

2005 Arizona Revised Statutes - Revised Statutes §14-7705 Settlor as beneficiary; exception

A. If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest in the trust is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

B. If the settlor is the beneficiary of a trust created by the settlor and the trust instrument provides that the trustee shall pay income or principal, or both, for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal, or both, to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

C. For purposes of this section, a trust settled or established by any corporation, professional corporation, partnership, governmental entity, trust, foundation or other entity is not deemed to be settled or established by its directors, officers, shareholders, partners, employees, beneficiaries or agents.

D. For purposes of this section, amounts contributed to a trust by any corporation, professional corporation, partnership, governmental entity, trust, foundation or other entity are not deemed to have been contributed by its directors, officers, shareholders, partners, employees, beneficiaries or agents. Powers, duties or responsibilities granted to or reserved by the settlor pursuant to the trust and any actions or omissions taken pursuant to the trust are deemed to be the powers, responsibilities, duties, actions or omissions of the settlor and not those of its directors, officers, shareholders, partners, employees, beneficiaries or agents.

E. Subsections C and D do not apply to either:

1. A trust which has no valid business purpose and which has as its principal purpose the evasion of the claims of the creditors of the persons or entities listed in such subsections.

2. A trust which would be treated as a grantor trust pursuant to sections 671 through 679 of the internal revenue code of 1986 or corresponding provisions of subsequent federal income tax laws.

F. Subsection E, paragraph 2 does not apply to a qualified subchapter S trust which is treated as a grantor trust solely by application of section 1361(d) of the internal revenue code of 1986.

G. A beneficiary of the trust is not a settlor merely because of a lapse, waiver or release of the beneficiary's right to withdraw a part of the trust property if the property that could have been withdrawn by exercising the right of withdrawal that lapsed, was waived or was released either:

1. Does not exceed in value at the time of the lapse, waiver or release in any calendar year the greater of the amount specified in section 2041(a)(2), 2514(e) or 2503(b) of the internal revenue code.

2. Was related to an inter vivos trust that was treated as qualified terminable interest property under section 2523(f) of the internal revenue code.

Arizona Statutes

Title 14. Trusts, Estates and Protective Proceedings

Chapter 11. ARIZONA TRUST CODE

Article 5. Creditor's Claims; Spendthrift and Discretionary Trusts

Current through L. 2019, ch. 111

§ 14-10505. Creditor's claim against settlor

- A. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:
1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors. If a trust has more than one settlor or contributor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This paragraph does not abrogate otherwise applicable laws relating to community property.
 2. Subject to the requirements of this section, with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This paragraph does not apply to any trust from which any distribution to the settlor can be made pursuant to the exercise of a power of appointment held by a third party or abrogate otherwise applicable laws relating to community property. A creditor of a settlor:
 - (a) Shall not reach any trust property based on a trustee's, trust protector's or third party's power, whether or not discretionary, to pay or reimburse the settlor for any income tax on trust income or trust principal that is payable by the settlor under the law imposing the tax or to pay the tax directly to any taxing authority.
 - (b) Is not entitled to any payment or reimbursement that is to be made directly to any taxing authority.
 - (c) Shall not reach or compel distributions to or for the benefit of the beneficiary of a special needs trust.
 3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the

settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and allowances, except to the extent that state or federal law exempts any property of the trust from these claims, costs, expenses or allowances. If a trust has more than one settlor or contributor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This paragraph does not abrogate otherwise applicable laws relating to community property.

B. For the purposes of this section:

1. During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power.
2. On the lapse, release or waiver of a power of withdrawal, the holder is not, by reason of any such power of withdrawal, treated as the settlor of the trust.

C. For the purposes of this section, a trust settled or established by a corporation, professional corporation, partnership, limited liability company, governmental entity, trust, foundation or other entity is not deemed to be settled or established by its directors, officers, shareholders, partners, members, managers, employees, beneficiaries or agents.

D. For the purposes of this section, amounts contributed to a trust by a corporation, professional corporation, partnership, limited liability company, governmental entity, trust, foundation or other entity are not deemed to have been contributed by its directors, officers, shareholders, partners, employees, beneficiaries or agents. Powers, duties or responsibilities granted to or reserved by the settlor pursuant to the trust and any actions or omissions taken pursuant to the trust are deemed to be the powers, responsibilities, duties, actions or omissions of the settlor and not those of its directors, officers, shareholders, partners, members, managers, employees, beneficiaries or agents.

E. For the purposes of this section, amounts and property contributed to the following trusts are not deemed to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts shall not be treated as a settlor:

1. An irrevocable inter vivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the internal revenue code if the settlor is a beneficiary of the trust after the death of the settlor's spouse.

2. An irrevocable inter vivos marital trust that is treated as a general power of appointment trust under section 2523(e) of the internal revenue code if the settlor is a beneficiary of the trust after the death of the settlor's spouse.
 3. An irrevocable inter vivos trust for the settlor's spouse if the settlor is a beneficiary of the trust after the death of the settlor's spouse.
 4. An irrevocable trust for the benefit of a person, the settlor of which is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse.
 5. An irrevocable trust for the benefit of a person to the extent that the property of the trust was subject to a general power of appointment in another person.
- F. For the purposes of subsection E, a person is a beneficiary whether so named under the initial trust instrument or through the exercise by that person's spouse or by another person of a limited or general power of appointment.
- G. Subsections C and D do not apply to:
1. A trust that has no valid business purpose and that has as its principal purpose the evasion of the claims of the creditors of the persons or entities listed in those subsections.
 2. A trust that would be treated as a grantor trust pursuant to sections 671 through 679 of the internal revenue code. This paragraph does not apply to a qualified subchapter S trust that is treated as a grantor trust solely by application of section 1361(d) of the internal revenue code.

Cite as A.R.S. § 14-10505

History. Amended by L. 2015, ch. 112, s. 7, eff. 9/13/2013.

Texas Statutes

Property Code

Title 9. Trusts

Subtitle B. Texas Trust Code: Creation, Operation, And Termination Of Trusts

Chapter 112. Creation, Validity, Modification, And Termination Of Trusts

Subchapter B. Validity

Current through 2017 Special Session

§ 112.035. Spendthrift Trusts

- (a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.
- (b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.
- (c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.
- (d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:
 - (1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax; or
 - (2) the settlor's interest in the trust was created by the exercise of a power of appointment by a third party.
- (e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:
 - (1) a power described by Subsection (f); or
 - (2) the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of :

- (A) the amount specified in Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or
 - (B) the amount specified in Section 2503(b), Internal Revenue Code of 1986, with respect to the contributions by each donor.
- (f) A beneficiary of the trust may not be considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary, in any capacity, holds or exercises:
 - (1) a presently exercisable power to:
 - (A) consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:
 - (i) exercisable only on consent of another person holding an interest adverse to the beneficiary's interest; or
 - (ii) limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary; or
 - (B) appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;
 - (2) a testamentary power of appointment; or
 - (3) a presently exercisable right described by Subsection (e)(2).
- (g) For the purposes of this section, property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:
 - (1) an irrevocable inter vivos marital trust if:
 - (A) the settlor is a beneficiary of the trust after the death of the settlor's spouse; and

- (B) the trust is treated as:
 - (i) qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or
 - (ii) a general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;

- (2) an irrevocable inter vivos trust for the settlor's spouse if the settlor is a beneficiary of the trust after the death of the settlor's spouse; or

- (3) an irrevocable trust for the benefit of a person:
 - (A) if the settlor is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse; or
 - (B) to the extent that the property of the trust was subject to a general power of appointment in another person.

- (h) For the purposes of Subsection (g), a person is a beneficiary whether named a beneficiary:
 - (1) under the initial trust instrument; or
 - (2) through the exercise of a limited or general power of appointment by:
 - (A) that person's spouse; or
 - (B) another person.

Cite as Tex. Prop. Code § 112.035

History. Amended by [Acts 2017, Texas Acts of the 85th Leg. - Regular Session, ch. 62, Sec. 2](#), eff. 9/1/2017.

Amended by [Acts 2013, 83rd Leg. - Regular Session, ch. 699, Sec. 2](#), eff. 9/1/2013.

Amended By [Acts 2007, 80th Leg., R.S., Ch. 451, Sec. 4](#), eff. September 1, 2007.

Amended By [Acts 2005, 79th Leg., Ch. 148, Sec. 5](#), eff. January 1, 2006.

Amended by [Acts 1997, 75th Leg., ch. 109, Sec. 1](#), eff. Sept. 1, 1997.

Added by [Acts 1983, 68th Leg., p. 3332, ch. 567](#), art. 2, Sec. 2, eff. Jan. 1, 1984.

Related Legislative Provision: See [Acts 2017, Texas Acts of the 85th Leg. - Regular Session, ch. 62, Sec. 17](#).

C.R.S. § 13-54-102. Property exempt - definitions

(1) The following property is exempt from levy and sale under writ of attachment or writ of execution:

(a) The necessary wearing apparel of the debtor and each dependent to the extent of two thousand dollars in value;

(b) Watches, jewelry, and articles of adornment of the debtor and each dependent to the extent of two thousand five hundred dollars in value;

(c) The library, family pictures, and school books of the debtor and the debtor's dependents to the extent of two thousand dollars in value, not including any property constituting all or part of the stock in trade of the debtor;

(d) Burial sites, including spaces in mausoleums, to the extent of one site or space for the debtor and each dependent;

(e) The household goods owned and used by the debtor or the debtor's dependents to the extent of three thousand dollars in value;

(f) Provisions and fuel on hand for the use or consumption of the debtor or the debtor's dependents to the extent of six hundred dollars in value;

(g)

(I) Except as otherwise provided in subparagraph (II) of this paragraph (g), in the case of every debtor engaged in agriculture as the debtor's principal occupation, including but not limited to farming, ranching, and dairy production; the raising of livestock or poultry; all livestock, poultry, or other animals; all crops, dairy products, and agricultural products grown, raised, or produced; and all tractors, farm implements, trucks used in agricultural operations, harvesting equipment, seed, and agricultural machinery and tools in the aggregate value of fifty thousand dollars.

(II) Only one exemption in the aggregate value of fifty thousand dollars shall be allowed for a debtor and his or her spouse under subparagraph (I) of this paragraph (g). In the event that property is claimed as exempt by a debtor or his or her spouse under subparagraph (I) of this paragraph (g), no exemption shall be allowed for such debtor or his or her spouse under paragraph (i) of this subsection (1).

(h) Except for amounts due under court-ordered support of children or spouse which are subject to the exemption provisions of section 13-54-104, all money received by any person as a pension, compensation, or allowance for any purpose on account or arising out of the services of such person as a member of the armed forces of the United States in time of war or armed conflict, and whether in the actual possession of the recipient thereof or deposited or loaned by him, and a like exemption to the unremarried widow or widower and the children of such person who receive a pension, compensation, or allowance of any kind from the United States on account or arising out of such service by a deceased member of such armed forces; and when a debtor entitled to exemption under this paragraph (h) dies or leaves his family said exemption shall extend to the dependents of said debtor;

(h.5) The articles of military equipment personally owned by members of the National Guard;

(i) The stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, and business materials of a debtor used and kept for the purpose of carrying on the debtor's primary gainful occupation in the aggregate value of thirty thousand dollars or used and kept for any other gainful occupation in the aggregate value of ten thousand dollars; except that exempt property described in this paragraph (i) may not also be claimed as exempt pursuant to paragraph (j) of this subsection (1);

(j)

(I) Up to two motor vehicles or bicycles kept and used by any debtor in the aggregate value of seven thousand five hundred dollars; or

(II) (A) Up to two motor vehicles or bicycles kept and used by any elderly or disabled debtor or by any debtor with an elderly or disabled spouse or dependent, in the aggregate value of twelve thousand five hundred dollars.

