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# Live And Legal: Lawmakers Deliver Postnuptial Agreements To Ohio Through Senate Bill 210

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For over 130 years, Ohio disallowed postnuptial agreements and amendment and termination of prenuptial agreements.<sup>1</sup> Not anymore! Senate Bill 210 (“SB 210”)<sup>2</sup> has been signed by Governor DeWine. A huge congratulations and thank you to the many attorneys, judges and legislators whose time, knowledge and efforts brought a much needed and beneficial change to married couples in Ohio. Now, a married couple will be able to voluntarily enter into a postnuptial agreement as well as amend or terminate an existing prenuptial or postnuptial agreement to allow these agreements to evolve with the marriage.

## THE HISTORY OF SB 210

In response to the growing trend of other states allowing spouses to enter into postnuptial agreements and the increased uncertainty in Ohio of enforcement of prenuptial agreements which were entered into years ago (and could not be amended), the OSBA Estate Planning, Trust and Probate Law Section decided to form a Postnuptial Committee to analyze the issue. The Postnuptial Committee was charged with determining whether Ohio law should be changed to permit postnuptial agreements and if so, to what extent. The Committee also believed that any proposed recommendation must be made through a collective effort with members of the Domestic Relations Bar, Probate Judges, and Domestic Relations Judges.

Over the course of the past five years, and through an extraordinary collaborative effort of many attorneys, judges and legislators that generously gave of their time and experience, proposed revised statutes were drafted which permit spouses to voluntarily enter into agreements with each other that alter their spousal rights, as well as voluntarily modify or terminate agreements entered into prior to or during the marriage.

In July 2021, SB 210 was introduced by its primary sponsor, Senator Theresa Gavarone. On November 16, 2021, SB 210 passed the Senate and was then introduced in the House on November 17, 2021. A year later, SB 210 passed the House on December 1, 2022, and the Senate concurred in House amendments on December 7, 2022. As the final step in making SB 210 the law in Ohio, Governor DeWine signed SB 210 on December 22, 2022.

## THE OVERVIEW OF SB 210

SB 210 provides for amendments to or enactments of six sections of the Ohio Revised Code ([R.C. 2106.22](#), [3103.05](#), [3103.06](#), [3103.061](#), [3105.17](#), and [3105.171\(A\)\(6\)\(a\)\(v\)](#)) as summarized below.

First, additions to [R.C. 3103.05](#) require any agreement between spouses that alter their legal relations comply with the additional requirements set forth in [R.C. 3103.061](#).

Second, [R.C. 3103.06](#) will allow spouses to (i) enter into a postnuptial agreement, (ii) modify or terminate a prenuptial agreement or postnuptial agreement (unless the agreement expressly provides otherwise), and (iii) agree to an immediate separation and make provisions for the division of property and support of each other and their children during the separation. Also, an agreement under (i) and (ii) must comply with [R.C. 3103.061](#).

Third, the addition of [R.C. 3103.061](#) provides for a postnuptial agreement that alters legal relations between spouses to be valid must:

1. be in writing and signed by both spouses;
2. be entered into freely without fraud, duress, coercion, or overreaching;
3. be made with full disclosure or full knowledge and understanding of the other spouse's property; and
4. not promote divorce or profiteering from divorce.<sup>3</sup>

Fourth, the addition of subsection (c) to [R.C. 3105.17](#) will allow a decree of legal separation to be terminated by the Court upon a motion signed by both spouses.

Fifth, the addition to [R.C. 3105.171\(A\)\(6\)\(a\)\(v\)](#) will treat a valid postnuptial agreement the same as a valid prenuptial agreement in determining a spouse's separate property.

Sixth, the addition to [R.C. 2106.22](#) will treat a postnuptial agreement the same as a prenuptial or separation agreement in actions to set aside such agreements upon the death of one of the parties.

Like prenuptial agreements, postnuptial agreements are subject to a higher degree of good faith negotiations and disclosures to be valid.

#### **BENEFITS OF THE CHANGE IN OHIO LAW**

While not a comprehensive list, postnuptial agreements can benefit your clients by:

1. Promoting each spouse's ability to freely contract and agree to the financial aspects of their marriage;
2. Creating certainty between spouses as to their rights and legal obligations;
3. Providing the ability to enter into or modify agreements to fit the spouses' current situation;
4. Allowing stale premarital agreements to be updated; and
5. Addressing issues with existing agreements such as errors and ambiguities.<sup>4</sup>

#### **EFFECTIVE DATE OF SB 210**

SB 210 will be effective March 23, 2023.

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#### **Footnotes**

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- 1 At the time of the enactment of Senate Bill 210, Ohio was one of only four states that prohibited the use  
of postnuptial agreements.
- 2 2021 OH S.B. 210 (NS), signed by governor December 22, 2022, eff. 90 days.
- 3 This is a codification of the standards set forth in  [Gross v. Gross](#), 11 Ohio St. 3d 99, 464 N.E.2d 500,  
53 A.L.R.4th 139 (1984).
- 4 Racey and Ferraro, *The Postnuptial Agreement Renaissance—Can Ohio Emerge From the Dark Ages?*,  
*Probate Law Journal of Ohio*, 29 No. 6 Ohio Prob. L.J. NL 5 (July/August 2019).

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