

**REVISED UNIFORM DISPOSITION OF
COMMUNITY PROPERTY RIGHTS AT DEATH ACT**

1. SECTION 1	
2. SUBJECT	SHORT TITLE
3. PROPOSED TEXT	This act may be cited as the Revised Uniform Community Property Rights at Death Act.
4. CURRENT CO STATUTE §15-20-101	15-20-11. Short Title. This article shall be known and may be cited as the “Uniform Disposition of Community Property Rights at Death Act.”
5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	Pursuant to Section 401 of the Uniform Law Commission’s Drafting Rules, the short title of an act is “its title as approved by the Executive Committee of the Uniform Law Commission. Uniform Law Commission, Drafting Rules: Rules 401 (2012). The short title is to be distinguished from the longer, more detailed title that is often included in bills as they are introduced in state legislatures.” This “short title” includes the term “Revised” to indicate a substantial revision from the original Uniform Disposition of Community Property Rights at Death Act (1971), rather than merely amendments to the existing act. See Uniform Law Commission, Drafting Rules: Rules 409 (2012). This approach is consistent with other uniform act revisions. See, e.g., Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA); Revised Uniform Unclaimed Property Act; Revised Uniform Partnership Act (RUPA). Although a completely new title could be adopted, it seems preferable in this instance to utilize a term indicating a revision. Ultimately, however, this is a matter for the Executive Committee. See Uniform Law Commission, Drafting Rules: Rules 409 (2012).
6. COLORADO LAW.	N/A
7. COLORADO COMMITTEE COMMENTS	
8. RECOMMENDATION	

UNIFORM TRUST CODE
ARTICLE 5
CREDITOR CLAIMS; SPENDTHRIFT; AND DISCRETIONARY TRUSTS

1. UTC SECTION	503
2. SUBJECT	Exceptions to Spendthrift Provisions
3. UTC TEXT (2005 Bill)	<p>(a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another State.</p> <p>(b) To the extent provided in subsection (c) of this section, a spendthrift provision is unenforceable against:</p> <p style="padding-left: 40px;">(1) a beneficiary’s child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;</p> <p style="padding-left: 40px;">(2) a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust; and</p> <p style="padding-left: 40px;">(3) a claim of this State or the United States to the extent a statute of this State or federal law so provides.</p> <p>(c) The only remedy of a claimant against whom a spendthrift provision cannot be enforced is to obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.</p>
4. UTC TEXT (ULC)	<p>(a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another State.</p> <p>(b) A spendthrift provision is unenforceable against:</p> <p style="padding-left: 40px;">(1) a beneficiary’s child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;</p> <p style="padding-left: 40px;">(2) a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust; and</p> <p style="padding-left: 40px;">(3) a claim of this State or the United States to the extent a statute of this State or federal law so provides.</p> <p>(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The</p>

	<p>court may limit the award to such relief as is appropriate under the circumstances.</p>
<p>5. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS</p>	<p>This section exempts the claims of certain categories of creditors from the effects of a spendthrift restriction and specifies the remedies such exemption creditors may take to satisfy their claims. The exception in subsection (b)(1) for judgments or orders to support a beneficiary’s child or current or former spouse is in accord with Restatement (Third) of Trusts Section 59(a) (Tentative Draft No. 2, approved 1999), Restatement (Second) of Trusts Section 157(a) (1959), and numerous state statutes. It is also consistent with federal bankruptcy law, which exempts such support orders from discharge.</p> <p>The effect of this exception is to permit the claimant for unpaid support to attach present or future distributions that would otherwise be made to the beneficiary. Distributions subject to attachment include distributions required by the express terms of the trust, such as mandatory payments of income, and distributions the trustee has otherwise decided to make, such as through the exercise of discretion. Subsection (b)(1), unlike Section 504, does not authorize the spousal or child claimant to compel a distribution from the trust. Section 504 authorizes a spouse or child claimant to compel a distribution to the extent the trustee has abused a discretion or failed to comply with a standard for distribution.</p> <p>Subsection (b)(1) refers both to “support” and “maintenance” in order to accommodate differences among the States in terminology employed. No difference in meaning between the two terms is intended.</p> <p>The definition of “child” in subsection (a) accommodates the differing approaches States take to defining the class of individuals eligible for child support, including such issues as whether support can be awarded to stepchildren. However the State making the award chooses to define “child” will be recognized under this Code, whether the order sought to be enforced was entered in the same or different State. For the definition of “state,” which includes Puerto Rico and other American possessions, see Section 103(17).</p> <p>The definition of “child” in subsection (a) is not exclusive. The definition clarifies that a “child” includes an individual awarded child support in any state. The definition does not expressly include but neither does it exclude persons awarded child support in some other country or political subdivision, such as a Canadian province.</p> <p>The exception in subsection (b)(2) for a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust is in accord with Restatement (Third) of</p>

