definitions, an expansion of the purposes of banking law regulation in Ohio and other transition matters.

The new definitions added to Ohio's statutory banking code cover the new financial institution charters added by the new law. Essentially, the new law consolidates all of Ohio's existing bank charters into one charter for both stock and mutual banking organizations. The definition of "state bank" for example is broadened to include both savings and loan associations and savings banks, while old definitions for these terms are deleted. Formerly, savings and loan associations and savings banks had separate charters and separate definitional sections. A number of new terms are included dealing with mutual banks and mutual holding companies.

The changes also add an additional purpose for state banking law: to provide state banks with competitive parity with other types of financial institutions doing business in Ohio.

The changes also provide for a transition to the new law: the new law modifies the powers, privileges, duties and restrictions applicable to existing savings banks and savings and loan associations so that their powers, rights, duties and restrictions conform with those conferred and imposed on institutions newly chartered after the effective date of the new law.

Another transition matter is the modification of existing Ohio law regarding the acceptance of deposits in Ohio to accommodate the expanded definition of "state bank." The law removes a current requirement that a bank or bank holding company incorporated in another state or having its principal place of business in another state establish or acquire a banking office under Ohio law. The law also removes a prohibition in the current law to permit a depository institution outside of Ohio to establish a deposit account with or for a person in Ohio by means of an automated teller machine or another money transmission device.



This chapter also provides the new law is enforceable by the Ohio Superintendent of Financial Institutions, the Federal Deposit Insurance Corporation, the Federal Reserve, or a state prosecuting attorney. This clarifies that the law creates no private right of action or defense for any other entity.



# Chapter 1103: State Banks – Corporate Governance

This chapter reorganizes the existing statutory law governing the corporate governance of state banks by recodifying the existing law in Ohio Revised Code Chapter 1113.

The chapter also updates certain restrictions regarding the use of the terms “bank” “banking,” “savings,” “loan,” “savings and loan,” “building and loan,” or “thrift” in order to prevent misleading use of the terms. The new law requires that the name of a banking organization must include one of these terms. The new law also prohibits the use without permission of the name of a state bank in advertising or promotional material in a way that may mislead a person into believing that the user of the name is associated or affiliated with the state bank. The chapter also creates a new civil money penalty of up to \$10,000 a day for violations of the new law.

The chapter also updates signature requirements: if two authorized signatories of a state bank are required by a document, one must be the chairperson, the president, or a VP, as determined by the board of directors, and the other must be the secretary or assistant secretary, as determined by the board of directors.

# Chapter 1105: Banks – Board of Directors

This chapter applies only to state banks as opposed to other kinds of Ohio business entities and makes a number of changes regarding board organizational matters. The chapter makes the following changes:



- Reduces minimum number of directors to two.
- Eliminates requirement that directors live near or in Ohio.
- Eases the requirements to be an outside director. Essentially, a person qualifies so long as he or she is not an employee of the state bank or holding company.
- Disqualifies from directorship anyone is quality of felony involving dishonesty or theft, breach of trust, theft or money laundering.



The chapter modernizes communications requirements by providing that board meetings can be held through *any* communications equipment if all of the participants can communicate with each other.

Directors can be removed if the director has been removed in accordance with federal law, or for any reason stated in the bank's code of regulations or by a majority of the directors if the board determines the director has a conflict of interest.

Prior law stated that vacancies occur when a director dies or resigns and the new law provides that a vacancy also exists when a director is removed. Vacancies are only required to be filled if the number of directors falls below the number fixed by the articles or code of

regulations and the new law provides that a vacancy does not have to be filled until an appropriate candidate is duly appointed or elected.

The chapter provides that quorum requirements under the Ohio general corporation law (Ohio Revised Code Chapter 1701) apply to state banks.

The new law changes existing law by providing that bank directors, officers, employees or other party affiliated with the state bank are not individually liable for direct or indirect damages unless it can be shown the person knowingly violated banking law or knowingly permitted another person to violate banking law. The new law also makes it clear that in Ohio bank directors can assert the defenses provided for all directors in the Ohio general corporation law.

# Chapter 1107: State Banks – Capital and Securities

Chapter 1107 of the Ohio Banking Code deals with the capital securities of Ohio state banks. The new law removes a long standing provision of Ohio banking law by removing the definition of “treasury shares.”

The new law also will no longer prohibit state banks from issuing convertible debt securities requiring individual holders of the securities to be responsible for the restoration of the banks’ paid-in capital.

Under the old law, treasury shares were deemed retired after one year after the date of acquisition; authorized but unissued shares were deemed cancelled after one year of becoming authorized; preferred shares were to be cancelled and not reissued; and both common and preferred shares were assessable on a pro rata basis for the restoration of paid-in capital. The new law removes these requirements.

The new law clarifies that employee stock options can be granted to employees, officers, and directors of the bank and its subsidiaries, and to other parties who have or will provide a service or benefit to the bank as determined by the board.

The new law also specifies that pre-emptive rights with respect to shares issued by a state bank after January 1, 2018 shall be governed by the general corporation law of Ohio.

The new law eliminates existing restrictions on when a bank can purchase its own shares and provides that a bank can now repurchase its own shares with (1) approval of the Superintendent, and (2) in accordance with the general corporation law.

The new law changes prior law by permitting dividends and distributions on a bank’s shares to be paid from a special reserve created from the proceeds from the sale of bank stock, in addition being funded from undivided profits.

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# Chapter 1109: Bank Powers

The new bill specifies that, in addition to what is otherwise authorized under the Ohio banking law, a state bank has and may exercise all powers, perform all acts, and provide all services that are permitted for national banks and federal savings associations, other than those dealing with interest rates, regardless of the date the corresponding parity rule adopted by the Superintendent takes effect (assuming a parity rule is adopted).

Under the new bill, a state bank may elect to operate as a savings and loan association by filing a written notice with the Superintendent. Such a bank is considered a savings and loan if its qualified thrift investments equal or exceed 65% of its portfolio assets *and* continue to equal or exceed 65% of its assets on a monthly average basis in nine out of every twelve months.

The new bill provides that a bank may rely on any information, agreements, documents, and signatures provided by its customers as being true, accurate, complete, and authentic and that the persons signing have full capacity and complete authority to execute and deliver any such documents. The bank must act in good faith, and "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

Under the new bill, a bank may provide electronically any statement, notice, or report required to be provided if it has the customer's consent. A customer's consent may be obtained electronically or in writing. Similar rules apply to notices from a bank customer.

Banks are currently required to provide a customer, at the time of opening a deposit account, the terms and conditions of the deposit contract. The statement may be set forth on the depositor's signature card. Under the new banking law, the signature card may be electronic or in writing.

Current law requires a bank to send written notice of a change to the deposit contract. The new bill permits a bank to provide notice, in written or "electronic form."

Prior banking law also required a bank, for each deposit account, to send to the customer a written report of the customer's account. Under the new bill, the bank is to make available to each deposit customer a report, in written or electronic form, of the customer's

deposit account activity since the last report was provided, unless the account is a certificate of deposit with no activity except for compounding interest.

The new bill states that depositors of public funds that are collateralized by securities pledged by a bank in accordance with the Uniform Depository Act (R.C. Chapter 135) and any applicable federal law, have and maintain a first and best lien and security interest in and to the securities, any substitute securities, and the proceeds of those securities, in favor of the depositors.

Current law governs a bank's provision of safes, vaults, safe deposit boxes, night depositories, and other secure receptacles for the use of its customers. The new bill adds that unless agreed to in writing by the bank, nothing in banking code creates a bailment between a customer and the bank.

Prior banking law specified that unless otherwise agreed in writing the relationship between a bank and its obligor, with respect to any extension of credit, is that of a creditor and debtor, and creates no fiduciary or other relationship between the parties. The new bill alters this provision, as follows: "Unless otherwise expressly agreed to in writing by the bank, the relationship between a bank and its obligor, or a bank and its customer, creates no fiduciary or other relationship between the parties or any special duty on the part of the bank to the customer or any other party."

Under current law, the Superintendent is required to prescribe standards for extensions of credit that are secured by liens on real estate or are made to finance the construction of a building or improvements to real estate. In prescribing those standards, the Superintendent is to consider certain factors, such as the risk the extensions of credit pose to the federal deposit insurance funds. The new bill adds "or any other factors the Superintendent considers appropriate." The new bill also states that, despite these limitations set forth in current law relative to the total loans and extension of credit that can be made to one person, a state bank may grant credit up to \$500,000 to one person subject to restrictions under federal law.