(B) (Deleted by amendment, L. 2007, p. 876, 3, effective May 14, 2007.)

(III) The exemption provided in this paragraph (j) does not apply to snowmobiles, all-terrain vehicles, golf carts, boats or other watercraft, travel trailers, tent trailers, or motor homes.

(k) The library of any debtor who is a professional person, including a minister or priest of any faith, kept and used by the debtor in carrying on his or her profession, in the value of three thousand dollars; except that exemptions with respect to any of the property described in this paragraph (k) may not also be claimed under paragraph (i) of this subsection (1);

(l) (I) (A) The cash surrender value of policies or certificates of life insurance that have been owned by a debtor for a continuous, unexpired period of forty-eight months or more, to the extent of two hundred fifty thousand dollars for writs of attachment or writs of execution issued against the insured; except that there is no exemption for increases in cash value from extraordinary moneys contributed to a policy or certificate of life insurance during the forty-eight months prior to the issuance of the writ of attachment or writ of execution; and

(B) The proceeds of policies or certificates of life insurance paid upon the death of the insured to a designated beneficiary, without limitation as to amount, for writs of attachment or writs of execution issued against the insured.

(II) The provisions of this paragraph (l) shall not be interpreted to provide an exemption for attachment or execution of the proceeds of any policy or certificate of life insurance to pay the debts of a beneficiary of such policy or certificate.

(III) The provisions of this paragraph (l) shall not provide an exemption for attachment or execution of the proceeds of any policy or certificate of life insurance if the beneficiary of such policy or certificate is the estate of the insured.

(IV) For purposes of this paragraph (l), "extraordinary moneys" means monetary contributions or loan payments in excess of those contractually required under the policy or certificate of life insurance.

(m) The proceeds of any claim for loss, destruction, or damage and the avails of any fire or casualty insurance payable because of loss, destruction, or damage to any property which would have been exempt under this article to the extent of the exemptions incident to such property;

(n) The proceeds of any claim for damages for personal injuries suffered by any debtor except for obligations incurred for treatment of any kind for such injuries or collection of such damages;

(o) The full amount of any federal or state income tax refund attributed to an earned income tax credit or a child tax credit;

(p) Professionally prescribed health aids for the debtor or a dependent of the debtor;

(q) The debtor's right to receive, or property that is traceable to, an award under a crime victim's reparation law;

(r) For purposes of garnishment proceedings pursuant to the provisions of article 54.5 of this title, any amount held by a third party as a security deposit, as defined in section 38-12-102 (2), C.R.S., or any amount held by a third party as a utility deposit to secure payment for utility goods or services used or consumed by the debtor or his dependents;

(s) Property, including funds, held in or payable from any pension or retirement plan or deferred compensation plan, including those in which the debtor has received benefits or payments, has the present right to receive benefits or payments, or has the right to receive benefits or payments in the future and including pensions or plans which qualify under the federal "Employee Retirement Income Security Act of 1974", as amended, as an employee pension benefit plan, as defined in 29 U.S.C. sec. 1002, any individual retirement account, as defined in 26 U.S.C. sec. 408, any Roth individual retirement account, as defined in 26 U.S.C. sec. 408A, and any plan, as defined in 26 U.S.C. sec. 401, and as these plans may be amended from time to time;

(t) All property which is subject to a judgment against a debtor for failure to pay state income tax to a state for periods when such individual was not a resident of such state on benefits received from a pension or other retirement plan;

(u) Any court-ordered domestic support obligation or payment, including a maintenance obligation or payment or a child support obligation or payment, if the child support obligation or payment meets the requirements of section 13-54-102.5;

(v) Any claim for public or private disability benefits due, or any proceeds thereof, not otherwise provided for under law, up to four thousand dollars per month. Any claim or proceeds in excess of this amount is subject to garnishment in accordance with section 13-54-104.

(2) Notwithstanding the provisions of paragraph (h) of subsection (1) of this section and section 13-54-104, military pensions shall be subject to court-ordered support of children or spouse.

(3) Notwithstanding the provisions of paragraph (s) of subsection (1) of this section, any pension or retirement benefit or payment shall be subject to attachment or levy in satisfaction of a judgment taken for arrearages for child support or for child support debt, subject to the limitations contained in section 13-54-104.

(4) Notwithstanding anything to the contrary in this section, all property of a person who has committed a felonious killing, as defined in section 15-11-803 (1)(b), C.R.S., and as determined in the manner described in section 15-11-803 (7), C.R.S., shall be subject to attachment or levy in satisfaction of a judgment awarded pursuant to section 13-21-201 or section 13-21-202 for such felonious killing.

(5) (a) As provided in the exception contained in 11 U.S.C. sec. 522 (f)(3), as amended, a debtor shall not avoid a consensual lien on property otherwise eligible to be claimed as exempt property.

(b) As used in this subsection (5), unless the context otherwise requires, "consensual lien" means a lien on property granted with the consent and approval of the owner.

History

Source:

L. 59: p. 530, § 2.CRS 53: § 77-13-2. C.R.S. 1963: § 77-2-2.L. 73: pp. 236, 915, 916, § § 15, 1, 3.L. 75: (1)(o)(II) amended, p. 1466, § 6, effective July 18.L. 77: (1)(h) amended and (1.1) added, p. 811, § 1, effective July 1.L. 81: Entire section R&RE, p. 893, § 2, effective July 1.L. 84: (1)(r) added, p. 475, § 2, effective January 1, 1985.L. 85: (1)(j) amended, p. 580, § 1, effective April 30.L. 91: (1)(s) and (3) added, p. 383, § § 1, 2, effective May 1.L. 92: (1)(t) added, p. 2241, § 1, effective June 6.L. 94: (1)(u) added, p. 1210, § 1, effective May 22.L. 95: (1)(l) amended, p. 723, § 1, effective July 1.L. 96: (4) added, p. 50, § 2, effective July 1.L. 2000: (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j)(I), (1)(j)(II)(A), (1)(k), and (1)(o) amended, p. 715, § 2, effective May 23.L. 2002: (1)(h.5) added, p. 587, § 11, effective May 24; (1)(s) amended, p. 487, § 1, effective May 24; (1)(g) amended, p. 1862, § 1, effective July 1; (1)(l)(I)(A) amended, p. 641, § 1, effective August 7.L. 2007: (1)(b), (1)(g), (1)(i), (1)(j), (1)(o), and (1)(u) amended and (1)(v) and (5) added, pp. 876, 877, § § 3, 4, effective May 14; (1)(s) amended, p. 2026, § 27, effective June 1.L. 2010: (1)(l)(I)(A) amended, (SB 10-147), ch. 147, p. 507, § 1, effective September 1.L. 2015: (1)(a), (1)(b), (1)(c), (1)(g)(I), (1)(i), (1)(j), (1)(l)(I)(A), and (1)(v) amended and (1)(l)(IV) added, (SB 15-283), ch. 301, p. 1237, § 2, effective July 1. L. 2017: (1)(l)(I)(A) amended, (HB 17-1093), ch. 57, p. 180, § 1, effective September 1.

IRC § 2041. Powers of appointment

(a) In general

The value of the gross estate shall include the value of all property-

(1) Powers of appointment created on or before October 21, 1942

To the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent-

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if-

(i) such partial release occurred before November 1, 1951, or

(ii) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.

(2) Powers created after October 21, 1942

To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(3) Creation of another power in certain cases

To the extent of any property with respect to which the decedent-

(A) by will, or

- (B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under section 2035, 2036, or 2037, exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(b) **Definitions**

For purposes of subsection (a)-

(1) **General power of appointment**

The term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that-

- (A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.
- (B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.
- (C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person-
 - (i) If the power is not exercisable by the decedent except in conjunction with the creator of the power-such power shall not be deemed a general power of appointment.
 - (ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent-such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

- (iii) If (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person-such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable. For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(2) Lapse of power

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts:

- (A) \$5,000, or
- (B) 5 percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

(3) Date of creation of power

For purposes of this section, a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

Cite as 26 U.S.C. § 2041

§ 2514. Powers of appointment

(a) Powers created on or before October 21, 1942

An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if-

- (1) such partial release occurred before November 1, 1951, or
- (2) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

(b) Powers created after October 21, 1942

The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

(c) Definition of general power of appointment

For purposes of this section, the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the "possessor"), his estate, his creditors, or the creditors of his estate; except that-

- (1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.
- (2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.
- (3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person-
 - (A) if the power is not exercisable by the possessor except in conjunction with the creator of the power-such power shall not be deemed a general power of appointment;
 - (B) if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor-such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the

possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power;

- (C) if (after the application of subparagraphs (A) and (B)) the power is a general power of appointment and is exercisable in favor of such other person-such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(d) Creation of another power in certain cases

If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

(e) Lapse of power

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

- (1) \$5,000, or
- (2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(f) Date of creation of power

For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

Cite as 26 U.S.C. § 2514

Source: Aug. 16, 1954, ch. 736, 68A Stat. 407; Pub. L. 94-455 Oct. 4, 1976, 90 Stat. 1894.

Notes from the Office of Law Revision Counsel

current through 1/16/2019

AMENDMENTS

1976-Subsec. (b). Pub. L. 94-455 struck out "A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section **2518** of this title.

§ 2503. Taxable gifts

(a) General definition

The term "taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following).

(b) Exclusions from gifts

(1) In general

In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

(2) Inflation adjustment

In the case of gifts made in a calendar year after 1998, the \$10,000 amount contained in paragraph (1) shall be increased by an amount equal to-

(A) \$10,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$1,000, such amount shall be rounded to the next lowest multiple of \$1,000.

(c) Transfer for the benefit of minor

No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom-

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended-

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

[(d) Repealed. Pub. L. 97-34, title III, §311(h)(5), Aug. 13, 1981, 95 Stat. 282]

(e) **Exclusion for certain transfers for educational expenses or medical expenses**

(1) **In general**

Any qualified transfer shall not be treated as a transfer of property by gift for purposes of this chapter.

(2) **Qualified transfer**

For purposes of this subsection, the term "qualified transfer" means any amount paid on behalf of an individual-

- (A) as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual, or
- (B) to any person who provides medical care (as defined in section 213(d)) with respect to such individual as payment for such medical care.

(f) **Waiver of certain pension rights**

If any individual waives, before the death of a participant, any survivor benefit, or right to such benefit, under section 401(a)(11) or 417, such waiver shall not be treated as a transfer of property by gift for purposes of this chapter.

(g) **Treatment of certain loans of artworks**

(1) **In general**

For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer (and the value of such qualified work of art shall be determined as if such loan had not been made) if-

- (A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and
- (B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

(2) **Definitions**

For purposes of this section-

(A) **Qualified work of art**

The term "qualified work of art" means any archaeological, historic, or creative tangible personal property.

(B) **Private foundation**

The term "private foundation" has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3)).

