

# Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

MAY 12 - 18, 2023

Attend our Liquor Law event on May 18 to learn more about Ohio's micro breweries and take a tour of the Mill Street Distillery. Details at [www.cbalaw.org](http://www.cbalaw.org)

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## OHIO CRAFT DISTILLERIES ARE TAKING OFF, BUT STARTING ONE IS NO SIMPLE TASK

In recent years, the craft distillery movement has been growing across the country, and Ohio is no exception.

In 2015, you could almost count on two hands the number of micro-distillery "A-3A"

Permits issued by the Ohio Division of Liquor Control. Today, the number of issued A-3A permits is over 100.

Not only are the number of permit holders increasing, but the production capacity and demand for local Ohio bourbons are increasing as well, as evidenced by several Ohio distilleries expanding operations and adding second locations, just to keep up.



JAMES NIEKAMP & DOUG MORGAN

Perhaps examples of the industry's success are the recent efforts to increase the A-3A production capacity cap per ORC § 4303.041. Years ago, few Ohio craft distilleries could imagine surpassing the 100,000 gallon per year production limit.

Now, several Ohio distilleries are contacting their state lawmakers to help increase the limit by passing H.B. 86.

Despite the recent growth and momentum of the industry, starting a craft distillery in Ohio is highly regulated, and can be as complicated as crafting a high-quality bourbon – just ask Doug Morgan, an attorney

and owner of Mill Street Distillery, outside of Columbus.

"It probably comes as no surprise, that the distilling industry is one of the most highly regulated industries there is" says Doug. "Even with my legal background, I was surprised by the extent of the regulation, and there's no way I could have navigated the regulatory morass without my liquor attorney's guidance."

To Doug's point, every drop of liquor must be tracked and accounted for, per federal law. Reports of operations are submitted to the federal government monthly, and the federal excise tax requirements are even more painstaking. Each label must be approved by the federal Alcohol & Tobacco Tax & Trade Bureau (TTB).

Ohio being a "Control State" does not help either – unlike other industries, the state takes a sizable chunk of each bottle sale. As if the state and federal agencies were not enough to deal with, new Ohio distilleries must also navigate local zoning requirements, building codes, and even determine whether a location is "wet" or "dry" for local alcohol sales.

If you are interested in learning more about the state and federal liquor laws regulating this growing industry, and hearing Doug Morgan's first-hand experience being in the trenches, the Columbus Bar Association will be hosting a CLE seminar on May 18th, 2023, at Mill Street Distillery in Utica, OH. ■

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## OHIO BECOMES THE 49TH STATE TO ALLOW POSTNUPTIAL CONTRACTS

Thanks to celebrity cases like Gisele Bundchen and Tom Brady, many people are familiar with prenuptial agreements. But fewer people are familiar with postnuptial agreements.

This may change thanks to a recent Ohio law which now permits spouses to enter into postnuptial agreements (Ohio Revised Code Section 3103.06).

A postnuptial agreement is a contract entered into by spouses after marriage that allows the spouses to outline what happens in the event of a divorce. For example, a postnuptial agreement can address how assets will be allocated between each spouse, how business interests are divided, who remains in the family home, whether a spouse is



HARLAN S. LOUIS & BRITTANY STEPHEN

entitled to alimony, and who receives custody of children (and even pets!). Ohio is the second to last state to permit postnuptial agreements, with Iowa being the only remaining state to prohibit these agreements.

While prenuptial and postnuptial agreements are often used in divorce, these agreements can also be used for planning purposes, including to: resolve financial or family conflicts during marriage without divorce; create certainty around or changing the character of community versus separate party; agree how assets are divided and the rights of the surviving spouse at death; address changed circumstances including new assets or issues that arise after marriage; and manage business succession,

particularly in a family-owned or closely held business.

According to many surveys, approximately 70% of family businesses fail to survive in the next generation. One challenge for these businesses can be the influence of a spouse not actively working there. Postnuptial (and prenuptial) agreements can plan for treatment of a family business before a dispute arises. These agreements can protect the income, benefits, and assets of a family business. These contracts can also prevent a non-owner spouse from accessing the company finances and receiving alimony based on the income generated by the entity.

A postnuptial agreement is also useful for those who wanted to create a prenuptial agreement but did not have the time (or means or knowledge) to do so prior to marriage.

The new statute also allows spouses to terminate or modify a prenuptial agreement. This can be particularly useful if a couple's financial or family situation has changed significantly since the implementation of the prenuptial agreement.

For a postnuptial agreement to be valid, it must be: (1) in writing and signed by both spouses; (2) entered into freely without fraud, duress, coercion, or overreaching; (3) accompanied by full disclosure, or full knowledge, and understanding of the nature, value, and extent of the property of both spouses; and (4) free from terms that promote or encourage divorce or profiteering by divorce.

Thanks to the Ohio legislature, married couples can now add an extra layer of planning to their business, estate planning, and family needs. ■

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