Under the prior law a bank may extend credit to any of its executive officers, directors, or principal shareholders, or to any of their related interests. The law also specified that whenever an executive officer of a bank becomes indebted to any other bank or banks, the executive officer must submit a report to the board of directors of his employer describing the debt. The new bill removes this reporting requirement.

The new bill allows state banks to invest in debt securities and obligations in which national banks, savings banks, and savings associations insured by the FDIC are permitted to invest without obtaining approval of the Superintendent.

A bank is currently authorized to invest, in the aggregate, 5% of its paid-in capital and surplus in shares of certain venture capital firms and small businesses. The new bill specifies that this limitation applies to stock state banks and adds – for mutual state banks – a limitation of 5% of its retained earnings.

The new bill also eliminates the prohibition against a bank or affiliate of a bank owning or controlling or having the power to vote shares of: (1) more than one bankers' bank, (2) more than one bankers' bank holding company, or (3) both a bankers' bank and a bankers' bank holding company.

Under existing law, a bank may invest up to 25% of its assets in the securities of bank subsidiary corporations and bank service corporations. Prior to investing, a bank must obtain the approval of the Superintendent. For these purposes, the new bill makes the following changes:



--It clarifies that only a bank subsidiary corporation that is a wholly owned subsidiary of the state bank that may engage in any activities that are a part of the business of banking (other than taking deposits).

--Rather than requiring that a bank service corporation be owned solely by one or more depository institutions, as in current law, the new bill requires that it be owned solely by one or more banks.

--The new bill authorizes a bank subsidiary corporation or a bank service corporation to invest in a lower-tier bank subsidiary corporation or bank service corporation, subject to certain requirements.



Under current law, a bank cannot invest more than 15% of its capital in the stock, obligations, or other securities of one issuer, subject to certain exceptions. One of the current exceptions is investment in the obligations or securities of the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The new bill clarifies that this applies to obligations or securities *other than stock* in these entities. It also adds another exception for the shares, obligations, securities, or other interests of any other issuer with the written approval of the Superintendent.

The new bill permits a state bank to engage in the business of selling insurance through a subsidiary insurance agency subject to licensing under Ohio law and the law of every other state in which services are provided by the bank or its subsidiary.

Existing law requires that each bank retain or preserve bank records and supporting documents for only a specified period of time, based on the type of record or document involved. The new bill adds "unless a longer record retention period is required by applicable federal law or regulation."



# Chapter 1113: Stock State Banks: Corporate Governance / Formation

The new bill specifies that a stock state banking corporation is to be created, organized, and governed, its business is to be conducted, and its directors are to be chosen, in the same manner as is provided under the general corporation law, to the extent it is not inconsistent with the Ohio banking law.

Existing law requires any persons proposing to incorporate a stock state bank to submit an application to the Superintendent for approval of the bank. Certain information must be included in the application, including the proposed articles of incorporation, application for reservation of a name, and the location of the proposed initial banking office. The new bill adds that an application must also include the proposed code of regulations and any other information required by the Superintendent.

Prior banking law set forth procedures under which the incorporators, before any subscription to shares has been received, may adopt amendments to the bank's articles of incorporation or amended articles of incorporation. Generally, upon their adoption of an amendment, the incorporators were required to send to the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent was required to conduct an examination to determine if (1) the amendment and the manner and basis for its adoption comply with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent was required to approve or disapprove it.

The new bill revises these procedures to require the Superintendent's prior approval of a proposed amendment by the incorporators. Under the new bill, if the incorporators propose the adoption of an



amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval prior to adoption by the incorporators. Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if (1) the proposed amendment complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 45 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval unless the Superintendent determines additional information is required. In that event, the Superintendent is to request the information in writing within 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval. If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the amendment within the time period required, the proposed amendment is to be considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

After the incorporators adopt the approved amendment, they must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent must then conduct an examination to determine if the manner of and basis for the adoption comply with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.

Prior banking law required each bank to have a code of regulations for its governance as a corporation, the conduct of its affairs, and the management of its property. The code of regulations must be consistent with Ohio law and the bank's articles of incorporation. The new bill repeals provisions that specify:

- How the original code is to be adopted;
- How the shareholders may amend the code or adopt a new one;
- How notice of a shareholders' meeting to adopt an amendment to the code is to be given;
- What provisions may be included in the code; and

- The procedures to be followed if the code is to be amended without a shareholders' meeting.

Prior banking law set forth the procedures under which the shareholders, after subscriptions to shares have been received by the incorporators, may adopt amendments to the bank's articles of incorporation or amended articles of incorporation. Generally, upon their adoption of an amendment, the bank was required to send to the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of its adoption. The Superintendent was required to conduct an examination to determine if (1) the manner of its adoption complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent was required to approve or disapprove it.

The new bill revises these procedures to require the Superintendent's prior approval of a proposed amendment. Under the new bill, if the shareholders propose the adoption of an amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval prior to adoption by the shareholders.

Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if (1) the proposed amendment complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 45 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval unless the Superintendent determines additional information is required.

In that event, the Superintendent is to request the information in writing within 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval.

If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the proposed amendment within the required time period, it is to be considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

After the shareholders adopt the approved amendment, the bank must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of its adoption. The Superintendent must then conduct an examination to determine if the manner of adoption complies with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.

Under prior banking law, if the directors proposed the amendment to the bank's articles of incorporation, the certificate sent to the Superintendent was required to be signed by "bank officers." The new bill instead requires that it be signed by "the bank's authorized representatives."

Prior banking law permitted the shareholders to adopt an amendment to the bank's articles of incorporation to permit the bank to have authorized and unissued shares or treasury shares for a specific purpose. The new bill eliminates the requirement that there be a specific purpose for the shares.

Prior banking law set forth the procedures under which the board of directors, after subscriptions to shares have been received by the incorporators, may adopt amendments to the bank's articles of incorporation for certain purposes or adopt amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as "amendments.") Generally, upon the directors' adoption of an amendment, the bank was required to send the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent was required to conduct an examination to determine if (1) the amendment and the manner of and basis for its adoption comply with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent was required to approve or disapprove it.

The new bill revises these procedures to require the Superintendent's prior approval of a proposed amendment by the directors. Under the new bill, if the directors propose the adoption of an amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval prior to adoption by the directors.

Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if (1) the proposed amendment complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors. Within 45 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval unless the Superintendent determines additional information is required.

In that event, the Superintendent is to request the information in writing within 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval.

If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the amendment within the required time period, it is to be considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

After the directors adopt the approved amendment, the bank must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent must then conduct an examination to determine if the manner of and basis for the adoption complies with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.

Under prior banking law, upon the directors' adoption of an amendment to the article of incorporation, the certificate sent to the Superintendent must be signed by "bank officers." The new bill instead requires that it be signed by "the bank's authorized representatives."

Under prior banking law, a bank's shareholders were required to hold an annual meeting for purposes including the election of directors and the presentation of financial statements. The old law specified the manner in which written notice of the meeting is to be provided and the period of time for giving the notice. The new bill eliminates those specific requirements and, instead, provides that the meeting may be

called for any of the reasons and in the manner set forth in the general corporation law. Notice of the meeting is also to be provided in accordance with that Law.

Additionally, the new bill states that the requirements of this provision do not apply with respect to annual or special meetings of shareholders of a stock state bank that is wholly owned, except for directors' qualifying shares, if any, by a bank holding company or savings and loan holding company.

# Chapter 1114: Mutual State Banks

R.C. Chapter 1114 provides for the creation of “mutual state banks” in Ohio. This type of bank does not have any capital stock and is instead owned by its members. Each depositor of the bank is required to be a voting member and has such ownership interest in the bank as may be provided for in the bank’s governance documents. The provisions of R.C. Chapter 1114 detail the governance, incorporation, funding, powers, and liquidation of a mutual state bank.

## Governance Structure (R.C. 1114.01)

A mutual state bank in Ohio, including the rights and liabilities of the bank’s members, are governed by (i) its articles of incorporation, (ii) its code of regulations, (iii) its bylaws, and (iv) the provisions of R.C. Chapter 1114.