Source: Aug. 16, 1954, ch. 736, 68A Stat. 404; Pub. L. 91-614 Dec. 31, 1970, 84 Stat. 1839; Pub. L. 95-600 Nov. 6, 1978, 92 Stat. 2931; Pub. L. 97-34, title III, §311(h)(5), title IV, §§441(a), (b), 442(a)(3), Aug. 13, 1981, 95 Stat. 282, 319, 320; Pub. L. 99-514, title XVIII, §1898(h)(1)(B), Oct. 22, 1986, 100 Stat. 2957; Pub. L. 100-647, title I, §1018(s)(2)(A), (u)(52), Nov. 10, 1988, 102 Stat. 3586, 3593; Pub. L. 101-239 1989; Pub. L. 105-34 1997; Pub. L. 115-97 Dec. 22, 2017, 131 Stat. 2060.

Notes from the Office of Law Revision Counsel

current through 1/16/2019

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENTS

2017-Subsec. (b)(2)(B). Pub. L. 115-97 substituted "for 'calendar year 2016' in subparagraph (A)(ii)" for "for 'calendar year 1992' in subparagraph (B)".

1997-Subsec. (b). Pub. L. 105-34 designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1989-Subsecs. (f), (g). Pub. L. 101-239 redesignated subsec. (f), relating to treatment of certain loans of artworks, as (g).

1988-Subsec. (e)(2)(B). Pub. L. 100-647 substituted "section 213(d)" for "section 213(e)". Subsec. (f). Pub. L. 100-647 added subsec. (f) relating to treatment of certain loans of artworks.

1986-Subsec. (f). Pub. L. 99-514 added subsec. (f).

1981-Subsec. (a). Pub. L. 97-34 substituted "the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following)" for ", in the case of gifts made after December 31, 1970, the total amount of gifts made during calendar quarter, less the deductions provided in subchapter C (sec. 2521 and following)" and struck out provision that in the case of gifts made before Jan. 1, 1971, "taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C. Subsec. (b). Pub. L. 97-34 substituted provision that in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such year for provision that in computing taxable gifts for the calendar quarter, in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year 1971 and subsequent calendar years, \$10,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such quarter.

Pub. L. 97-34 substituted "\$10,000" for "\$3,000".

Subsec. (d). Pub. L. 97-34 repealed subsec. (d) which related to individual retirement accounts, etc., for spouse.

Subsec. (e). Pub. L. 97-34 added subsec. (e).

1978-Subsec. (d). Pub. L. 95-600 added subsec. (d).

1970-Subsec. (a). Pub. L. 91-614 divided definition of "taxable gifts" into gifts made after Dec. 31, 1970, where taxable gifts are based on the total amount of gifts made during the calendar quarter, less the applicable deductions, and gifts made before Jan. 1, 1971, where taxable gifts are based on the total amount of gifts made during the calendar year, less the applicable deductions.

Subsec. (b). Pub. L. 91-614 substituted provisions with regard to computing taxable gifts for the calendar quarter, in the case of gifts made to any persons by the donor during the calendar year 1971 and subsequent calendar years, \$3,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not be included in the total amount of gifts made during such quarter for provisions requiring in the case of gifts made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first \$3,000 of such gifts to such person shall not be included in the total amount of gifts made during such year.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by [Pub. L. 115-97](#) applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of [Pub. L. 115-97](#), set out as a note under section [1](#) of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by [Pub. L. 105-34](#) applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of [Pub. L. 105-34](#), set out as a note under section [2001](#) of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by [Pub. L. 101-239](#) effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of [Pub. L. 101-239](#), set out as a note under section [1](#) of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1018(s)(2)(B), Nov. 10, 1988, 102 Stat. 3587, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to loans after July 31, 1969."

Amendment by section 1018(u)(52) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section [1](#) of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98-397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99-514, set out as a note under section [401](#) of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(5) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section [219](#) of this title.

Pub. L. 97-34, title IV, §441(c), Aug. 13, 1981, 95 Stat. 319, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.-Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after December 31, 1981.

"(2) TRANSITIONAL RULE.-If-

"(A) an instrument executed before the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981] provides for a power of appointment which may be exercised during any period after December 31, 1981,

"(B) such power of appointment is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under section 2503(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or the corresponding provision of prior law),

"(C) the instrument described in subparagraph (A) has not been amended on or after the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981], and

"(D) the State has not enacted a statute applicable to such gift under which such power of appointment is to be construed as being defined in terms of, or by reference to, the amount of the exclusion under such section 2503(b) after its amendment by subsection (a), then the amendment made by subsection (a) shall not apply to such gift."

Amendment by section 442(a)(3) of Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section **2501** of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600 Nov. 6, 1978, 92 Stat. 2932, provided that: "The amendment made by paragraph (2) [amending this section] shall apply to transfers made after December 31, 1976."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section **2501** of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section **401** of this title.

UTC 505 by State, as of 4/29/2019

State	Year Enacted	Bill	Link	
Alabama	2006	HB45/SB157	https://law.justia.com/codes/alabama/2012/title-19/chapter-3b/section-19-3b-505/	Section 19-3B- (a) Whether or (1) During (2) With r for the se not excee (3) After t that was i settlor's e allowance expenses (b) With respec (1) Any cl beneficial (2) A trus The notic in writing the trustee specified (3) If a cla date of th six month death, the claims, e) deemed t the paym except th: (4) The pr decendent

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564-B:5-505 C

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- (2) upon the death of the settlor, the property of the trust shall be included in the settlor's federal income tax gross estate.

New Mexico

2003

HB48

<https://law.justia.com/codes/new-mexico/2011/chapter46A/article5/section46A-5-505/> 46A-5-505. Create a trust that is irrevocable.

- A. Whether or not the trust is irrevocable:
 - (1) during the term of a revocable trust;
 - (2) with respect to the property of the trust that exceeds the settlor's net worth at the time the trust was created;
 - (3) after the death of the settlor, the property of the trust that was included in the settlor's gross estate for federal income tax purposes.

- B. For purposes of this section:
 - (1) during the term of a revocable trust;
 - (2) upon the death of the settlor, the property of the trust that exceeds the settlor's net worth at the time the trust was created.

North Carolina

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<https://law.justia.com/codes/north-carolina/2014/chapter-36c/article-5/section-36c-5-505/> 36C-5-505. Create a trust that is irrevocable.

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North Dakota	2007	HB1034	https://www.legis.nd.gov/cencode/t59c13.pdf#nameddest=59-13-05	59-13-05. (505 1. In the following revocable trust not been place the maximum a assignee of a p After the death revocable imm expenses of th probate estate includes any h period the pow extent of the pr only to the exte 2041(b)(2) or 2 provisions of fe
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Oregon

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Pennsylvania

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SB422/HB3487

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SECTION 62-7

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Tennessee

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<https://law.justia.com/codes/tennessee/2016/title-35/chapter-15/part-5/section-35-15-505/>

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Utah

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SB47

https://le.utah.gov/xcode/Title75/Chapter7/75-7-S505.html?v=C75-7-S505_2017050920170509

75-7-505. Cre

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Vermont	2009	SB86	https://legislature.vermont.gov/statutes/section/14A/005/00505	<p>§ 505. Creditor</p> <p>(a) Whether or</p> <p>(1) During</p> <p>(2) with r</p> <p>for the se</p> <p>exceed th</p> <p>irrevocab</p> <p>governinc</p> <p>(3) After t</p> <p>that was i</p> <p>expenses</p> <p>settlor's p</p> <p>(b) For purpose</p> <p>(1) during</p> <p>revocable</p> <p>(2) upon t</p> <p>property &</p> <p>Internal R</p> <p>of this title</p>
Virginia	2005	SB891	https://law.justia.com/codes/virginia/2016/title-64.2/chapter-7/section-64.2-747/	<p>A. Whether or</p> <p>1. During</p>

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West Virginia

2011

HB2551

<https://law.justia.com/codes/west-virginia/2011/chapter44d/article5/44d-5-505/>

(a) Whether or

(1) During the l

(2) During the life of the trust, the settlor may revoke the trust or the trust may be terminated by the settlor.

(3) After the death of the settlor, the trust shall be irrevocable.

(A) The trust shall be irrevocable.

(B) Reassignment of the trust shall be prohibited.

(C) Debts of the settlor shall not be a charge against the trust.

(D) Unpaid debts of the settlor shall not be a charge against the trust.

(E) Debts of the settlor shall not be a charge against the trust.

(F) Reassignment of the trust shall be prohibited.

attending

(G) All other provisions of the trust shall survive.

(b) For purposes of this section, the following definitions apply:

(1) During the life of the settlor, the trust shall be irrevocable.

(2) Upon the death of the settlor, the trust shall be irrevocable.

property of the settlor.

Section 701.0505

Wisconsin

2014

SB384

<https://law.justia.com/codes/wisconsin/2014/cap-chapter-701/section-701.0505/>

701.0505(1)(a) to claims of a settlor.

701.0505(1)(a)

701.0505(1)(a)

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Wyoming

2003

HB77

<https://law.justia.com/codes/wyoming/2016/title-4/chapter-10/article-5/section-4-10-506/>

4-10-506. Cred

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505, Creditor's claim against settlor.

If not the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, then the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable immediately prior to the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and homestead allowance, exempt property and family allowance to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and homestead allowance, exempt property and family allowance.

Notwithstanding, a claim against a trust that was revocable at the settlor's death:

(a) A claim of a creditor which would be barred against the fiduciary of a decedent's estate, the estate of the decedent, or any creditor or beneficiary of the decedent's estate, shall be barred against the trustee, the trust property, and the creditors and beneficiaries of the trust. The trustee at any time may give notice to any person the trustee has reason to believe may have a claim against the settlor at death.

(b) The notice shall contain the name and address of the trustee to whom the claim must be presented. If the person fails to present the claim within 90 days from the date of the notice, then the person shall be forever barred from asserting or recovering on the claim from the trust property and the creditors and beneficiaries of the trust. Any person who presents a claim on or before the date

in the notice may not later increase the claim following the expiration of the 90-day period.

(c) If a claim is not presented in writing to the personal representative of the settlor's estate or to the trustee (i) within six months from the date of the appointment of the initial personal representative of the settlor's estate, or (ii) if no personal representative is appointed within six months from the settlor's date of death and a claim is not presented in writing to the trustee within six months from the settlor's date of death, then no trustee shall be chargeable for any assets that the trustee may pay or distribute in good faith in satisfaction of any lawful claims, expenses, or taxes or to any beneficiary before the claim was presented. A payment or distribution of assets by a trustee shall be deemed to have been made in good faith unless the creditor can prove that the trustee had actual knowledge of the claim at the time of payment or distribution. The six-month period shall not be interrupted or affected by the death, resignation, or removal of a trustee, and the period at the time during which there is no trustee in office shall not be counted as part of the period.

(d) The provisions of Section 43-2-371 dealing with the priority of payment of claims, expenses, and taxes from the probate estate of a decedent shall apply to a revocable trust to the extent the assets of the decedent's probate estate are inadequate.

ases of this section:

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and

At the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2), 2503(b), or 2514(e) of the Internal Revenue Code of 1986, in each case as in effect on January 1, 2007, or as later amended.

Creditor's claim against settlor

Unless the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors. If a trust has more than one settlor or contributor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This paragraph does not abrogate otherwise applicable laws relating to community property.