Trusts Section 59(b) (Tentative Draft No. 2, approved 1999), and Restatement (Second) of Trusts Section 157(c) (1959). This exception allows a beneficiary of modest means to overcome an obstacle preventing the beneficiary's obtaining services essential to the protection or enforcement of the beneficiary's rights under the trust. See Restatement (Third) of Trusts Section 59 cmt. d (Tentative Draft No. 2, approved 1999).

Subsection (b)(3), which is similar to Restatement (Third) of Trusts Section 59 cmt. a (Tentative Draft No. 2, approved 1999), exempts certain governmental claims from a spendthrift restriction. Federal preemption guarantees that certain federal claims, such as claims by the Internal Revenue Service, may bypass a spendthrift provision no matter what this Code might say. The case law and relevant Internal Revenue Code provisions on the exception for federal tax claims are collected in George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees* Section 224 (Rev. 2d ed. 1992); and 2A Austin W. Scott & William F. Fratcher, *The Law of Trusts* Section 157.4 (4th ed. 1987). Regarding claims by state governments, this subsection recognizes that States take a variety of approaches with respect to collection, depending on whether the claim is for unpaid taxes, for care provided at an institution, or for other charges. Acknowledging this diversity, subsection (c) does not prescribe a rule, but refers to other statutes of the State on whether particular claims are subject to or exempted from spendthrift provisions.

Unlike Restatement (Third) of Trusts Section 59(2) (Tentative Draft No. 2, approved 1999), and Restatement (Second) of Trusts Section 157(b) (1959), this Code does not create an exception to the spendthrift restriction for creditors who have furnished necessary services or supplies to the beneficiary. Most of these cases involve claims by governmental entities, which the drafters concluded are better handled by the enactment of special legislation as authorized by subsection (b)(3). The drafters also declined to create an exception for tort claimants. For a discussion of the exception for tort claims, which has not generally been recognized, see Restatement (Third) of Trusts Section 59 Reporter's Notes to cmt. a (Tentative Draft No. 2, approved 1999). For a discussion of other exceptions to a spendthrift restriction, recognized in some States, see George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees* Section 224 (Rev. 2d ed. 1992); and 2A Austin W. Scott & William F. Fratcher, *The Law of Trusts* Sections 157-157.5 (4th ed. 1987). Subsection (c) provides that the only remedy available to an exception creditor is attachment of present or future distributions of present or future distributions. Depending on other creditor law of the state, additional remedies may be available should a beneficiary's interest not be subject to a spendthrift provision. Section 501, which applies in such