### Articles of Incorporation (R.C. 1114.04)

A mutual state bank’s articles of incorporation must contain all of the following items:

- The name of the bank;
- The place in Ohio where the bank’s principal place of business is to be located; and
- The purpose(s) for which the bank is being formed.

The articles of incorporation may also set forth provisions that define, limit, or regulate the exercise of the authority of the bank, the incorporators, the directors, the officers, and the members, so long as the provisions comply with Ohio law. Further, the articles of incorporation may contain any provision that may be set forth in the bank’s code of regulations.

### Code of Regulations (R.C. 1114.10 & R.C. 1114.11)

Each mutual state bank must have a code of regulations for its governance as a corporation, the conduct of its affairs, and the management of its property. The code of regulations must be consistent with Ohio law and the bank’s articles of incorporation.

### **Meetings of Members (R.C. 1114.12)**

Whenever the members of the mutual state bank are required or authorized to elect directors, or to take any other action at a meeting, a notice of the member meeting must be given in one of the following ways:

- By publication, once each week on the same day of the week for three (3) consecutive weeks immediately preceding the date of the member meeting. Publication of the notice must be made in a newspaper of general circulation in the county in which the bank's principal office is located. The notice must contain the name of the bank and the purpose, place, date and hour of the meeting; or
- By notice served upon or mailed to members as provided in R.C. 1701.41 of Ohio's general corporation law (*i.e.* in the same manner as a corporation would provide notice to shareholders of a shareholder meeting).

Regardless of how notice of the member meeting is provided, the notice must include a statement that, if a member granted a proxy to the officers and directors of the bank, the proxy is revocable at any time before the meeting, or by attending the meeting and voting in person.

## **Incorporation**

### **Application to Incorporate Mutual State Bank (R.C. 1114.02)**

Five (5) or more natural persons (note: not legal entities) may incorporate a mutual state bank in Ohio, but may only do so after receiving approval by Ohio's Superintendent of Financial Institutions (the "Superintendent"). At least one (1) of the individuals proposing to incorporate the mutual state bank must be a resident of Ohio.

To apply for approval, the incorporators must submit an application prescribed by the Superintendent. The application must include all of the following items:

- The proposed articles of incorporation and code of regulations for the mutual state bank;
- An application for reservation of a corporate name for the mutual state bank, but only if a name reservation is desired by the incorporators and has not been previously filed;
- The location and a description of the proposed initial banking office;
- Information to demonstrate the proposed mutual state bank will satisfy R.C. Chapter 1114 and any other provision of the Ohio Revised Code identified by the Superintendent; and
- Any other information requested by the Superintendent.



### **Publication of Notice (R.C. 1114.03)**

If the Superintendent subsequently approves the incorporators' submission of the application to incorporate the mutual state bank, then the incorporators must, within ten (10) days after receiving the Superintendent's notice of acceptance, publish a notice of the bank's proposed incorporation in a newspaper of general circulation in the county where the bank's initial banking office is to be located. The notice must be published once a week for two weeks, and the incorporators must furnish a certified copy of the published notice to the Superintendent. The notice must specify: (i) the name of the proposed bank, (ii) its location, (iii) the amount of proposed capital to initially fund the bank, (iv) the names of each incorporator, (v) the address of the Superintendent, and (vi) the date by which comments on the incorporators' application must be submitted to the Superintendent, which must be thirty (30) days after the date of the first publication of the notice.

If any comments are submitted to the Superintendent within the thirty day period, then the Superintendent will determine whether the comments are relevant to the incorporation requirements and, if so, investigate the comments in a manner determined by the Superintendent.

### **Approval of Application (R.C. 1114.03)**

After the comment process has ended, the Superintendent must examine all of the facts related to the submitted application to determine whether the following requirements have been met:

- The proposed articles of incorporation, code of regulations, fees, and other items related to proposed bank meet all legal requirements set forth in the Ohio Revised Code;
- The population and economic characteristics of the area primarily to be served afford reasonable promise of adequate support for the proposed bank;
- The competence, experience, and integrity of the proposed directors and officers of the bank command the confidence of the community and warrant the belief that the business of the proposed bank will be honestly and efficiently conducted; and
- The capital of the proposed bank is adequate in relation to the amount and character of the anticipated business of the bank and the safety of prospective depositors.

Within one hundred and eighty (180) days following the date of the Superintendent's acceptance of the application, the Superintendent must either approve or deny the incorporation of the proposed bank. If the Superintendent approves the incorporation of the bank, then it may impose certain conditions to be met prior to the issuance of a "certificate of authority to commence business" in accordance with R.C. 1114.07.

## Authorized Capital; Organization (R.C. 1114.05)

The initial amount of funding required to organize a mutual state bank, referred to in R.C. Chapter 1114 as “authorized capital,” is determined by the Superintendent based on the amount and character of the bank’s anticipated business and the safety of prospective depositors. The Superintendent may, in its discretion, fix the amount of the expense fund for operating losses to be created by nonrefundable contributions.

Once the Superintendent approves the incorporation of the proposed mutual state bank and determines the amount of the bank’s authorized capital, the organization and incorporation of the bank may be completed when (i) a sum equal to five percent (5%) of the authorized capital is paid, and (ii) the names and addresses of the bank’s officers, the bank’s code of regulations, and the bank’s bylaws have all been filed with and approved by the Superintendent.

Five years after the mutual state bank commences its business, any remaining balance in the expense fund must be transferred to the bank’s retained earnings, but only if the bank is on a profitable operating basis (as determined by the Superintendent).

## Certificate of Authority to Commence Business (R.C. 1114.06 & R.C. 1114.07)

Before a mutual state bank organized under R.C. Chapter 1114 is allowed to accept deposits, incur indebtedness, or transact any business other than business that is incidental to the bank’s organization, the bank must first receive a “certificate of authority to commence business” issued by the Superintendent.

To initiate the process of receiving the required certificate of authority from the Superintendent, the bank must file a report with the Superintendent stating that it has completed everything required by the Superintendent in order to be authorized to commence business. After receiving this report, the Superintendent must examine the affairs of the bank and determine whether the bank has complied with all of the requirements necessary to entitle it to engage in business.

The Superintendent must issue the certificate of authority if:

- The Superintendent is satisfied, based on its examination of the bank and any other facts known to the Superintendent, that the mutual state bank is otherwise entitled to commence business; **and**

- The Superintendent has received written confirmation from the FDIC that it has approved the bank's application to become an insured bank as defined under the Federal Deposit Insurance Act.

After the issuance of the certificate of authority, the bank must publish the certificate once a week for two consecutive weeks in a newspaper of general circulation in the county where the bank's initial banking office is located.

## Members; Proxies (R.C. 1114.08)

A depositor of a mutual state bank is required to be a voting member of the bank and has such ownership interest in the bank as may be provided in the terms and conditions set forth in the bank's articles of incorporation, code of regulations, and bylaws. The bank's code of regulations may also provide that all borrowers from the bank are members and, if so, must provide for their rights and privileges.

Unless the bank's articles of incorporation or code of regulations provide otherwise, a proxy granted by a depositor to the officers and directors of the bank will expire on the date specified in the proxy. If no date is specified, then the authority granted by the proxy is perpetual. On or after January 1, 2018, the writing or verifiable communication appointing a proxy must be separate and distinct from any deposit agreement, loan agreement, or any other agreement, statement, document, or disclosure provided by the mutual state bank to a depositor.

## Amendment to Articles of Incorporation

### By Incorporators Before Any Receipt of Member Deposits (R.C. 1114.09)

Before any member deposits have been received by the mutual state bank, the incorporators may, by unanimous written action and subject to the provisions of R.C. 1114.09, adopt amendments to the bank's articles of incorporation to change any provision in the articles or add a provision to the articles; **provided, however**, that any proposed amendment to the bank's articles of incorporation must first be reviewed and approved by the Superintendent prior to the adoption of the amendment by the incorporators.

### Prior Approval by Superintendent (R.C. 1114.09(C))

Prior to adoption, the incorporators must send a copy of the proposed amendment to the Superintendent for review and approval. After receiving the proposed amendment, the Superintendent will review the amendment to ensure that:

- The proposed amendment complies with the requirements of the Ohio Revised Code; and
- The proposed amendment will not adversely affect the interests of the bank's depositors and creditors.