In addition to the requirements of this section, with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the portion of the trust that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This paragraph does not apply to any trust from which any distribution to the settlor can be made pursuant to the exercise of a power of appointment held by a third party or abrogate otherwise applicable laws relating to community property. A creditor of a settlor:

(a) Shall not reach any trust property based on a trustee's, trust protector's or third party's power, whether or not discretionary, to pay or reimburse the settlor for any income tax on trust income or trust principal that is payable by the settlor under the law imposing the tax or to pay the tax directly to any taxing authority.

(b) Is not entitled to any payment or reimbursement that is to be made directly to any taxing authority.

(c) Shall not reach or compel distributions to or for the benefit of the beneficiary of a special needs trust.

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that is revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and statutory allowances to a surviving spouse and children to the extent the probate estate is inadequate to satisfy those claims, costs, expenses and allowances, except to the extent that state or federal law requires the payment of any property of the trust from these claims, costs, expenses or allowances. If a trust has more than one settlor or contributor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This paragraph does not abrogate otherwise applicable laws relating to community property.

Provisions of this section:

the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power.

lapse, release or waiver of a power of withdrawal, the holder is not, by reason of any such power of withdrawal, treated as the settlor. For purposes of this section, a trust settled or established by a corporation, professional corporation, partnership, limited liability company, governmental entity, trust, foundation or other entity is not deemed to be settled or established by its directors, officers, shareholders, partners, members, managers, employees, beneficiaries or agents.

For purposes of this section, amounts contributed to a trust by a corporation, professional corporation, partnership, limited liability company, governmental entity, trust, foundation or other entity are not deemed to have been contributed by its directors, officers, shareholders, partners, members, managers, employees, beneficiaries or agents. Powers, duties or responsibilities granted to or reserved by the settlor pursuant to the trust and actions or omissions taken pursuant to the trust are deemed to be the powers, responsibilities, duties, actions or omissions of the settlor or of its directors, officers, shareholders, partners, members, managers, employees, beneficiaries or agents.

For purposes of this section, amounts and property contributed to the following trusts are not deemed to have been contributed by the settlor. A person who would otherwise be treated as a settlor or a deemed settlor of the following trusts shall not be treated as a settlor:

(A) A revocable inter vivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the internal revenue code if the settlor is a beneficiary of the trust after the death of the settlor's spouse.

(B) A revocable inter vivos marital trust that is treated as a general power of appointment trust under section 2523(e) of the internal revenue code if the settlor is a beneficiary of the trust after the death of the settlor's spouse.

(C) A revocable inter vivos trust for the settlor's spouse if the settlor is a beneficiary of the trust after the death of the settlor's spouse.

(D) A revocable trust for the benefit of a person, the settlor of which is the person's spouse, regardless of whether or when the person is a settlor of an irrevocable trust for the benefit of that spouse.

(E) A revocable trust for the benefit of a person to the extent that the property of the trust was subject to a general power of appointment exercisable by that person.

For purposes of subsection E, a person is a beneficiary whether so named under the initial trust instrument or through the exercise by the settlor or spouse or by another person of a limited or general power of appointment.

Subsections C and D do not apply to:

(1) A trust that has no valid business purpose and that has as its principal purpose the evasion of the claims of the creditors of the persons listed in those subsections.

(2) A trust that would be treated as a grantor trust pursuant to sections 671 through 679 of the internal revenue code. This paragraph does not apply to a qualified subchapter S trust that is treated as a grantor trust solely by application of section 1361(d) of the internal revenue code.

creditor's claim against settlor.

If not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors; and

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

Provisions of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and

(2) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986 or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on January 1, 2005.

Creditor's claim against settlor.

If not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children under sections 19-9-101.03, and 19-101.04, to the extent the settlor's residuary probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. The purposes of this section:

(a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and (b) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of the power (March 10, 2001, or as later amended).

(c) If a proceeding other than a small estate proceeding is commenced in the District of Columbia to administer the estate of a deceased settlor and Title 20, property of the trust of which the decedent was a settlor is not liable for payment of claims against the settlor that were asserted in the estate proceeding.

(d) If a proceeding as described in subsection (c) of this section has not been commenced, the trustee of the trust of which the decedent was a settlor shall publish a notice substantially similar to, and in the same manner as provided for the notice described in section 20-704, and thereby shall afford the same protection from claims afforded to a decedent's estate under section 20-903. Claims against a deceased settlor are enforceable against the trustees and the trust property unless presented to the trustee at the address provided in the notice within 6 months after the first publication of the notice. Except to the extent inconsistent with this subsection, Chapter 9 of Title 20 applies to the trustee of a trust created by a deceased settlor in the same manner as it applies to a personal representative and decedent's estate.

(e) If a proceeding under subsection (d) of this section is published and a proceeding to administer the settlor's estate is later commenced, claims against the settlor are barred as against the trustee and trust property as of the date provided in subsection (d) of this section, and not

as against the settlor's creditors' claims against settlor.—

(f) If the terms of a trust contain a spendthrift provision, the following rules apply:

(1) The property of a revocable trust is subject to the claims of the settlor's creditors during the settlor's lifetime to the extent the property is not otherwise exempt by law if owned directly by the settlor.

(2) In respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

withstanding the provisions of paragraph (b), the assets of an irrevocable trust may not be subject to the claims of an existing or present creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the settlor by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax liability or principal which is payable by the settlor under the law imposing such tax.

cases of this section:

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power.

On the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in:

1. Section 2041(b)(2) or s. 2514(e); or
2. Section 2503(b) and, if the donor was married at the time of the transfer to which the power of withdrawal applies, twice the amount specified in s. 2503(b), of the Internal Revenue Code of 1986, as amended.

Under the provisions of s. 726.105, for purposes of this section, the assets in:

the trust described in s. 2523(e) of the Internal Revenue Code of 1986, as amended, or a trust for which the election described in s.

of the Internal Revenue Code of 1986, as amended, has been made; and

the other trust, to the extent that the assets in the other trust are attributable to a trust described in paragraph (a), shall, after the death of the settlor's spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.

the settlor's claim against settlor.

As provided by K.S.A. 33-101 et seq. and 33-201 et seq., and amendments thereto, whether or not the terms of a trust contain a provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the benefit of the settlor. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, the homestead, homestead allowance, the elective share rights of the surviving spouse pursuant to K.S.A. 59-6a209, and amendments thereto, and statutory allowance to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

Purposes of this section:

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power;

At the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the federal internal revenue code of 1986, as in effect on December 31, 2002; or section 2503(b) of the federal internal revenue code of 1986, but this subsection shall not apply to the lapse of powers held by the spouse of a person occurring upon the death of such person.

Settlor's claim against settlor.

The statutory provisions of KRS Chapter 396 regarding claims against decedents' estates, whether or not the terms of a trust or a will contain a disclaimer or disclaimer provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities shall be paid, the property of a trust revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, but no property added to a revocable trust after the death of the settlor from a source other than the settlor's estate or another revocable trust created by the settlor shall be subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children.

as of this section: (a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and (b) Upon the lapse, release, or waiver of the power, the holder is not treated as the settlor of the trust.

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

upon the lapse, release, or waiver of the power, the holder is not treated as the settlor of the trust.

no claim against settlor

applies. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply.

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2(AFF).]

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that is revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the costs of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the probate estate is inadequate to satisfy those claims, costs, expenses and allowances.

For purposes of this section:

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

Upon the lapse, release or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property subject to the power by the lapse, release, or waiver exceeds the greater of the amount specified in the federal Internal Revenue Code of 1986, Section 2041(b)(2) or 2514(e) or the federal Internal Revenue Code of 1986, Section 2503(b), in each case as in effect on July 1, 2005, or as amended.

-- The following rules apply, whether or not the terms of a trust contain a spendthrift provision:

g the lifetime of the settlor, the property of a revocable trust is subject to claims of the creditors of the settlor;

espect to an irrevocable trust, a creditor or an assignee of the settlor may reach only the lesser of:

(i) The claim of the creditor or assignee; and

(ii) The maximum amount that can be distributed to or for the benefit of the settlor;

ust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the interest of r in the portion of the trust attributable to the contribution of that settlor;

espect to a trust described in 42 U.S.C. § 1396p(d)(4)(A) or (C), the court may limit the award of the creditor of a settlor under and (2) of this subsection to the relief that is appropriate under the circumstances, considering among other factors determined ite by the court, the supplemental needs of the beneficiary; and

he death of a settlor, and subject to subsection (b) of this section and the right of the settlor to direct the source from which will be paid, the property of a trust that was revocable at the death of the settlor is subject to claims of the creditors of the settlor.

in claims; procedure. --

ner or not the terms of a trust contain a spendthrift provision, if a proceeding other than for a small estate under Title 5, Subtitle 6 icle is commenced to administer the estate of a deceased settlor as provided in Title 5 of this article, property of a trust that was e at the death of the settlor is not subject to, and the trustee and beneficiaries of that trust may not be held liable for, claims of the of the settlor that are not properly presented in the estate proceeding within the time periods specified in § 8-103 of this article or lisallowed and barred as provided in § 8-107 of this article.

proceeding as described under paragraph (1) of this subsection has not been commenced, the trustee of the trust of which the was a settlor may publish a notice once a week for 3 successive weeks in a newspaper of general circulation in what would e be the proper venue for an administrative or judicial probate for that decedent under § 5-103 of this article.

otice shall:

1. Announce the death of the decedent;
2. Provide the name and address of the trustee;
3. Notify creditors of the decedent to present their claims to the trustee; and
4. Be substantially in the following form:

Notice to Creditors of a Settlor of a Revocable Trust

To all persons interested in the trust of :

This is to give notice that died on or about

. Before the decedent's death, the decedent created a revocable trust for which the undersigned, , whose address is , is now a trustee.

To have a claim satisfied from the property of this trust, a person who has a claim against the decedent must present the claim on or before the date that is 6 months after the date of the first publication of this notice to the undersigned trustee at the address stated above. The claim must include the following information:

A verified written statement of the claim indicating its basis;

The name and address of the claimant;

If the claim is not yet due, the date on which it will become due;

If the claim is contingent, the nature of the contingency;

If the claim is secured, a description of the security; and

The specific amount claimed.

Any claim not presented to the trustee on or before that date or any extension provided by law is unenforceable.

Trustee

Date of first publication: .

Publication of a notice in accordance with paragraph (2) of this subsection shall afford the trust property, the trustee, and the beneficiaries of the trust those protections under § 8-103 of this article afforded to a decedent's estate, personal representative, and heirs against claims presented more than 6 months after the date of the first publication of the notice.

Claims against a deceased settlor are forever barred as against the trust property, the trustee, and the trust beneficiaries unless, within 6 months after the date of the first publication of a notice in accordance with paragraph (2) of this subsection, the creditor:

(i) Files an action against the trustee on the creditor's claim and serves a copy of the complaint on the trustee within 30 days of the date of the first publication of the notice;

(ii) Presents to the trustee at the address provided in the notice:

1. A verified written statement of the claim indicating its basis;

2. The name and address of the claimant;

3. If the claim is not yet due, the date on which it will become due;

4. If the claim is contingent, the nature of the contingency;

5. If the claim is secured, a description of the security; and

6. The specific amount claimed.

may not be deemed to have been presented to the trustee unless the claimant has provided all the information specified in paragraph (4) of this subsection.

If a claim is presented to the trustee as provided in paragraph (4) of this subsection and the trustee disallows the claim wholly or in part, the claimant is forever barred to the extent of the disallowance unless the claimant files an action against the trustee or any person to whom trust property has been distributed.