	<p>situations, provides that the creditor may reach the beneficiary’s interest under that section by attachment or “other means.”</p> <p>Subsection (c), similar to Section 501, clarifies that the court has the authority to limit the creditor’s relief as appropriate under the circumstances.</p>
<p>6. PRIOR UTC VERSION</p>	<p>Section 503 was amended in 2005. The prior version of this uniform section read as follows:</p> <p>SECTION 503. EXCEPTIONS TO SPENDTHRIFT PROVISION.</p> <p>(a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another State.</p> <p>(b) Even if a trust contains a spendthrift provision, a beneficiary’s child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.</p> <p>(c) A spendthrift provision is unenforceable against a claim of this State or the United States to the extent a statute of this State or federal law so provides.</p>
<p>7. COLORADO COMMITTEE COMMENTS (2005)</p>	<p>Restatement (Second) of Trusts §157 (1959) recognizes preferred status for some creditors of a beneficiary of a trust. The Restatement position is expressed as follows:</p> <p><i>§157. Particular Classes of Claimants</i> <i>Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary,</i></p> <p><i>(a) by the wife or child of the beneficiary for support, or by the wife for alimony;</i> <i>(b) for necessary services rendered to the beneficiary or necessary supplies furnished to him;</i> <i>(c) for services rendered and materials furnished which preserve or benefit the interest of the beneficiary;</i> <i>(d) by the United States or a State to satisfy a claim against the beneficiary.</i></p> <p>Thus, per Restatement (Second), these preferred creditors may attach a beneficiary's interest in a trust even though the trust contains a valid spendthrift provision. The Restatements (Second) and (Third) recognize that an owner of property does not have an unqualified power of disposition. There are common law and</p>

statutory restrictions based on public policy. Thus, spendthrift restraint is not unqualified. For public policy reasons, some creditors are not bared by spendthrift provisions.

The UTC codifies some, but not all, of the common law preferred creditor classes. Under the UTC, there are only three preferred creditor classes, to wit: (i) a beneficiary's child, spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance; (ii) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and (iii) a claim of a state or the United States to the extent a statute of this state or federal law so provides.

Restatement (Third) of Trusts section 59 provides:

Section 59. Spendthrift Trusts: Exceptions for Particular Types of Claims:

The interest of a beneficiary in a spendthrift trust can be reached in satisfaction of an enforceable claim against the beneficiary for:

a) Support of a child, spouse or former spouse; or

b) Services or supplies provided for necessities or for protection of the beneficiary's interest in the trust.

Restatement (Third) of Trusts section 59 cmt. a(1) provides that "It is implicit in the rule of this section, as a statement of the common law, that governmental claimants, and other claimants as well, may reach the interest of a beneficiary of a spendthrift trust to the extent provided by federal law or an applicable state statute."

Restatement (Third) of Trusts section 59 cmt. a(2) provides that "The exceptions to spendthrift immunity stated in this section are not exclusive. Special circumstances, or evolving policy may justify recognition of other exceptions. . . "

While the Restatement (Third) of Trusts section 59 leaves open the possibility that courts may recognize other exceptions to spendthrift protection, such as for a tort creditor, enactment of the UTC will prevent courts from doing so. The UTC provides that creditors may not reach a beneficial interest in a spendthrift trust "except as otherwise provided" in the Code. See UTC section 502(c) supra. Thus, enactment of the UTC will limit the classes of exception creditors to only those recognized by the legislature. 2005 Amendment 503 has been restructured for three reasons.

(i) In connection with the amendment of 501, remedies for government exception creditors are being addressed in 503. As

	<p>originally drafted, 503(c) did not address government exception creditor remedies on the assumption that state and federal laws piercing spendthrift would provided the remedies (e.g. tax liens.) Some have argued that because 503(c) did not contain remedies, the drafters intended that 501 (as originally drafted) did; and that as a consequence, a government creditor could force a spendthrift interest to "judicial sale." The drafters did not intend this result. Remedies for such exception creditors are now to be addressed in 503(c).</p> <p>ii) Under 503(b) as originally drafted, child, spouse, former spouse and "protection provider" exception creditors were limited to attaching only present or future distributions. There is a belief that this same restriction should apply to government exception creditors unless state or federal law applies otherwise. Accordingly, the remedy restriction has been moved to new subsection 503(c); and 503(b) has been rewritten to simply identify the three classes of exception creditors (although section 503(b)(3) continues to recognize state and federal law remedies engrafted into spendthrift piercing statutes/laws.)</p> <p>iii) There is an interest in bringing the benefit of the last sentence of 501 to bear on relief granted to all exception creditors under 503. Accordingly, new subsection (c) duplicates the last sentence in 501.</p> <p>A court should consider exercising its equitable powers under the last sentence of section 503(c) where it seems appropriate in light of a beneficiary's particular circumstances. Consider for example the case of a beneficiary who is disabled for medical reasons with a reduction in employment and wages. Although the beneficiary had been ordered to pay maintenance to a former spouse, maintenance has fallen into arrears because of disability. The former spouse obtains a judgment for the maintenance arrearage. In these circumstances, the court should limit the former spouse's award.</p>
<p>8. COLORADO LAW</p>	<p>No Colorado case law currently allows exception creditors to a spendthrift clause.</p> <p><i>In re Estate of Beren</i>, 321 P.3d 615 (Colo. App. 2013) “Spendthrift trusts are valid and enforceable in Colorado. <i>In re Cohen</i>, 8 P.3d 429, 430 n. 1 (Colo.1999); <i>see In re Portner</i>, <u>109 B.R. 977, 987 (Bkrcty.D.Colo.1989)</u> (In Colorado, “spendthrift trusts are determined exclusively by common law because there are no statutory provisions regulating their existence.”). Such trusts “provide a fund for the maintenance of the beneficiary, and at the same time ... secure it against his improvidence or incapacity.” <i>Portner</i>, <u>109 B.R. at 987</u>.</p> <p>Funds under the discretionary control of a trustee subject to a spendthrift provision cannot be garnished. <i>Brasser v.</i></p>