Within forty-five (45) days after receiving the proposed amendment, the Superintendent must either approve or deny the proposed amendment, **unless** the Superintendent determines that additional information is needed. If additional information is needed, then the Superintendent must request the additional information in writing within twenty (20) days after the date of receipt of the proposed amendment, and the bank must submit the requested information within thirty (30) days after notice from the Superintendent. Once the additional information has been received, the Superintendent must either approve or deny the proposed amendment within forty-five (45) days after the date the additional information is received. If the Superintendent denies the proposed amendment, then the Superintendent must notify the bank of the reasons for the denial.

If the Superintendent fails to approve or deny the proposed amendment within the timeframes stated above, then the proposed amendment will be considered approved. Any approval of a proposed amendment is not to be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

#### **Final Approval by Superintendent (R.C. 1114.09(D), (E), & (F))**

After receiving prior approval from the Superintendent and adopting the amendment, the incorporators must send a certificate signed by all the incorporators to the Superintendent containing a copy of the resolution adopting the amendment and a statement of the manner of, and basis for, its adoption.

Upon receipt of the certificate, the Superintendent must conduct whatever examination the Superintendent considers necessary to determine whether the stated manner of, and basis for, the adoption of the amendment complies with the requirements of the Ohio Revised Code. Within thirty (30) days after receiving the certificate, the Superintendent must either give final approval for the amendment or deny the amendment. If final approval is given, then the Superintendent will forward (i) a certificate of its approval, (ii) a copy of the certificate submitted by the incorporators, and (iii) a copy of the amendment to the Ohio Secretary of State, who will then file the documents. The amendment to the articles of incorporation will become effective upon filing by the Ohio Secretary of State.

## By Members (R.C. 1114.11)

A mutual state bank's code of regulations may provide for the amendment of its articles of incorporation or code of regulations at any meeting of the bank's members for which notice has been properly given (see Section I.C. of this summary for more information regarding member meetings and notice requirements). The amendment to the articles of incorporation or code of regulation must be adopted by either:

- an affirmative two-thirds (2/3rds) vote of the votes cast in person or by proxy at the meeting; **or**
- if the bank's articles of incorporation or code of regulations provide or permit, by the affirmative vote of a greater or lesser population, but not less than a majority, of the voting members represented at the meeting.

The number of votes that each member may cast will be determined by the bank's code of regulations.

If the bank's code of regulations does not otherwise address the amendment of the bank's articles of incorporation or code of regulations, then the default statutory rule is that amendments to such documents may be adopted at any meeting, authorized in writing by a majority of the bank's members, if all of the conditions are met:

- Notice of meeting is properly given in accordance with R.C. 1114.12 (see Section VII.A.3. of this summary);
- The notice of the proposed action to be taken at the meeting is in a form approved by the Superintendent;
- The proposed action is approved by a two-thirds (2/3rds) vote of the votes cast authorizing the meeting; and
- A majority of the bank's members are present in person or by proxy at the meeting.

### Prior Approval by Superintendent (R.C. 1114.11(D))

If the members or board of directors propose the adoption of an amendment, the bank must first receive approval from the Superintendent *prior* to the adoption of the amendment. The process of receiving prior approval from the Superintendent mirrors the one set forth in R.C. 1114.09. Please refer to Section VII.F.1.a. of this summary.

### Final Approval by Superintendent (R.C. 1114.11(E), (F), & (G))

After receiving prior approval from the Superintendent and adopting the amendment, the bank must send a certificate to the Superintendent containing a copy of the members' resolution adopting the amendment and a statement of the manner of, and basis for, its adoption. If the board of directors proposed the amendment, then the

certificate must include a copy of the resolution adopted by the board of directors to propose the amendment. Both certificates must be signed by the bank's authorized representatives.

Upon receipt of the certificate, the Superintendent must conduct whatever examination the Superintendent considers necessary to determine whether to give final approval for the adopted amendment. The process of receiving final approval from the Superintendent mirrors the one set forth in R.C. 1114.09. Please refer to Section VII.F.1.b. of this summary.

## **Liquidation and Dissolution (R.C. 1114.16)**

In the event of a liquidation or dissolution of a mutual state bank, the priority of claims will be established by R.C. 1125.24 of Ohio's banking law.

# Chapter 1115: Banks – Acquisitions & Reorganizations

The new law clarifies which types of banking entities can convert into which other banking entities:

- A stock state bank may convert into (i) a national bank or federal savings association upon approval of 2/3 of the shareholders (or a lower amount not less than a majority if altered by the articles or regulations of the bank) and the office of the controller; or (ii) a bank savings bank, or savings association of another state, so long as the other state's regulatory body approves and 2/3 of the shareholders (or a lower amount not less than a majority if altered by the articles or regulations of the bank) approve;
- A mutual state bank may convert into (i) a national bank or federal savings association upon approval of 2/3 of the board of directors, 2/3 of voting members (or a lower amount not less than a majority if altered by the articles or regulations of the bank), and approval by Office of the Comptroller of Currency; or (ii) a bank, savings bank, or savings association under the laws of another state, so long as the bank receives approval of 2/3 of the board of directors, approval of 2/3 of voting members (or a lower amount not less than a majority if altered by the articles or regulations of the bank) and approval of a regulatory body;
- A national or foreign state bank may convert into an Ohio bank into an Ohio state bank by submitting an application to the Superintendent;
- A mutual bank may convert into stock state bank with the approval of 2/3 of the board of directors, two-thirds of voting members (or a lower amount not less than a majority if altered by the articles or regulations of the bank) and the Superintendent;
- A stock state bank may convert into a mutual state bank with the approval of the 2/3 of the shareholders (or a lower amount not less than a majority if altered by the articles or regulations of the bank) and the Superintendent.

The new law changes notice requirements for acquisitions of state banks from a specific list to as required by rule of Superintendent.

The new law provides that in a merger involving a stock state bank, the board of directors and 2/3 of the shareholders (or a lower amount

not less than a majority if altered by the articles or regulations of the bank) must approve.

The new law also provides that in a merger involving a mutual state bank, the board of directors and 2/3 of the voting members (or a lower amount not less than a majority if altered by the articles or regulations of the bank), must approve.

The new law provides that in a merger involving a foreign bank, the foreign bank must comply with all laws of its jurisdiction.

The new law also states that if the surviving company of the merger is:

- A state bank, the Superintendent must approve.
- A national bank or federal savings association, the Office of the Comptroller must approve.
- A bank, savings bank, or savings association surviving in another state, then the state regulatory authority of the state must approve.

The new law requires that if a stock state bank or mutual state bank sells more than 50% of its assets, then the same approvals are required as for a merger.

The new law requires generally that creditors' rights in consolidations and mergers now governed by Ohio general corporation law.

New Ohio Revised Code Section 1115.24 provides for "shelf charter" (preliminary conditional approval of an applicant for a charter). The shelf charter lasts for 24 months once approved by the Superintendent. The shelf charter can be used to form an interim bank, acquire a state bank, acquire a national bank and convert it to a state bank, acquire the assets of a bank from the FDIC, or form a new bank.



# Chapter 1116: Mutual Holding Companies

R.C. Chapter 1116 provides for the creation of “mutual holding companies” in Ohio and subsequently allows Ohio mutual state holding banks to reorganize into a mutual holding company structure. The provisions of R.C. Chapter 1116 detail the governance, incorporation, and powers of a mutual holding company, as well as how a mutual state bank may reorganize as a mutual holding company.

Generally, in such a reorganization, the original mutual state bank converts to a stock bank that is wholly owned by a mutual holding company. The depositors of the mutual state bank, as members of the bank, then have their membership rights transferred to the resulting mutual holding company. Future depositors of the stock bank also receive membership rights in the mutual holding company. After the reorganization, the mutual holding company may then decide to sell part of the stock bank (or other subsidiaries of the mutual holding company). This mutual holding company structure tends to give more flexibility to mutual state banks that want to pursue outside investment while maintaining the mutual form.

For clarity and understanding, please note that, as adopted in Amended House Bill 49, R.C. Chapter 1116 does not contain a Section 1116.03, 1116.04, 1116.14, 1116.15, or 1116.17.