(ii) An action under subparagraph (i) of this paragraph shall be filed within 60 days after the mailing of the notice of disallowance by the trustee to the claimant.

(iii) The notice informing the claimant of the disallowance shall contain a warning to the claimant concerning the time limitation under subparagraph (ii) of this paragraph for commencing an action.

Withdrawal. --

During the period the power of withdrawal may be exercised, the holder of a power of withdrawal shall be treated in the same manner as the settlor of a revocable trust to the extent of the property subject to that power.

On the lapse, waiver, or release of a power of withdrawal, the former power holder shall no longer be considered a settlor of the trust.

Settlor's claim against settlor

If a trust contains a spendthrift provision, the following rules shall apply:

During the lifetime of the settlor, the property of a revocable trust shall be subject to claims of the settlor's creditors.

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit and, if a trust has more than 1 settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. Trust property shall not be considered available to or for the settlor's benefit solely because the trustee has the discretion under the terms of the trust to reimburse the settlor for tax on trust income or capital gain that is payable by the settlor under the law imposing such tax; no creditor or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust property based on the discretionary authority described in this sentence. At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust revocable at the settlor's death shall be subject to claims of the settlor's creditors, the expenses of the settlor's funeral and burial, and of remains and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy claims, expenses and allowances.

Subsection (b).]

itor's claim against settlor; "settlor" explained.

If not the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and advances as provided in section 7605.

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach no more than the lesser of the following:

(i) The claim of the creditor or assignee.

(ii) The maximum amount that can be distributed to or for the settlor's benefit exclusive of sums to pay the settlor's taxes during the trust term. If there is more than 1 settlor, the amount a creditor or assignee of a particular settlor may reach under subsection (1)(c) shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

A beneficiary is not considered a settlor merely because of a lapse, waiver, or release of a power of withdrawal over the trust property.

An individual who creates a trust shall not be considered a settlor with regard to the individual's retained beneficial interest in the trust that results from the termination of the individual's spouse's prior beneficial interest in the trust if all of the following apply:

(i) The individual creates, or has created, the trust for the benefit of the individual's spouse.

(ii) The trust is treated as qualified terminable interest property under section 2523(f) of the internal revenue code, 26 USC 2523.

(iii) The individual retains a beneficial interest in the trust income, trust principal, or both, which beneficial interest follows the termination of the individual's spouse's prior beneficial interest in the trust.

EDITOR'S CLAIM AGAINST SETTLOR.

If not the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

not enact Article 5

creditor's claim against settlor.

Whether or not the terms of a trust contain a spendthrift provision, during the lifetime of the settlor, the property of a revocable trust is not subject to the claims of the settlor's creditors.

Subject to an irrevocable trust without a spendthrift provision, a creditor or assignee of the settlor may reach the maximum amount contributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

Subject to an irrevocable trust with a spendthrift provision, a spendthrift provision will prevent the settlor's creditors from satisfying their claims against trust assets except:

(1) where the conveyance of assets to the trust was fraudulent as to creditors pursuant to the provisions of chapter 428; or

(2) to the extent of the settlor's beneficial interest in the trust assets, if at the time the trust became irrevocable:

- (a) The settlor was the sole beneficiary of either the income or principal of the trust or retained the power to amend the trust; or
- (b) The settlor was one of a class of beneficiaries and retained a right to receive a specific portion of the income or principal of the trust that was determinable solely from the provisions of the trust instrument.

Even if a trust meets the requirements set forth in subsection 3 of this section, a settlor's creditors may not reach the settlor's interest in that trust regardless of any testamentary power of appointment retained by the settlor that is exercisable by the settlor in favor of appointees other than the settlor, the settlor's estate, the settlor's creditors, or the creditors of the settlor's estate.

A trustee who has a duty or power to pay the debts of a deceased settlor may publish a notice in a newspaper published in the county in which the trust is located in subdivision (3) of this subsection once a week for four consecutive weeks in substantially the following form:

Persons interested in the estate of _____, decedent. The undersigned _____ is acting as a trustee under a trust the terms of which provide that the debts of the decedent may be paid by the Trustee(s) upon receipt of proper proof thereof. The address of the

ors of the decedent are noticed to present their claims to the undersigned within six (6) months from the date of the first
n of this notice or be forever barred.

Trustee

such publication is duly made by the trustee, any debts not presented to the trustee within six months from the date of the first
n of the preceding notice shall be forever barred as against the trustee and the trust property.

trustee shall not be liable to account to the decedent's personal representative under the provisions of section 461.300 by reason
bt barred under the provisions of this subsection.

ich publication shall be in a newspaper published in:

(a) The county in which the domicile of the settlor at the time of his or her death is situated;

(b) If the settlor had no domicile in this state at the time of his or her death, any county wherein trust assets are located;
except that, when the major part of the trust assets in this state consist of real estate, the notice shall be published in the county
in which the real estate or the major part thereof is located; or

(c) If the settlor had no domicile in this state at the time of his or her death and no trust assets are located therein, the county
wherein the principal place of administration of the trust is located.

or purposes of this subsection, the term "domicile" means the place in which the settlor voluntarily fixed his or her abode, not for a
cial or temporary purpose, but with a present intention of remaining there permanently or for an indefinite term.

oses of this section:

uring the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a
trust to the extent of the property subject to the power; and

on the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the
affected by the lapse, release, or waiver exceeds the greater of the amount specified in Sections 2041(b)(2), 2514(e) or 2503(b)
ernal Revenue Code

tion shall not apply to a spendthrift trust described, defined, or established in section 456.014.

reditor's claim against settlor.

not the terms of a trust contain a spendthrift provision, the following rules apply:

ng the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

In respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. A trustee's discretionary authority to pay or reimburse the settlor for any tax that is payable by the settlor on trust income or principal may not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor is not entitled to reach any amount because of this discretionary authority.

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that is revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

Provisions of this section:

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and

On the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of the lapse, release, or waiver.

If the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

In respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the cost of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written consent by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after the death of the decedent. Sums recovered by the personal representative of the settlor's estate must be treated as part of the decedent's estate. The liability created by this subdivision shall not apply to any assets to the extent that such beneficiary of a trust subject to subdivision (a)(3) of this section who receives one or more distributions from the trust after the death of the settlor against whom a proceeding to account is brought may join as a party to the proceeding any other beneficiary who has received a distribution from that trust or any other trust subject to subdivision (a)(3) of this section, any surviving owner or beneficiary of any security or securities account of the decedent or proceeds thereof, or a surviving party or beneficiary of any account under sections 30-2716 to 30-2733.

If a written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative before the distribution, a trustee is released from liability under this section on assets distributed to the trust's beneficiaries.

Provisions of this section:

1. During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and

2. Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2), 2503(b), or 2514(e) of the Internal Revenue Code as defined in section 49-801.01.

Creditor's Claim Against Settlor.

Unless the terms of a trust contain a spendthrift provision, the following rules apply:

1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

2. With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subparagraph shall not apply to:

(a) an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. 1396p(d)(4) or similar federal law governing the transfer to such a trust; or

an irrevocable trust solely because of the existence or exercise of a discretionary power granted to the trustee by the terms of court order, agreement of the qualified beneficiaries or any other provision of law (or the existence or exercise of a discretionary power granted to a trust advisor or trust protector by the terms of the trust, court order, agreement of the qualified beneficiaries, or any other provision of law, to direct the trustee) to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or other tax which is payable by the settlor under the law imposing such tax.

After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains to the extent the settlor's probate estate is inadequate to satisfy those claims, and expenses. This section does not apply to the proceeds and any other benefits of a policy of life or endowment insurance owned by the settlor on the settlor's own life or on another life as provided in RSA 408:2. The purposes of this section:

(a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and

(b) After the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of:

- (i) the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code, or
- (ii) the amount specified in section 2503(b) of the Internal Revenue Code.

This section shall limit the application of the Qualified Dispositions in Trust Act set forth in RSA 564-D.

Creditor's Claim Against Settlor.

Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, expenses of the settlor's funeral and disposal of remains, and to a surviving spouse or partner in a civil union and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses.

The purposes of this section:

ring the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and

on the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. s.2041(b)(2) or 26 U.S.C. s.2514(e)), or section 2503(b) of the federal Internal Code of 1986 (26 U.S.C. s.2503(b)), in each case as in effect on the effective date of this act, or as later amended.

creditor's claim against settlor.

not the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors;

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution; and

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that is revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the costs of the settlor's funeral and disposal of remains and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and allowances.

Provisions of this section:

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and

On the lapse, release or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in Section 2041(b)(2), 2514(e) or 2503(b) of the Internal Revenue Code of 1986, as amended.

creditor's claim against settlor.

he other applicable law, whether or not the terms of a trust contain a spendthrift provision or the interest in the trust is a trust interest as defined in G.S. 36C-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, the following rules apply: During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(2a) Notwithstanding subdivision (2) of this subsection, the trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or trust principal that is payable by the settlor under the law imposing the tax shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor, at the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that is revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent that the probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by applicable law.

Notwithstanding the provisions of this section, with respect to a power of withdrawal over property of a trust exercisable by a holder of the power other than the settlor, both of the following shall apply:

(1) Property subject to the exercise of the power shall be subject to the claims of the creditors of the holder only when and to the extent that the holder exercises the power.

(2) The exercise, release, or waiver of a power shall not be deemed to be an exercise of the power and shall not cause the holder to be deemed to be a settlor of the trust.

ARTICLE 5A OF CHAPTER 59 OF THE GENERAL STATUTES, FOR PURPOSES OF THIS SECTION, IF THE SETTLOR IS A BENEFICIARY OF THE FOLLOWING TRUSTS OF THE SETTLOR'S SPOUSE, THE PROPERTY OF THE TRUSTS SHALL, AFTER THE DEATH OF THE SETTLOR'S SPOUSE, BE DEEMED TO HAVE BEEN TRANSFERRED TO THE SETTLOR'S SPOUSE AND NOT BY THE SETTLOR:

(a) A revocable intervivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code;
(b) A revocable intervivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the Internal Revenue Code;
(c) A revocable intervivos trust of which the settlor's spouse is the sole beneficiary during the lifetime of the settlor's spouse but which qualify for the federal gift tax marital deduction.

(3) Notwithstanding the provisions of this section, with respect to a power of withdrawal over property of the other trust, to the extent that the property of the other trust is attributable to property passing from a trust described in subdivision (1) or (2) of this subsection.

(4) For purposes of this subsection, the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a general power of appointment, and the "settlor's spouse" refers to the person to whom the settlor was married at the time the intervivos trust was created, notwithstanding a subsequent dissolution of the marriage.

) Creditor's claim against settlor.

g rules apply whether or not the terms of a trust contain a spendthrift provision. During the lifetime of the settlor, the property of a trust is subject to claims of the settlor's creditors to the extent that the property would be subject to creditors' claims if the property had not been placed in the trust. With respect to an irrevocable trust, other than a special needs trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. If the property of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was established immediately before the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's estate is inadequate to satisfy those claims, costs, expenses, and allowances. For purposes of this section, "statutory allowances" includes the homestead exception under chapter 47-18 and the allowances included in title 30.1. 2. For purposes of this section during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power and, upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 5814(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, or corresponding future federal tax law.