	<p><i>Hutchison</i>, 37 Colo.App. 528, 531, 549 P.2d 801, 803 (1976). But once such funds have been distributed, they are within the reach of creditors. <i>See generally</i> Restatement (Third) of Trusts § 58 cmt. d(2) (2003) (“After the income or principal of a spendthrift trust has been distributed to a beneficiary ... it can be reached by creditors.”).”</p> <p>“Thus, because the spendthrift provision, even assuming its validity, no longer protected those trust funds that had become subject to mandatory distribution, the trial court properly allowed garnishment of those funds.”</p>
<p>9. OTHER RELEVANT STATE LAW</p>	<p>Alabama – adopted 503 verbatim</p> <p>Arizona – excepts child only (does not apply exceptions to special needs trusts)</p> <p>Arkansas – reserved 503</p> <p>District of Columbia – excepts child only</p> <p>Florida – provides spouse, former spouse and children as exception creditors but only as a last resort upon an initial showing that traditional methods of enforcing a claim are insufficient.</p> <p>“Except as otherwise provided in this subsection and in s. 736.0504, a claimant against which a spendthrift provision may not be enforced may obtain from a court, or pursuant to the Uniform Interstate Family Support Act, an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. Notwithstanding this subsection, the remedies provided in this subsection apply to a claim by a beneficiary’s child, spouse, former spouse, or a judgment creditor described in paragraph (2)(a) or paragraph (2)(b) only as a last resort upon an initial showing that traditional methods of enforcing the claim are insufficient.”</p> <p>Kansas – reserved 503</p> <p>Kentucky – did not enact 503</p> <p>Maine – no exceptions</p> <p>Maryland - same exceptions at UTC but only permits a court to order the trustee to satisfy payments from distributions of income or principal as they come due.</p> <p>Mass. – reserved 503</p>

	<p>Michigan – same exceptions at UTC but only permits a court to order the trustee to satisfy payments from distributions of income or principal as they come due.</p> <p>Minn. – no except creditors</p> <p>Mississippi – reserved all of Part 5</p> <p>Missouri – reserved 503</p> <p>Montana – reserved 503</p> <p>Nebraska – adopted 503 verbatim</p> <p>New Hampshire – repealed 503 in 2017</p> <p>New Mexico – enacted 503 verbatim</p> <p>North Carolina – excepts child only</p> <p>North Dakota – same exceptions at UTC, but does not apply to special needs trusts</p> <p>Ohio – excepts child or spouse (but not former spouse) but only if distributions can be made for the beneficiary’s support or the beneficiary is entitled to receive mandatory distributions</p> <p>Oregon – adopted pre-2005 UTC version verbatim Penn. – adopted UTC verbatim</p> <p>South Carolina – exceptions only for children (but does not apply to special needs trusts)</p> <p>Tennessee – adopted only a portion of (c) from the pre-2005 UTC: “A spendthrift provision is unenforceable against a claim of this state to the extent a statute of this state so provides.”</p> <p>Utah – exceptions for children, judgement creditor who has provided services for the protection of a beneficiary’s interest in trust, or a victim who has a judgment requiring payment of restitution.</p> <p>Vermont – UTC except does not include spouses or former spouses</p> <p>Virginia – exceptions only for children</p> <p>West Virginia - UTC except does not include spouses or former spouses</p>
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	<p>Wisconsin – exceptions for children and individuals whom the beneficiary is legally obligated to pay for support.</p> <p>Wyoming – exceptions for child support or maintenance</p>
10. RECOMMENDATION	