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## Definitions (R.C. 1116.01)

There are various terms used throughout R.C. Chapter 1116 which have statutorily-defined meanings. They are as follows:

**“Acquiree mutual bank”** – any state bank, savings association, or savings bank that meets both of the following conditions:

- It is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization; *and*
- It is in the mutual form (e.g. the ownership is made of its depositors) immediately prior to the acquisition.

**“Reorganization plan”** – the plan to reorganize into a mutual holding company structure described under R.C. Chapter 1116.

**“Reorganizing mutual state bank”** – a mutual state bank that proposes to reorganize into a mutual holding company structure in accordance with R.C. Chapter 1116.

**“Resulting mutual holding company”** – a bank holding company organized in mutual form under R.C. Chapter 1116 and, unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company organized under R.C. Chapter 1116.

**“Resulting stock state bank”** – a stock state bank that is organized as a subsidiary of a reorganizing mutual state bank to receive a substantial part of the assets and liabilities, including all deposit accounts, of the reorganizing mutual state bank upon consummation of the reorganization.

**“Stock bank”** – a bank that has an ownership structure in the form of shares of stock and is doing business under authority granted by the Superintendent or the bank regulatory authority of another state or the U.S. federal government.

**“Subsidiary holding company”** – a stock company that is controlled by a mutual holding company and that owns the stock of a stock state bank whose depositors have membership rights in the parent mutual holding company.

## Governing Law; Organization (R.C. 1116.02)

An Ohio mutual holding company and any subsidiary of an Ohio mutual holding company must be created, organized, and governed, and their businesses must be conducted, in all respects in the same manner as provided under Ohio's general corporation law (R.C. Chapter 1701), to the extent that the general corporation law's provisions are not inconsistent with R.C. Chapter 1116, Ohio's banking law (R.C. Chapters 1101–1115 & 1117–1127), or the rules adopted under the banking law. However, a nonbank subsidiary of a mutual holding company may be organized under the general corporate laws of another U.S. state.

A mutual holding company and any subsidiary of a mutual holding company organized under R.C. Chapter 1116 are subject to all powers, remedies, and sanctions provided to the Superintendent under Ohio law (see R.C. Chapters 1101–1127).

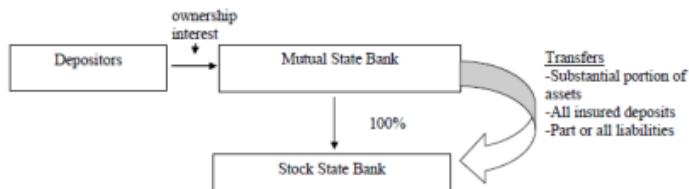
## Reorganization of a Mutual State Bank into a Mutual Holding Company (R.C. 1116.05)

### Structure of Reorganization (R.C. 1116.05(A) & (B))

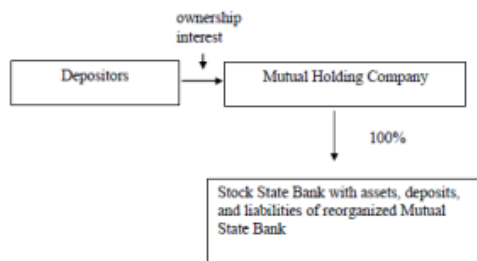
A mutual state bank may, with the approval of the Superintendent, reorganize to become a mutual holding company in one of the following ways:

- By organizing one or more subsidiary stock state banks, the ownership of which must be evidenced by shares of stock to be owned by the reorganizing mutual state bank, and by transferring a substantial portion of its assets, all of its insured deposits, and part or all of its other liabilities to one or more of the subsidiary stock state banks. See Figure 1 for an example of this structure.

**FIGURE 1**



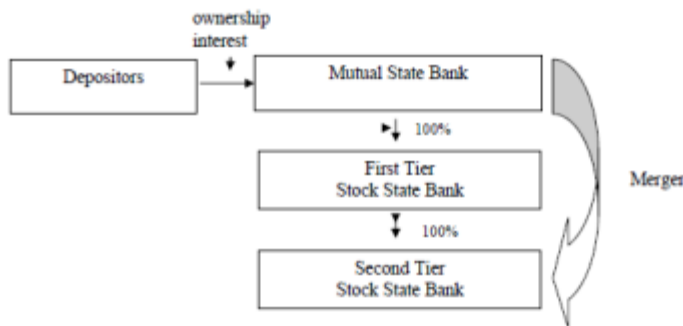
Step 1: Mutual State Bank organizes a subsidiary Stock State Bank and owns shares of stock in subsidiary Stock State Bank. Mutual State Bank then transfers a substantial portion of its assets, all of its insured deposits, and a part or all of its liabilities to subsidiary Stock State Bank.



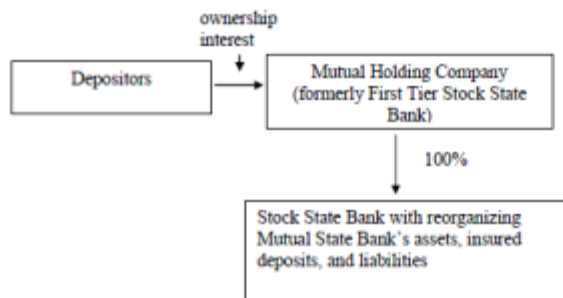
Step 2: Mutual State Bank reorganizes as Mutual Holding Company.

- By organizing a first tier subsidiary stock state bank, causing that subsidiary to organize a second tier subsidiary stock state bank, and transferring, by merger of the reorganizing mutual state bank with the second tier subsidiary, a substantial portion of its assets, all of its insured deposits, and part or all of its other liabilities to the resulting stock state bank, at which time the first tier subsidiary stock state bank becomes a mutual holding company. See Figure 2 for an example of this structure.

**FIGURE 2**



**Step 1:** Mutual State Bank organizes a First Tier Stock State Bank. First Tier Stock State Bank then organizes a Second Tier Stock State Bank. Mutual State Bank merges into Second Tier Stock State Bank.



**Step 2:** Mutual State Bank merges out of existence and Second Tier Stock Bank receives assets, insured deposits, and liabilities of reorganizing Mutual State Bank. First Tier Stock Bank becomes Mutual Holding Company.

In any other manner approved by the Superintendent.

As a part of its mutual holding company reorganization, a mutual state bank may organize as a subsidiary holding company of the mutual holding company, which subsidiary holding company must own all of the outstanding voting stock of the resulting stock state bank.

## Reorganization Plan (R.C. 1116.07)

Each reorganization plan must contain a description of all significant terms of the proposed reorganization and include all of the following:

- Any proposed stock issuance plan;
- An opinion of legal counsel, or a ruling from the IRS and the Ohio Department of Taxation, as to the federal and state tax treatment of the proposed reorganization;
- A copy of the articles of incorporation and code of regulations of the proposed mutual holding company, the resulting stock state bank, and any affiliate organization in the holding company structure;
- A description of the method of reorganization;
- A statement that, upon the completion of the reorganization, certain assets and liabilities, including all deposit accounts of the reorganizing mutual state bank, will be transferred to the resulting stock state bank, and such bank will become a stock state bank subsidiary of the mutual holding company or subsidiary holding company;
- A summary of the expenses to be incurred in connection with the reorganization; and
- Any other information required by the Superintendent.

## Approval of Reorganization Plan by Board and Members (R.C. 1116.05(C))

Before reorganizing into a mutual holding company, a reorganizing mutual state bank must obtain both of the following approvals:

- Approval of the reorganization plan by a two-thirds (2/3rds) vote of the board of directors of the reorganizing mutual state bank and any acquire mutual bank; and
- Approval of the reorganization plan by a two-thirds (2/3rds) vote, or such other proportion (but not less than a majority) as the reorganizing mutual state bank's or any acquire mutual bank's articles of incorporation or code of regulations provide, of the members' votes cast in person or by proxy at the members meeting.

## **Amendment or Termination of Adopted Reorganization Plan (R.C. 1116.13)**

If the board of directors of a mutual state bank or any acquire mutual bank adopt a reorganization plan, then the plan may be amended or terminated by such boards as follows:

- The reorganization plan may be amended by the boards as a result of a regulator's comments before any solicitation of proxies from the members to vote on the plan, or with written consent of the Superintendent at any later time.
- The reorganization plan may be terminated by either board at any time before the meeting at which the members will vote on the plan, or with the written consent of the Superintendent at any later time.