) of settlor's creditors - power of withdrawal.

g rules apply whether or not the terms of a trust contain a spendthrift provision, all of the following apply:

) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

) To the extent that a trust is established pursuant to, or otherwise is wholly or partially governed by or subject to Chapter 5816. of the Revised Code, with respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If an irrevocable trust has more than one settlor, the amount distributable to or for a settlor's benefit at the creditor or assignee of a particular settlor may reach may not exceed that settlor's interest in the portion of the trust attributable to that settlor's contribution. The right of a creditor or assignee to reach a settlor's interest in an irrevocable trust shall be governed by Chapter 5816. of the Revised Code to the extent that that chapter applies to that trust.

) With respect to a trust described in 42 U.S.C. section 1396p(d)(4)(A) or (C), the court may limit the award of a settlor's creditor under section 5814(1) or (2) of this section to the relief that is appropriate under the circumstances, considering among any other factors the needs of the beneficiary and appropriate by the court, the supplemental needs of the beneficiary.

) For purposes of this section, all of the following apply:

) The holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power during the period the power may be exercised.

the lapse, release, or waiver of the power of withdrawal, the holder is treated as the settlor of the trust only to the extent the value of property affected by the lapse, release, or waiver exceeds the greatest of the following amounts:

- (a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code;
- (b) If the donor of the property subject to the holder's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in section 2503(b) of the Internal Revenue Code;
- (c) If the donor of the property subject to the holder's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in section 2503(b) of the Internal Revenue Code.

of the following shall be considered an amount that can be distributed to or for the benefit of the settlor:

- (a) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor only as a result of the exercise of a power of appointment held in a nonfiduciary capacity by any person other than the settlor;
- (b) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor of a trust pursuant to the power of the trustee to make distributions or pursuant to the power of another in a fiduciary capacity to direct distributions, if and to the extent that the distributions could be made from trust property the value of which was included in the gross estate of the settlor's spouse for federal estate tax purposes under section 2041 or 2044 of the Internal Revenue Code or that was treated as a transfer by the settlor's spouse under section 2514 or 2519 of the Internal Revenue Code;
- (c) Trust property that, pursuant to the exercise of a discretionary power by a person other than the settlor, could be paid to a taxing authority or to reimburse the settlor for any income tax on trust income or principal that is payable by the settlor under the

not the terms of a trust contain a spendthrift provision:

the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

itor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's interest. If an irrevocable trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

If a trust was revocable at the settlor's death, the property of the trust becomes subject to creditors' claims as provided in [130.350 \(Statute of limitations\)](#) to [130.450 \(Consolidation of proceedings\)](#) when the settlor dies. The payment of claims is subject to the settlor's right to direct the priority of the sources from which liabilities of the settlor are to be paid.

Notwithstanding the provisions of paragraph (b) of this subsection, the assets of an irrevocable trust may not be subject to the claims of a creditor or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust or any other provision of law to pay the amount of tax owed directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable or has been paid by the settlor under the law imposing the

in case of creditors' claims, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to which the property of the trust is subject to the power. The provisions of this subsection apply to the holder of a power of withdrawal only during the period in which the power may be exercised.

In case of lapse, release or waiver of a power of withdrawal, the property of the trust that is the subject of the lapse, release or waiver is not subject to claims of creditors of the holder of the power only to the extent the value of the property exceeds the greatest of:

(1) the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code, as in effect on December 31, 2012;

(2) the amount specified in section 2503(b) of the Internal Revenue Code, as in effect on December 31, 2012; or

(3) the amount specified in section 2503(b) of the Internal Revenue Code, as in effect on December 31, 2012, if the donor was not the settlor at the time of the transfer to which the power of withdrawal applies.

Property of an irrevocable trust that are attributable to a contribution to an inter vivos marital deduction trust described in section 2523(e) or 2523(f) of the Internal Revenue Code, as in effect on December 31, 2012, after the death of the spouse of the settlor of the inter vivos marital deduction trust shall be deemed to have been contributed by the settlor's spouse and not by the settlor.

Property of an irrevocable trust for the benefit of a person, including the settlor, are not subject to claims of creditors of the settlor to the extent the property of the trust is subject to a presently exercisable general power of appointment held by a person other than the settlor.

Subsections (2) and (3) of this section do not apply to a person other than a settlor who is a beneficiary of a revocable or irrevocable trust in which he or she is a trustee of the trust, if the power to withdraw for the person's own benefit is limited by an ascertainable standard.

Spouse's claim against settlor - UTC 505(a).

Even if a trust instrument contains a spendthrift provision and notwithstanding section 7744 (relating to discretionary trusts; effect of standing in the shoes of the settlor during the lifetime of the settlor), the property of a revocable trust is subject to claims of the settlor's creditors.

A judgment creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the creditor or assignee of a particular settlor may reach the portion of the trust property attributable to that settlor's contribution. However, the assets of an irrevocable trust are not subject to the claims of a creditor of the settlor to the extent of the settlor's contribution because of the existence of the trustee's discretionary power to pay directly to the taxing authorities or to reimburse the settlor for the settlor's share of the net tax payable by the settlor attributable to trust income or principal.

the death of the settlor and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and the family exemption to the extent the settlor's probate estate is inadequate to satisfy those claims, expenses and exemption and no other statute specifically exempts the property from those claims.

Property subject to power of withdrawal - UTC 505(b).
Property that is subject to a power of withdrawal, during the period the power may be exercised and after its lapse, release or waiver, reached by a creditor or an assignee of the holder of the power whether or not the interest of the holder in the trust is subject to a different provision.

62-505. Creditors' claims against settlor.

Unless the terms of a trust contain a spendthrift provision, the following rules apply:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, and except to the extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property held in a revocable trust at the time of the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by Section 62-3-801 et seq.

(d) Assets of this section:

(1) Property of a beneficiary who is a trustee of a trust, but who is not the settlor of the trust, cannot be treated in the same manner as the settlor of a trust if the beneficiary-trustee's power to make distributions to the beneficiary-trustee is limited by an ascertainable standard such as the beneficiary-trustee's health, education, maintenance, and support;

(2) Assets in a trust that are attributable to a contribution to an inter vivos marital deduction trust described in either Section 2523(e) or Internal Revenue Code of 1986, after the death of the spouse of the settlor of the inter vivos marital deduction trust are deemed to have been contributed by the settlor's spouse and not by the settlor.

not the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

As provided in chapter 16 of this title regarding investment services trusts and subdivisions (a)(3)-(5) regarding an irrevocable special needs trust, a creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to the settlor's benefit. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution;

For the purposes of this section, "irrevocable special needs trust" means an irrevocable trust established for the benefit of one or more persons, which includes, but is not limited to, any individual who is disabled pursuant to 42 U.S.C. § 1382c(a), as well as any individual who is disabled pursuant to any similar federal, state or other jurisdictional law or regulation, or has a condition that is medically equivalent to one that qualifies them to be so disabled in accordance with any of the above even if not officially found to be so by a governmental body if one of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to provide for the disabled person to qualify or continue to qualify for public, charitable or private benefits that might otherwise be available to the disabled person. The existence of one or more nondisabled remainder beneficiaries of the trust shall not disqualify it as an irrevocable special needs trust for the purposes of this section:

A creditor or assignee of the settlor of an irrevocable special needs trust, as defined in subdivision (a)(3), may reach or compel distributions from such special needs trust, to or for the benefit of the settlor of such special needs trust, or otherwise, regardless of whether or not such irrevocable special needs trust complies with, and irrespective of the requirements of, chapter 16 of this title; and notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the settlor, any other fiduciary, or an advisor of an irrevocable special needs trust. For purposes of this subdivision (a)(5), an advisor of an irrevocable special needs trust includes any person involved in the counseling, drafting, preparation, execution or funding of an irrevocable special needs trust.

At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was irrevocable immediately preceding the settlor's death is subject to claims of the settlor's creditors, costs of administration of the trust, the estate and the expenses of the settlor's funeral and disposal of remains. With respect to claims, expenses, and taxes in connection with the settlement of the settlor's estate, any claim of a creditor that would be barred against the fiduciary of a settlor's estate, any creditor of the settlor, or any creditor or beneficiary of the settlor's estate shall be barred against the trust property of a trust that was irrevocable at the settlor's death, the trustee of the revocable trust, and the creditors and beneficiaries of the trust. The provisions of § 30-2-10 detailing the priority of payment of claims, expenses, and taxes from the probate estate of a decedent shall apply to a revocable trust to the extent the assets of the settlor's probate estate are inadequate and the personal representative or creditor or taxing authority of the settlor's estate has perfected its right to collect from the settlor's revocable trust.

as of this section during the period a power of withdrawal may be exercised or upon the lapse, release, or waiver of the power, created as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the amount specified in § 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. § 2041(b)(2) and § 2514(e)), or § Internal Revenue Code of 1986 (26 U.S.C. § 2503(b)), in each case as in effect on July 1, 2004, or as later amended.

as of subdivision (a)(2), the power of a trustee of an irrevocable trust, whether arising under the trust agreement or any other law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any payable on any portion of the trust principal and income that are includable in the settlor's personal income under applicable law, distributions made by the trustee pursuant to such authority, shall not be considered an amount that may be distributed to or for the t.

ct to an irrevocable trust for which the settlor made a qualified election pursuant to 26 U.S.C. § 2523(f), the power of a trustee, t resulting to the settlor from any exercise of such power, whether arising under the trust agreement or any other provision of the distribution to or for the benefit of a settlor or to otherwise permit the settlor to use or benefit from trust property following the settlor's spouse, shall not be considered an amount that may be distributed to or for the settlor's benefit for purposes of subdivision subsection (d) shall not limit a creditor's remedies under the Uniform Fraudulent Transfer Act, compiled in title 66, chapter 3, part 3, settlor's transfers to such trust.

as of subdivision (a)(2) and subsection (g), a person who is the holder of a power of withdrawal is not considered a settlor of the to exercise that power of withdrawal or letting that power of withdrawal lapse.

is of subdivision (a)(2) and subsection (g), a person who becomes a beneficiary of a trust due to the exercise of a power of y someone other than such person shall not be considered a settlor of the trust.

standing § 66-3-310, no person shall bring an action with respect to a transfer of property to a spendthrift trust:

(A) If the person is a creditor when the transfer is made, unless the action is commenced within the later of two (2) years after the transfer is made or six (6) months after the person discovers or reasonably should have discovered the transfer; or

(B) If the person becomes a creditor after the transfer is made, unless the action is commenced within two (2) years after the trans

division (g)(1) applies:

(A) A person shall be deemed to have discovered the existence of a transfer at the time any public record is made of the transfer, including but not limited to, a conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement under title 47, chapter 9, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state;

(B) No creditor shall bring an action with respect to a transfer of property to a spendthrift trust unless that creditor proves by clear and convincing evidence that the settlor's transfer to the trust was made with the intent to defraud that specific creditor; and

(i) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary or an advisor of a spendthrift trust if that claim or cause of action is based in any way on any person availing themselves of the benefits of this subsection (g);

(ii) For purposes of subdivision (g)(2)(C), an advisor of a spendthrift trust includes, but is not limited to, any person involved in the counseling, drafting, preparation, execution or funding of a spendthrift trust;

(iii) For purposes of subdivision (g)(2)(C)(i), counseling, drafting, preparation, execution or funding of a spendthrift trust includes the counseling, drafting, preparation, execution and funding of a limited partnership, a limited liability company or any other type of entity if interests in the limited partnership, limited liability company or other entity are subsequently transferred to a trust. Notwithstanding subdivision (g)(2)(C), in the same manner as provided otherwise than by this section to trusts in general, a beneficiary, trustee, trust advisor or trust protector retains the right to bring a claim against a trustee or against another cotrustee, trust protector or any of their predecessors; however, no such claim shall arise solely because a person availed themselves, or attempted to avail themselves, of the benefits of this subsection (g);

Notwithstanding subdivision (g)(2)(C)(i), if more than one transfer of property is made to a spendthrift trust, the subsequent transfer of property to the spendthrift trust shall be deemed to be the most recent transfer for the purpose of determining whether a person may bring an action pursuant to this subsection (g) with respect to a prior transfer of property to the spendthrift trust; and any distribution to a beneficiary from the spendthrift trust shall be deemed to have been made in the most recent transfer made to the spendthrift trust;

Notwithstanding the exception of any claim brought pursuant to subdivision (g)(3), notwithstanding any other law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, other fiduciary or advisor of a spendthrift trust if, as of the date such action is brought, an action by a creditor or assignee with respect to a transfer of property to the spendthrift trust would be barred pursuant to this subsection (g); and

Subsection (g) shall not abridge the rights of a creditor, to the extent otherwise provided by this section, to reach the maximum amount that can be distributed to or for the settlor's benefit under a spendthrift trust.

