

## Chapter 12

### Leasing from Trusts and Estates: A Survey of Issues in Pennsylvania, Ohio and West Virginia<sup>1</sup>

**Arnold L. Schulberg**

*Babst, Calland, Clements and Zomnir, PC*  
Hurricane, West Virginia

**Mandi L. Scott**

*Goehring, Rutter & Boehm*  
Pittsburgh, Pennsylvania

#### Synopsis

§ 12.01.	<b>Introduction.....</b>	<b>430</b>
§ 12.02.	<b>Pennsylvania.....</b>	<b>430</b>
	[1] — Statutory Authority and Limitations.....	430
	[a] — Trusts.....	430
	[b] — Estates.....	432
	[2] — The Power to Lease v. the Power to Buy and/or Sell.....	432
	[3] — Recording/Title Issues.....	434
	[4] — Litigation Issues – Jurisdiction Over Trust/Estate Disputes.....	437
	[a] — <i>Estate of Gilbert</i> .....	439
	[b] — <i>In re Estate of Frano</i> .....	439
	[c] — <i>Sherman v. Brooks</i> .....	439
	[d] — Trust Established Under Trust Agreement of <i>Golub</i> .....	440
	[e] — <i>Powell v. Best (In re Powell)</i> .....	440
	[f] — <i>Golden v. Golden</i> .....	440
	[5] — Pennsylvania Uniform Principal and Income Act.....	440

---

<sup>1</sup> *Authors' note:* The information contained herein is for general guidance on matters of interest only. The application and impact of laws can vary widely based on the specific facts involved. Given the changing nature of laws and related rules and regulations, there may be delays, omissions or inaccuracies in information contained in this chapter. The authors do not offer any tax advice and do not address the tax consequences of any law or action. You should not rely solely on the information presented here, but rather should consult a legal professional with any questions.

**§ 12.03. Ohio .....442**

[1] — Statutory Authority and Limitations.....442

    [a] — Trusts .....442

    [b] — Estates .....443

[2] — The Power to Lease v. the Power to Buy and/or Sell..... 444

[3] — Recording/Title Issues .....445

[4] — Litigation Issues – Jurisdiction Over Trust/Estate Disputes.....447

[5] — Uniform Principal and Income Act .....448

**§ 12.04. West Virginia.....449**

[1] — Statutory Authority and Limitations.....449

    [a] — Summary of H.B. 2551 .....449

    [b] — Trusts v. Estates .....449

[2] — Recording/Title Issues ..... 451

[3] — Litigation Issues – Jurisdiction Over Trust/Estate Disputes.....453

[4] — Uniform Principal and Income Act .....454

**§ 12.01. Introduction.**

Certain unique issues arise when leasing from trusts, estates and other artificial entities. For example, what authority does a fiduciary have as a lessor or lessee? Do the terms of the trust or will control in every instance or are there certain statutory requirements that cannot be amended by the instrument? If a lease dispute arises involving a trust or estate, where must the legal action be filed? This chapter explores these and other issues associated with leasing from trusts and estates under the laws of Pennsylvania, West Virginia and Ohio. The differences among the three jurisdictions are also examined. In addition, this chapter contains specific information about West Virginia’s new Uniform Trust Code, applicable to West Virginia trusts as of July 1, 2011.

**§12.02. Pennsylvania.**

**[1] — Statutory Authority and Limitations.**

**[a] — Trusts.**

On July 7, 2006, the Governor of Pennsylvania signed Senate Bill 660 into law as Act 98 of 2006. This statute codified the law of trusts in Pennsylvania into a new Chapter 77 of the Pennsylvania Probate, Estates & Fiduciaries Code (Title 20 of Pennsylvania Consolidated Statutes).