## **Application to Superintendent (R.C. 1116.05(C))**

After receiving the necessary approval from the mutual state bank's board of directors and members, the bank must file a reorganization application with the Superintendent that includes all of the following:

- An officers' certification that the reorganization plan has been approved by the bank's directors and members in accordance with Ohio law and the bank's articles of incorporation, code of regulations, or bylaws;
- A copy of the reorganization plan; and
- Any other information required by the Superintendent.

## **Approval by Superintendent (R.C. 1116.06 & 1116.08)**

Within ten (10) business days after the Superintendent's receipt of an application for a mutual holding company reorganization, the Superintendent must do one of the following:

- Accept the application for processing;
- Request additional information to complete the application; or
- Return the application if it is substantially incomplete

Within one hundred and eighty (180) days after an application is accepted for processing, the Superintendent must either approve or deny the application. If approved, the Superintendent may impose certain conditions which the Superintendent determines appropriate.

In determining whether to approve or deny an application, the Superintendent must consider the following factors:

- Whether the reorganizing mutual state bank and any acquire mutual bank will operate in a safe, sound, and prudent manner;
- Whether the applicant has demonstrated that the reorganization plan is fair to the members of the reorganization mutual state bank and any acquire mutual bank;
- Whether the interests of the reorganizing mutual state bank's depositors and creditors, along with the general public, will not be jeopardized by the proposed reorganization;
- Whether the proposed reorganization will result in a reorganizing mutual state bank that has adequate capital, satisfactory management, and good earnings prospects;
- Whether a stock issuance proposed in connection with the reorganization plan meets the standards established by the Superintendent and any applicable state and federal securities laws; and
- Whether the reorganizing mutual state bank or any acquire mutual bank has furnished all information required in the reorganization plan and any other information requested by the Superintendent.

If the application for reorganization is approved, the Superintendent must forward the articles of incorporation to the Ohio Secretary of State for filing in order to effect the reorganization.

## Membership Rights (R.C. 1116.09)

Regarding membership rights, a mutual holding company must do all of the following:

### As to depositors:

- Confer upon all existing and future depositors of the resulting stock state bank the same membership rights in the mutual holding company as were conferred upon the depositors of the reorganizing mutual state bank in effect immediately prior to the reorganization; and
- Confer upon all existing and future depositors of any acquire mutual bank, or any bank that is in the mutual form when acquired by the mutual holding company, the same membership rights in the mutual holding company as were conferred upon the depositors of the reorganizing mutual state bank in effect immediately prior to the acquisition.
  - **Provided, however,** that if the acquired mutual bank is merged into another subsidiary state bank from which the mutual

holding company draws members, the depositors of the acquired mutual bank must receive the same membership rights as the depositors of the subsidiary state bank.

**As to borrowers:**

- Confer upon the borrowers of the resulting stock state bank, who are borrowers at the time of reorganization, the same membership rights in the mutual holding company as were conferred upon them by the reorganizing mutual state bank in effect immediately prior to the reorganization, but not any membership rights in connection with any borrowings made after the reorganization; and
- Confer upon the borrowers of any acquire mutual bank, or any bank that is in the mutual form when acquired by the mutual holding company, who are borrowers at the time of the acquisition, the same membership rights in the mutual holding company as were conferred upon them by the acquired mutual bank in effect immediately prior to the acquisition, but not any membership rights in connection with any borrowings made after the acquisition.
  - **Provided, however,** that if the acquired mutual bank is merged into another bank from which the mutual holding company draws members, the borrowers of the acquired mutual bank must instead receive the same grandfathered membership rights as the borrowers of the subsidiary state bank.

It is prohibited for a mutual holding company that acquires a bank in stock form (other than a resulting stock state bank or an acquire mutual bank) to grant any membership rights to the depositors and borrowers of the stock bank, *unless* the stock bank is merged into a subsidiary stock state bank from which the mutual holding company draws it members. In this case, the depositors of the stock bank must receive the same membership rights as the other depositors of the subsidiary stock state bank into which the stock bank is merged.

## Governance (R.C. 1116.10)

A mutual holding company (and any subsidiary holding company) must be governed by a board of directors. The governance of the entity must be in accordance with the articles of incorporation and code of regulations that were adopted in connection with the reorganization.

The board of directors must have at least five (5) members who must come from the board of directors of the reorganizing mutual state bank. The board members, after the formation of the mutual holding company, will continue to serve as directors for the remainder of the terms to which they were elected.



## **Assets and Liabilities (R.C. 1116.11)**

All assets, rights, obligations, and liabilities of a reorganizing mutual state bank that are not expressly retained by the mutual holding company are transferred to the resulting stock state bank.

## **Deposit Accounts (R.C. 1116.12)**

Each person who holds a deposit account in a reorganizing mutual state bank or any acquire mutual state bank at the time of a reorganization must receive, upon the consummation of the reorganization and without payment, an identical deposit account in the resulting stock state bank or acquire mutual state bank.

## **Conversion of Foreign Mutual Holding Companies (R.C. 1116.16)**

A mutual holding company organized under the laws of another state or U.S. federal law may, with approval from the Superintendent, convert to an Ohio mutual holding company by submitting an application to the Superintendent. State banks existing as of January 1, 2018 that are affiliates of a mutual holding company organized under federal law or the laws of another state are eligible for an expedited review process by the Superintendent if such banks submit an application within one (1) year after January 1, 2018.

## **Powers and Duties of a Mutual Holding Company (R.C. 1116.18)**

An Ohio mutual holding company may do all of the following:

- Acquire a bank organized in mutual or stock form by merger of such bank with the subsidiary stock state bank, interim subsidiary stock bank, or subsidiary stock holding company of the mutual holding company;
- Merge with or acquire another holding company provided that such holding company has, as one of its subsidiaries, a subsidiary banking corporation;
- Exercise any power of, or engage in any activity permitted for, a mutual state bank;
- Engage directly or indirectly only in such activities as are permissible activities for bank holding companies under applicable state and federal law or regulations;

- Invest in the stock of a bank; and
- Exercise any rights, waive any rights, or take or waive any other action with respect to any securities of any subsidiary stock state bank or subsidiary stock holding company that are held by the mutual holding company.

## Distribution of Surplus (R.C. 1116.19)

By a majority vote of the directors, the board of a mutual holding company may equitably divide any surplus that is in excess of the amount required for the company's operations or to maintain the safety and soundness of the mutual holding company, and distribute such surplus to the respective depositors of its subsidiary stock state bank(s) in accordance with the depositors' membership rights.

The Superintendent has the ability to determine whether a surplus held by a mutual holding company is excessive and, if such a determination is made, may order the board of directors to make a surplus distribution.

## Subsidiary Holding Company (R.C. 1116.20)

A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold one hundred percent (100%) of the stock of its subsidiary stock state bank, provided that the subsidiary holding company is not formed and operated as a means of evading or frustrating the purposes of Chapter 1116. Establishment of a subsidiary holding company is subject to the approval from the Superintendent, and may occur at the time of the initial mutual holding company reorganization or at a subsequent date.

A subsidiary stock state bank or subsidiary holding company may, with prior approval from the Superintendent and subject to any rules set forth by the Superintendent, issue one or more classes of securities, including one or more classes of common stock or preferred stock, and take any necessary action in connection with the securities. However, in no event may the mutual holding company hold less than **twenty five percent (25%)** of the combined voting power of all classes of securities of the subsidiary stock holding company or stock state bank that have voting power in the election of directors of such stock state bank.

A subsidiary stock state bank or subsidiary holding company may issue, in connection with an employee stock option, an employee benefit plan, or the mutual holding company reorganization (or

subsequent thereto), different classes of common stock to the mutual holding company and subsidiary stock state bank or subsidiary stock holding company. An issuance of securities may be made at the time of the mutual holding company reorganization or anytime thereafter, and may be made in connection with the merger or acquisition of another bank whether organized in mutual or stock form.

## **Conversion to a Stock Holding Company (R.C. 1116.21)**

An Ohio mutual holding company may, with approval from the Superintendent, convert to a stock holding company by submitting an application with the Superintendent.

# Chapter 1117: Banks - Offices

The new bill removes “the adequacy of the bank’s paid-in capital” as a factor considered in a Superintendent’s approval of a proposed banking office or a contract with other banks to provide services to customers at those other banks’ offices.