Notwithstanding a creditor's claim against settlor.

When the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

subject to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-502, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If the trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that is irrevocable at the settlor's death, but not property received by the trust as a result of the death of the settlor which is otherwise exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

settlor's claim against settlor

If the terms of a trust contain a spendthrift provision, the following rules apply:
During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.
With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This subdivision shall not apply to an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. Section 1396p(d)(4) or similar federal law that provides for the transfer to such a trust of property of the settlor at the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that is irrevocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

Provisions of this section:

During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of the transfer.
(Added 2009. No. 20. § 1.)

If the terms of a trust contain a spendthrift provision, the following rules apply:

During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

With respect to an irrevocable trust, except to the extent otherwise provided in §§ 64.2-745.1 and 64.2-745.2, a creditor or assignee of a trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount a creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. A trustee's discretionary authority to pay directly or to reimburse the settlor for any tax on trust income or other amount that is payable by the settlor shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount solely by reason of this discretionary authority. At the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that is revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children including the family allowance, the right to exempt property, and the homestead allowance to the extent the settlor's probate estate is inadequate to satisfy such claims, costs, expenses, and allowances. This section shall not apply to life insurance proceeds under § 38.2-3122. No proceeding against a trustee, trust assets, or distributees of such assets to such claims, costs, and expenses shall be commenced unless the trustee's representative of the settlor has received a written demand by a surviving spouse, a creditor, or one acting for a minor or next of kin of the settlor, and no proceeding shall be commenced later than two years following the death of the settlor. This section shall not affect the right of a trustee to make distributions required or permitted by the terms of the trust prior to being served with process in a proceeding brought by the personal representative.

For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a trust to the extent of the property subject to the power; and

(2) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest of (i) the amount specified in § 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, (ii) the amount specified in § 2503(b) of the Internal Revenue Code of 1986, or (iii) two times the amount specified in (b) of the Internal Revenue Code of 1986 if the donor was married at the time of the transfer to which the power of withdrawal applied.

(3) Assets in a trust that are attributable to a contribution to an inter vivos marital deduction trust described in either § 2523(e) or (f) of the Internal Revenue Code of 1986, after the death of the spouse of the settlor of the inter vivos marital deduction trust shall be deemed to have been contributed by the settlor's spouse and not by the settlor.

Unless the terms of a trust instrument contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the grantor, the property of a revocable trust is subject to claims of the grantor's creditors.

lifetime of the grantor, with respect to an irrevocable trust, a creditor or assignee of the grantor may reach the maximum amount distributed to or for the grantor's benefit. If a trust has more than one grantor, the amount the creditor or assignee of a particular trust may not exceed the grantor's interest in the portion of the trust attributable to that grantor's contribution.

At the death of a grantor, and subject to the grantor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the grantor's death is subject to claims of the grantor's creditors, to the extent the grantor's probate estate is inadequate to satisfy them:

(1) costs and expenses of administration of the grantor's estate;

(2) reasonable funeral expenses;

(3) and taxes with preference under federal law;

(4) child support which is due and owing at the time of the decedent's death;

(5) and taxes with preference under other laws of the State of West Virginia;

(6) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons who cared for the decedent during his or her last illness; and

(7) other claims.

Assets of this section:

(a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the grantor of a trust to the extent of the property subject to the power; and

(b) Upon the lapse, release or waiver of the power, the holder is treated as the grantor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in Section 2041(b)(2), Section 2503(b) or Section 514(a) of the Internal Revenue Code.

(a) Whether or not the terms of a trust include a spendthrift provision and except as provided in par. (b), the following rules apply to settlor's creditors:

1. 1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

2. 2. With respect to an irrevocable trust that is not a trust for an individual with a disability, upon application of a judgment creditor, the court may, if the trust instrument requires or authorizes the trustee to make payments of income or principal to or for the settlor, or the trustee to satisfy part or all of the judgment out of part or all of the payments of income or principal as they are due, the future, or which are payable in the trustee's discretion. If a trust has more than one settlor, the amount the judgment creditor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

3. 3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

- (b) Assets of a trust that are exempt from claims of creditors under other statutes are not subject to par. (a).
-) For purposes of this subchapter, all of the following apply:
 - (a) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the irrevocable trust to the extent of the property subject to the power.
 - (b) A beneficiary of a trust may not be considered a settlor solely because of a lapse, waiver, or release of any of the following:
 - 1. 1. A power described under par. (c).
 - 2. 2. The beneficiary's right to withdraw part of the trust property, to the extent that the value of the property affected by the withdrawal or release in any year does not exceed the greater of the following:
 - 2.a. a. The amount referenced in section 2041 (b) (2) or 2514 (e) of the Internal Revenue Code.
 - 2.b. b. The amount referenced in section 2503 (b) of the Internal Revenue Code for each individual other than the beneficiary who makes a transfer to the trust or who is deemed to make a transfer to the trust pursuant to an election to split gifts under section 2513 (a) of the Internal Revenue Code.
 - (c) A beneficiary of a trust is not a settlor, has not made a voluntary or involuntary transfer of the beneficiary's interest in the trust, and does not have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust solely because the beneficiary exercises, or allows in any capacity, any of the following:
 - 1. 1. A presently exercisable power to consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary or any of the following:
 - 1.a. a. Exercisable only with the consent of another person holding an interest adverse to the beneficiary's interest.
 - 1.b. b. Limited by an ascertainable standard of the beneficiary.
 - 2. 2. A presently exercisable power to appoint any property of the trust to or for the benefit of a person other than the beneficiary, the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate.
 - 3. 3. A testamentary power of appointment.
 - 4. 4. A presently exercisable right described in sub. (2) (b).
 - (d) A beneficiary of a trust is not a settlor solely because the beneficiary is entitled to nondiscretionary distributions from the trust.
 - (e)
 - 1.1. Contributions to the following trusts are not considered to have been contributed by the settlor:
 - 1.a. a. An irrevocable marital trust that is treated as qualified terminable interest property under section 2053 (T) of the Internal Revenue Code if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

1.d. b. An irrevocable marital trust that is treated as a general power or appointment trust under section 2523 (e) or the Internal Revenue Code if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

1.c. c. An irrevocable trust for the settlor's spouse if after the death of the settlor's spouse the settlor is a beneficiary of the trust or an irrevocable trust that receives property from the trust.

1.d. d. An irrevocable trust for the benefit of a person, the settlor of which is the person's spouse, regardless of whether or when the settlor is a settlor of an irrevocable trust for the benefit of that spouse.

1.e. e. An irrevocable trust for the benefit of a person to the extent that the property of the trust was subject to a general power of appointment in favor of another person.

2. 2. A person who would otherwise be treated as a settlor of a trust described in subd. 1. a. to e. is not treated as a settlor of the trust.

3. 3. For purposes of this paragraph, notwithstanding s. 701.0103 (3), "beneficiary" means a person who satisfies s. 701.0103 (3) who is designated in a trust instrument or through the exercise of a special or general power of appointment.

) Any order entered by a court under this section is subject to modification upon application of an interested person.

Settlor's claim against settlor.

If the terms of a trust contain a spendthrift provision, the following rules apply:

1. For irrevocable trusts created in accordance with W.S. 4-10-504(a) or irrevocable trusts providing that the trustee may only make discretionary distributions to the settlor, a creditor or assignee of the settlor of an irrevocable trust without a spendthrift provision may not attach to the trust property or the income therefrom a maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may attach shall not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

2. For irrevocable trusts created in accordance with W.S. 4-10-504(b) or irrevocable trusts providing that the trustee may only make discretionary distributions to the settlor, a creditor or assignee of the settlor of an irrevocable trust with a spendthrift provision, a creditor or assignee of the right of a settlor are limited by the provisions of W.S. 4-10-504(b) et seq.

3. For irrevocable trusts created in accordance with W.S. 4-10-504(c) or irrevocable trusts providing that the trustee may only make discretionary distributions to the settlor, a creditor or assignee of the settlor are limited by W.S. 4-10-504(b) if:

1. The trust instrument provides that the trustee may only make discretionary distributions to the settlor, a creditor or assignee of the settlor are limited by W.S. 4-10-504(b) if:

transfer of property to the trust by the settlor was not in violation of the Uniform Fraudulent Transfers Act by applying the same of proof as provided in W.S. 4-10-517;

at one (1) trustee of the irrevocable trust is a qualified trustee; and

trustee with authority to make distributions to the settlor is not a trust beneficiary, related to the settlor or subordinate to the settlor Internal Revenue Code section 672(c).

death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the portion of a trust that at the settlor's death, and the property subject thereto, is subject to claims of the settlor's creditors, costs of administration of the trust, the expenses of the settlor's funeral and disposal of remains to the extent the settlor's probate estate is inadequate to satisfy the costs of administration and expenses

Under this section, the holder of an unexercised power of withdrawal or power of appointment over trust property shall not be treated as a settlor of the trust regardless of whether the power remains exercisable or has lapsed.

Under this section, a person who created a trust for his or her spouse under section 2523(e) of the Internal Revenue Code, or for whom a contribution in section 2523(f) of the Internal Revenue Code was made, shall not be treated as a settlor of the trust, as of and after the death of the settlor or her spouse.

Article Citation

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sfer is made; and

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Notes from Article

"Section 505 of the Uniform Trust Code, on the other hand, in recognition that revocable trusts are now widely used as "will substitutes," allows creditors of the grantor, after the grantor's death, to assert claims against the trust estate, and also subjects the trust estate to payment of administration expenses, funeral and burial costs and statutory family allowances, to the extent the grantor's probate estate is insufficient to pay them. The Arkansas General Assembly opted to delete this provision of the UTC" (p. 16).