**Colorado Bar Association Trusts & Estates Section
Revised Uniform Disposition of Community Property Rights at Death Act
Subcommittee of the Statutory Revisions Committee**

Minutes of October 6, 2021

Participants

Via WebEx:	Interested:
• Connie Eyster, Chair	• Darla Daniel
• Georgine Kryda, Secretary	• Susan Harris
• Shelly Merritt	
• Michelle Mieras	
• Charles Spence	

Initial Assignments

RUDCPRDA Section		Lead Reviewer(s)
Based on Jan. 31 – Feb. 1, 2020 ULC Drafting Committee Meeting	Based on June 28, 2021 Memo by D. English	
1 Short Title	1 Short Title	Committee
2 Definitions	2 Definitions	Georgine
3 Applicability; Affected Property	3 Applicability; Affected Property	Connie
4 Rebuttable Presumption	4 Effect of Waiver or Partition	Connie
5 Disposition of Property Rights Upon Death	5 Rebuttable Presumption	Shelly
6 Other Legal and Equitable Remedies Available at Death	6 Disposition of Property Rights Upon Death	Shelly
7 Claims of Surviving Spouse Against the Estate of the Decedent	7 Court Authority to Adjudicate Bad Faith Actions by a Spouse	Charles
8 Claims by Heirs, Legatees, or Creditors Against the Surviving Spouse	8 Claims of Surviving Spouse Against the Estate of the Decedent	Georgine
9 Protection of Bona Fide Purchasers	9 Claims by Heirs, Legatees, or Creditors Against the Surviving Spouse	Michelle
10 Rights of Creditors	10 Protection of Bona Fide Purchasers & Rights of Creditors	Michelle
11 Effect of Waiver or Partition	11 Other Legal and Equitable Remedies Available at Death	Charles
12 Uniformity of Application and Construction	12 – 17	Committee
13 Repeals and Conforming Amendments		
14 Effective Date		

The meeting was held by WebEx coordinated by the CBA Offices, 1290 Broadway, Suite 1700 in Denver.

The meeting was called to order at 11:00 a.m. by the Chair and adjourned at 11:26 a.m.

Overview of Review Process

Connie provided an overview of the usual review process of uniform laws, and subsequently emailed the group a copy of the “Santa Fe” style for presentation.

Regarding Section 2, Definitions, the committee agreed to hold an initial discussion and then to revisit the Definitions after seeing how the terms were used throughout the Act.

Connie advised the subcommittee that additional changes may be coming.

Georgine said she would keep a chart comparing how RUDCPRDA changes existing Colorado law, based on the Santa Fe style reports committee members submit.

Initial Selection of Sections to Review

Committee members volunteered for various sections as identified in the table above.

The question arose as to whether the committee had the latest version of the Act corresponding to the memo. Connie will contact Darla.

Next Meeting

Committee members agreed to continue meeting by WebEx; to meet again on January 5, 2022; and to communicate as needed by email in the interim. Connie will check with Darla regarding the Colorado Uniform Law Commissioners’ timeline.

For the January 5, 2022 meeting:

- Connie will speak with Darla regarding the version of RUDCPRDA to use and the Colorado Uniform Law Commissioners’ timeline for the committee’s review.
- All committee members to report on the status of their sections.
- Discussion and vote on Section 1, Short Title.
- Begin discussion of Section 2, Definitions.

The next meeting is January 5, 2022, at 11:00 a.m. via WebEx coordinated by the CBA.