The new bill changes the relocation procedures, making a one-mile radius of a banking office’s current location a key delineator.

The new bill also provides that a banking office cannot close for two consecutive days (excluding weekends and long holidays) without Superintendent’s approval.



Banking office cannot close for two consecutive days.



# Chapter 1121: Superintendent's Powers

Section 1121.01 revises the definition of a “regulated person” under the jurisdiction of the Superintendent to include any “person who controls” a financial institution, with “control” taking its meaning from another section of the banking code (Section 1115.06).

Sections 1121.05 and 1121.06 expand the parity rules for state financial institutions to put them on equal footing with any other persons engaging in financial services, wherever such persons are located or transacting business, and permit the Superintendent to relax rules putting state financial institutions at a disadvantage compared to such other persons. Such sections also allow the Superintendent to prescribe a reasonable amount of time for financial institutions to comply with the law if a permissive rule on which the institution has relied is revoked. The new bill modifies the Superintendent's examination power in several ways: reducing the retention period for examination records from twenty to ten years (Section 1121.10(E)), expanding the examination jurisdiction to savings and loan holding companies (Section 1121.12), and reinstating the Superintendent's authority to charge banks application fees and examination costs (Sections 1121.10(C), 1121.24, and 1121.29).

Money received for such fees and costs was already put into a banks fund under continuing law for expenditure by the Superintendent; the new bill clarifies that the banks fund cannot be used for any other purpose (Section 1121.30). Banks and trust companies are added to regulated persons as entities forbidden from refusing an examination or providing false or misleading information (though the new bill adds a scienter to the false or misleading information provision prohibition) (Section 1121.16).

The new bill expands the confidentiality requirement regarding information pertaining to an examination to include all information obtained by the Superintendent as a result of or arising out of an examination, while providing that the Superintendent may disclose such information to the examined bank's auditors or to appropriate regulatory agencies (Section 1118). The new bill also creates a “self-assessment privilege” for evaluations a bank performs on itself (Section 1119). The reporting requirement for each bank is relaxed,

## CONFIDENTIALITY REQUIREMENT

The new bill expands the confidentiality requirement regarding information pertaining to an examination to include all information obtained by the Superintendent as a result of or arising out of an examination, while providing that the Superintendent may disclose such information to the examined bank's auditors or to appropriate regulatory agencies (Section 1118).

with banks no longer required to maintain summaries of their most recent income and condition reports, and the penalty for failure to report its condition to income has been removed (though the requirement remains) (Section 1121).

Continuing law allows the Superintendent to suspend from participation in the affairs of a financial institution a regulated person charged in an indictment or complaint for certain crimes. The new bill expands these crimes to encompass “a felony or a crime involving an act of fraud, dishonesty or, breach of trust, theft, or money laundering involving a depository institution,” and also forbids regulated persons suspended by other states or the United States from participating in the affairs of a financial institution (Sections 1121.33 and 1121.34). Administrative hearings are made confidential by the new bill, unless the Superintendent determines that an open hearing would be in the public interest. Administrative hearings pertaining to the above mentioned suspensions are always open (Section 1121.38(A)). The new bill requires that records of each hearing shall be taken at the division of financial institution’s expense and filed with the clerk of court within 30 days of notice of the hearing’s appeal (under seal if the hearing was private) (Section 1121.38(B)).

Section 1121.52 of the new bill rewrites the provisions governing an undercapitalized bank. The new law requires that the Superintendent inform the bank of the undercapitalization and provides that the Superintendent may require the bank to submit a written capitalization plan to the Superintendent for approval. The plan must be realistic and not appreciably increase risk to the bank, and must specify, inter alia, the steps the bank will take, the levels of capital to be attained, and the types and levels of activities in which the bank will engage. If the plan is not submitted, not accepted, or not implemented, the Superintendent may appoint a conservator or take any other authorized action.

# Chapter 1125: Banks – Liquidations & Conservatorships

The new law alters existing law with an addition that a conservator's power to take certain actions must be done in good faith. The new law also expands permitted payments to officers and employees within the order of payments of claims against a bank's estate in liquidation or conservatorship. The new law also requires that a receiver's destruction of records be done in accordance with applicable law.



# Chapter 1181: Division of Financial Institutions

The new law eliminates the savings and loan association and savings bank board, and terminates the savings institutions fund, transferring the balance of such fund to the banks fund (former Sections 1181.16, 1181.17, 1181.18 of the Ohio Revised Code, and Section 512.120 of the Banking Bill). As such, the financial institutions fund is no longer funded by the savings termination fund, and the new law further clarifies that money in the financial institutions fund may only be used for the division of financial institutions' operating expenses.

Additionally, the offices of deputy superintendents for savings and loan associations and savings banks are abolished (Section 1181.01). The remaining three deputy superintendents (for banks, credit unions, and consumer finance), must each have at least five years' experience in a comparable capacity, as more fully detailed in Section 1181.01. The new law adds the Ohio Credit Services Organization Act (Chapter 4712) as a statute under which the deputy superintendent for consumer finance is responsible for conducting investigations.

The new law also modifies Section 1181.25, concerning introduction into evidence in a legal proceeding or other disclosure of nonpublic information. The Superintendent may so introduce or disclose privileged or confidential information in connection with any civil, criminal, or administrative litigation, investigations, or examinations conducted by the Superintendent, or for licensing or registration purposes through the nationwide mortgage licensing system. The Superintendent is required to obtain a protective order or agreement to protect such information if the Superintendent believes the recipient may disclose the information.



## Meet the Authors

For over 170 years, our clients  
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exceptional legal advice.

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# H. Grant Stephenson

Grant focuses on the regulation of financial firms such as banks, credit unions, broker-dealers and investment advisors. He has also represented clients in business formations and acquisitions, financial institution mergers, the issuance of public and private securities, equipment leasing matters, corporate reorganization, bankruptcy proceedings and technology matters, including electronic payment systems.

He has represented de novo financial institutions, corporate and natural person credit unions, community banks, and regional and national banking organizations.

Grant is listed in *The Best Lawyers in America*® in the areas of Banking and Finance Law, Equipment Finance Law and Financial Services Regulation Law, has been recognized in *Ohio Super Lawyers*® and he is AV Preeminent rated by Martindale-Hubbell®. Grant was named *Best Lawyers*® 2014 Columbus, Ohio Equipment Finance Law "Lawyer of the Year" and most recently named *Best Lawyers*® Columbus, Ohio Financial Services Regulation Law "Lawyer of the Year" in 2015 and 2017. He edits the firm's banking & finance blog, *Banking & Finance Law Report*.

## Bar Admissions

Ohio

U.S. Court of Appeals for the Sixth Circuit

U.S. District Court for the Northern District of Ohio

U.S. District Court for the Southern District of Ohio

Supreme Court of the United States

## Presentations

- "Where Does the Bailout Fit Into Your Business?" Project for Law & Business Ethics, Dayton School of Law, March 20, 2009

## Publications

- "Banker's Brief" (Legal Column), *The Ohio Community Banker*, Community Bankers Association of Ohio, 1986-present

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## SOCIAL MEDIA

### Blogs

[bankingandfinancelawreport.com](http://bankingandfinancelawreport.com)

### Twitter

@HGStephensonEsq

## EDUCATION

The Ohio State University Michael E. Moritz College of Law, J.D., 1979

Ohio University, A.B., *summa cum laude*, 1971

## SERVICES

### Financial Institutions

- Financial institution regulation and corporate governance
- Mergers and acquisitions, and other regulatory matters
- Secured lending, negotiable instruments and other Uniform Commercial Code matters
- Representation of financial institution regulatory agencies

### Banking & Finance

- Equipment leasing and financing



### **Honors | Awards**

- *Best Lawyers*®, Columbus, Ohio Financial Services Regulation Law “Lawyer of the Year,” 2015, 2017
- *Best Lawyers*® Columbus, Ohio Equipment Finance Law “Lawyer of the Year,” 2014
- *The Best Lawyers in America*®, Banking & Finance Law
- *Ohio Super Lawyers*®, Banking, Business/Corporate
- Martindale-Hubbell®, AV Preeminent
- Phi Beta Kappa
- Omicron Delta Kappa

### **Community**

- ProMusica of Columbus Chamber Orchestra, Board of Trustees
- Columbus School for Girls, Board of Trustees
- Leadership Columbus, 1989

### **SERVICES (CONTINUED)**

#### **Business Growth & Operation**

- Board and committee counsel
- Executive compensation

#### **Privacy & Data Security**

- U.S. and international privacy regulation
- Broker, lender and financial institution matters

#### **Bankruptcy, Workout & Creditors' Rights**

- Creditors' rights
- Reorganizations and workouts

#### **Technology**

- Software development, licensing and services

#### **Securities**

- Regulatory compliance and corporate governance
- Investment advisors

#### **Mergers & Acquisitions**

- Financial institution regulation and corporate governance

### **PROFESSIONAL ASSOCIATIONS**

- American Bar Association
- Ohio State Bar Association
- Columbus Bar Association



# Steven D. Hoying

Steven concentrates his practice on banking and finance and real estate contracts for large corporate organizations, including publicly traded financial services institutions, leading fashion retailers, telecommunications companies and healthcare providers.

He represents financial institutions and other commercial lenders, administrative agents and corporate borrowers in large, middle-market, syndicated and asset-based transactions, as well as in real estate financing related to acquisition, construction and development. He also concentrates on documentation that helps banks, credit unions and other financial services companies resolve regulatory matters, including customer privacy and information sharing, and Small Business Association loans.

Additionally, Steven has significant experience with matters across the broad spectrum of real estate, including acquisition and sale, construction and development. He handles complex asset purchase and sale agreements, commercial leases, refinancing documentation and general corporate contracts. Specifically, Steven has negotiated leasing conditions for a global medical company's nuclear pharmacy, as well as terms and conditions related to several new stores for an international fashion retailer. He has advised several clients regarding rights of property owners and tenants, as well as land use restrictions.

Steven is a member of the Columbus Bar Association and the International Council of Shopping Centers. He contributes to the firm's *Banking and Finance Law Report* blog.

## Bar Admissions

Ohio

## Community

- Knights of Columbus

## Associate

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## SOCIAL MEDIA

### Blogs

[bankingandfinancelawreport.com](http://bankingandfinancelawreport.com)

## EDUCATION

University of Chicago Law School,  
J.D., 2015

The Ohio State University, M.Ed.,  
2010

The Ohio State University, B.S.,  
*magna cum laude*, 2009

## SERVICES

### Banking & Finance

- Commercial lending
- Real estate financing

### Bankruptcy, Workout & Creditors' Rights

- Reorganizations and workouts

### Real Estate

#### Financial Institutions

- Secured lending, negotiable instruments and other Uniform Commercial Code matters

### Wireless & Telecommunications

## PROFESSIONAL ASSOCIATIONS

- Columbus Bar Association
- International Council of Shopping Centers



# Matthew P. Navarre

Matt is an associate in the firm's Corporate Department, practicing in the areas of mergers and acquisitions, corporate and securities, health law and tax.

He has experience in many areas of transactional law and has represented clients in the real estate, financial services, manufacturing, consumer services, distribution and technology industries. Matt has experience in public and private equity purchases, dispositions and mergers, asset purchases and dispositions, ownership reorganizations and tax credit financings.

Matt advises individuals and companies regarding offerings of securities, '34 Act compliance, blue-sky laws, broker-dealer rules, corporate governance, fiduciary duties, as well as tax consequences to individuals, partnerships and corporations. Additionally, Matt has experience forming start-up companies and drafting initial documents for corporate and other limited liability entities, along with managing the contractual relationships of those companies with their employees and initial customers and suppliers.

Matt advises health care organizations with regard to commercial contracting as well as structuring business relationships that comply with the Stark law and federal and state anti-kickback laws.

In law school, Matt was a managing editor of the *Ohio State Law Journal*.

## Bar Admissions

Ohio

## Associate

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## SOCIAL MEDIA

### Blogs

[employeebenefitslawreport.com](http://employeebenefitslawreport.com)

## EDUCATION

The Ohio State University Moritz  
College of Law, J.D., *cum laude*, 2015

The Ohio State University, B.A.,  
*magna cum laude*, 2012

## SERVICES

### Banking & Finance

- Tax credit financing

### Business Growth & Operation

- Corporate governance
- Organization, planning and financing
- Tax planning
- Venture capital and private equity

### Mergers & Acquisitions

- Due diligence
- Transaction structuring

### Tax, Estate Planning & Personal Wealth

- Tax credits
- Wealth and asset preservation
- Tax exempt organizations
- Tax

**Honors | Awards**

- The Ohio State University, Public Service Fellow, 2015
- The Ohio State University, Moritz College of Law, Charles W. Kettlewell Professional Responsibility Award, 2015
- Phi Beta Kappa, 2011

**Community**

- United Way of Central Ohio, Volunteer Income Tax Assistance (VITA), Volunteer, 2012-2016

**SERVICES (CONTINUED)****Securities**

- Equity, mezzanine and debt securities
- Regulatory compliance and corporate governance
- Health Care
- Fraud and abuse counseling, defense, prevention and compliance

**Financial Institutions**

- Mergers and acquisitions, and other regulatory matters

**Entrepreneurship & Startups****PROFESSIONAL  
ASSOCIATIONS**

- Columbus Bar Association
- American Bar Association



## Kyle D. Schrodi

As an associate based out of the Dayton and Cincinnati offices, Kyle represents a variety of public and privately held businesses in a vast range of corporate law matters so that foreign and domestic clients can achieve their business growth goals.

Specifically, Kyle focuses his practice on the multitude of complex contracts that come into play during global transactions, including mergers, acquisitions and divestitures, as well as estate planning and administration, international business and trade, emerging business, corporate governance and general business. He completes contractual matters for business owners, company executives and entrepreneurs involving entity formation, asset purchase and sale agreements, general business contracts and ownership succession plans.

Kyle handles a variety of estate planning matters to assist clients with wealth planning. His estate planning work involves wills and trusts, estate and trust administration and health care directives. His industry experience spans across multiple sectors, including health care, community schools, higher education, performing arts, financial services, manufacturing, professional services and entrepreneurship. Previously, Kyle was a corporate fellow at a diversified, publicly traded company operating across North America in the grain, ethanol, plant nutrient and rail industries, and also served as a legal intern at the Ohio State Entrepreneurial Business Law Clinic. Kyle has a background in German language and culture and studied in Germany and the United Kingdom.

### Bar Admissions

Ohio  
U.S. Court of International Trade

### Honors | Awards

- The Ohio State University Michael E. Moritz College of Law Ernest E. Karam Award
- The Center for Computer-Assisted Legal Instruction (CALI), Excellence for the Future Award

### Associate

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### EDUCATION

The Ohio State University Michael E. Moritz College of Law, J.D., 2014

The Ohio State University, B.S., 2011

### LANGUAGES

- German, *intermediate*

### SERVICES

#### Mergers & Acquisitions

- Due diligence
- Transaction structuring

#### Business Growth & Operation

- Business succession planning
- Business transactions
- Corporate governance
- Organization, planning and financing
- Venture capital and private equity

#### Entrepreneurship & Startups

#### Banking & Finance



## **Publications**

- “What happens to your online accounts after you die? New Ohio law gives guidance,” *Dayton Business Journal*, July 10, 2017
- “It’s never too early – Estate planning for millennials,” *Dayton Business Journal*, April 12, 2017
- “Foreign deal? Make sure you get paid,” *Cincinnati Business Courier*, March 10, 2017

## **Community**

- European American Chamber of Commerce (EACC) – Cincinnati Chapter, Young Professionals Committee, Board Member, 2017-Present
- Friends of Aullwood, Board Member, 2016-Present
- Columbus Collegiate Academy, Volunteer Academic Mentor, 2011-2012
- Jahnschule Elementary School, Bonn, Germany, Assistant Teacher, 2010

## **SERVICES (CONTINUED)**

### **Financial Institutions**

- Secured lending, negotiable instruments and other Uniform Commercial Code matters

### **Tax, Estate Planning & Personal Wealth**

- Estate and gift planning
- Tax exempt organizations
- Wealth and asset preservation

### **Real Estate**

- Commercial and residential development
- Commercial leasing
- Purchase and sale transactions

### **Securities**

### **International Business & Trade**

- Export control restrictions and compliance
- International trade and customs regulation and compliance
- Sales representation, distribution and licensing agreements