"The same section of the ATC cited in Wetzel was amended by the Arkansas legislature in 2015, marking the only major amendment to the ATC since its adoption in 2005 and expanding the situations in which protection from creditors applies. First, if a trust has more than one settlor, the amendment allows creditors of one settlor access only to the assets attributable to that settlor. Second, if a person (such as a settlor or beneficiary) holds a power of withdrawal, the ATC treats that person as a settlor with respect to a creditor's claim. As amended, the ATC now states that on the lapse, release, or waiver of such a power, the holder of a power is not treated as a settlor. In addition, property transferred to one of the following is not deemed to be property of a settlor: (1) an irrevocable qualified terminable interest property (QTIP) trust (under § 2523(f) of the Internal Revenue Code), if the settlor is a beneficiary after the death of the settlor's spouse; (2) an irrevocable general power of appointment trust (under § 2523(e) of the Internal Revenue Code), if the settlor is a beneficiary after the death of the settlor's spouse; or (3) an irrevocable trust for the benefit of a person, to the extent that the property of the trust was subject to a general power of appointment in another person.²⁵ This amendment will weaken creditors' rights against settlors' assets typically distributed to a surviving spouse and descendants" (p. 322).

"The MUTC captures only express trusts, charitable or non-charitable, of a donative nature and trusts created pursuant to a judgment or decree that requires the trust to be administered in the manner of an express trust" (p. 38).

"Prior to enactment of the MUTC, the common law rule had been that a settlor of a trust who reserves to himself a right of withdrawal fully exposes the trust property to attack by the settlor's intervivos and postmortem creditors. The MUTC has codified that rule in its section 505 for donative-type trusts. And that is all the MUTC has done. Unlike the Official UTC, it has not extended the rule to non-settlors. And it certainly has not extended it to donees of general testamentary powers of appointment" (p. 38).

Subsection 505(b) was deleted as it would have changed current law by making all donees of GPOAs settlors for creditor-access purposes (pp. 38-39, & n.137).

Minnesota did not adopt 505(b) -- nor did it adopt 503.

"The creditors of a settlor of an irrevocable trust can reach 'the maximum amount that can be distributed to or for the settlor's benefit.' This stance is not in accord with Missouri's present limited exception to that rule. Missouri's limited exception is designed to allow retention by a settlor of a discretionary interest as one of a class of beneficiaries. This exception should allow estate-planning techniques that would require a settlor to retain some interest in a trust that should not be included in the settlor's gross estate for federal estate tax purposes." (p. 377).

See 456.5-505(3) which changes UTC language to preserve Missouri protection of asset trusts that are irrevocable.

Missouri declined to grant creditor rights at settlor's death.

"Nebraska modified the UTC provision for two reasons. First, the UTC provision does not provide a procedure for the enforcement of the debts, expenses of administration and allowances. Second, there was a desire to make certain that property, that is exempt from claims of creditors under the laws of Nebraska or under federal law, does not become subject to those claims merely because it passes through a trust that was revocable at the time of the settlor's death" (pp. 134-135).

Ohio declined to grant creditor rights at settlor's death.

"SCTC section 62-7-505 is consistent with the UTC treatment of self-settled trusts, and thus South Carolina follows the general common law rule" (p. 186).

Tennessee's 505(a)(3) deleted all references to statutory allowances available to surviving spouses and children (p. 509). Non-probate transfers with the purpose of disinheritting a surviving spouse are void as a fraudulent conveyance (pp. 509-510). Tennessee courts have broad discretion to determine whether revocable trust assets are included in a decedent's estate (p. 510).

"The study committee tentatively decided that the section would not apply to 'special needs' trusts established to allow a disabled person established to allow a disabled person to retain the benefit of an inheritance or insurance settlement despite receiving government support" (p. 59).

"This is especially true in Virginia, where the common law, in the absence of valid spendthrift clauses, is very much pro-creditor. The Virginia UTC continues the ability of grantors to defeat claims of beneficiary creditors by using spendthrift trusts and enlarges the ability of beneficiaries to resist claims of creditors under discretionary and support trusts lacking the protection of spendthrift clauses.' To the extent that the

Virginia UTC changes the law in Virginia, it does so in a manner that increases-not decreases the level of creditor protection available with trusts" (p. 368).

Creditor cannot bring an action against a trustee for failing to make a mandatory distribution, and Wyoming protects mandatory and discretionary distributions, even if beneficiary is also a trustee (p. 196).

DRAFT AS DISCUSSED BY CUTC COMMITTEE

15-5-503. Exceptions to spendthrift provision.

(a) IN THIS SECTION, "CHILD" INCLUDES ANY PERSON ~~FOR WHOM AN ORDER OR JUDGMENT FOR CHILD SUPPORT HAS BEEN ENTERED~~ WHO IS AN OBLIGEE PURSUANT TO A CURRENT CHILD SUPPORT ORDER, OR WHO IS THE HOLDER OF A JUDGMENT FOR CHILD SUPPORT IN THIS OR ANOTHER STATE

(b) ~~TO THE EXTENT PROVIDED IN SUBSECTION (c) OF THIS SECTION,~~ A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST:

~~(1) A BENEFICIARY'S CHILD WHO IS AN OBLIGEE PURSUANT TO A CURRENT CHILD SUPPORT ORDER FOR WHICH THE BENEFICIARY IS THE OBLIGEE, OR WHO HOLDS A JUDGMENT FOR CHILD SUPPORT, SPOUSE, OR FORMER SPOUSE WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR SUPPORT OR MAINTENANCE;~~

(2) A JUDGMENT CREDITOR WHO HAS PROVIDED ESSENTIAL SERVICES FOR THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE TRUST; AND

~~(3) A CLAIM OF THIS STATE OR THE UNITED STATES TO THE EXTENT A STATUTE OF THIS STATE OR FEDERAL LAW SO PROVIDES.~~

(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.

(D) THE EXCEPTION IN SUBSECTION (B) IS UNENFORCEABLE AGAINST A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A DISABLED PERSON IF THE APPLICABILITY OF SUCH A PROVISION COULD INVALIDATE SUCH A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME (SSI) PURPOSES OR IF THE APPLICABILITY OF SUCH A PROVISION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING SUCH DISABLED PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING, BUT NOT LIMITED TO, MEDICAID AND SSI.

DRAFT AFTER DISCUSSIONS WITH STATE CHILD SUPPORT ENFORCEMENT DIVISION

15-5-503. Exceptions to spendthrift provision.

(a) DEFINITIONS. As used in this Part 5, unless the context otherwise requires:
~~IN THIS SECTION,~~

(1) "CHILD" INCLUDES ANY PERSON OR ENTITY WHO CAN ENFORCE A CHILD SUPPORT ORDER FOR WHOM AN ORDER OR JUDGMENT FOR CHILD SUPPORT HAS BEEN ENTERED IN THIS OR ANOTHER STATE.

(2) CHILD SUPPORT ORDER MEANS ANY ADMINISTRATIVE OR COURT ORDER REQUIRING THE PAYMENT OF CHILD SUPPORT, CHILD SUPPORT ARREARS, CHILD SUPPORT DEBT, RETROACTIVE SUPPORT, OR MEDICAL SUPPORT, WHETHER OR NOT SUCH ORDER IS COMBINED WITH AN ORDER FOR MAINTENANCE.

~~(b) TO THE EXTENT PROVIDED IN SUBSECTION (c) OF THIS SECTION, A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST:~~

~~(1) A BENEFICIARY'S CHILD, SPOUSE, OR FORMER SPOUSE WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR SUPPORT OR MAINTENANCE WHO IS AN OBLIGEE PURSUANT TO A CHILD SUPPORT ORDER FOR WHICH THE BENEFICIARY IS THE OBLIGOR; AND;~~

~~(2) A JUDGMENT CREDITOR WHO HAS PROVIDED SERVICES FOR THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE TRUST; AND~~

~~(3) A CLAIM OF THIS STATE OR THE UNITED STATES TO THE EXTENT A STATUTE OF THIS STATE OR FEDERAL LAW SO PROVIDES.~~

(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.

(D) THE EXCEPTION IN SUBSECTION (B) IS UNENFORCEABLE AGAINST A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A DISABLED PERSON IF THE APPLICABILITY OF SUCH A PROVISION COULD INVALIDATE SUCH A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME (SSI) PURPOSES OR IF THE APPLICABILITY OF SUCH A PROVISION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING SUCH DISABLED PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING, BUT NOT LIMITED TO, MEDICAID AND SSI.

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1. Part 5 UTC SECTION	504
2. SUBJECT	Discretionary Trusts; Effect of Standard
3. Part 5 UTC STATUTE	<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) Except as otherwise provided in subsection (c), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion, even if:</p> <p style="padding-left: 40px;">(1) the discretion is expressed in the form of a standard of distribution; or</p> <p style="padding-left: 40px;">(2) the trustee has abused the discretion.</p> <p>(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:</p> <p style="padding-left: 40px;">(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary’s child, spouse, or former spouse; and</p> <p style="padding-left: 40px;">(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.</p> <p>(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.</p> <p>(e) If the trustee’s or cotrustee’s discretion to make distributions for the trustee’s or cotrustee’s own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor’s claim were the beneficiary not acting as trustee or cotrustee.</p>
4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	This section addresses the ability of a beneficiary’s creditor to reach the beneficiary’s discretionary trust interest, whether or not the exercise of the trustee’s discretion is subject to a standard. This section, similar to the Restatement, eliminates the distinction between discretionary and support trusts, unifying the rules for all trusts fitting within either of the former categories. <i>See</i> Restatement

(Third) of Trusts Section 60 Reporter's Notes to cmt. a (Tentative Draft No. 2, approved 1999). By eliminating this distinction, the rights of a creditor are the same whether the distribution standard is discretionary, subject to a standard, or both. Other than for a claim by a child, spouse or former spouse, a beneficiary's creditor may not reach the beneficiary's interest. Eliminating this distinction affects only the rights of creditors. The effect of this change is limited to the rights of creditors. It does not affect the rights of a beneficiary to compel a distribution. Whether the trustee has a duty in a given situation to make a distribution depends on factors such as the breadth of the discretion granted and whether the terms of the trust include a support or other standard. *See* Section 814 comment.

For a discussion of the definition of "child" in subsection (a), see Section 503 Comment.

Subsection (b), which establishes the general rule, forbids a creditor from compelling a distribution from the trust, even if the trustee has failed to comply with the standard of distribution or has abused a discretion. Under subsection (d), the power to force a distribution due to an abuse of discretion or failure to comply with a standard belongs solely to the beneficiary. Under Section 814(a), a trustee must always exercise a discretionary power in good faith and with regard to the purposes of the trust and the interests of the beneficiaries.

Subsection (c) creates an exception for support claims of a child, spouse, or former spouse who has a judgment or order against a beneficiary for support or maintenance. While a creditor of a beneficiary generally may not assert that a trustee has abused a discretion or failed to comply with a standard of distribution, such a claim may be asserted by the beneficiary's child, spouse, or former spouse enforcing a judgment or court order against the beneficiary for unpaid support or maintenance. The court must direct the trustee to pay the child, spouse or former spouse such amount as is equitable under the circumstances but not in excess of the amount the trustee was otherwise required to distribute to or for the benefit of the beneficiary. Before fixing this amount, the court having jurisdiction over the trust should consider that in setting the respective support award, the family court has already considered the respective needs and assets of the family. The Uniform Trust Code does not prescribe a particular procedural method for enforcing a judgment or order against the trust, leaving that matter to local collection law.

Subsection (e), which was added by a 2004 amendment, is discussed below.

2004 Amendment.

Section 504(e), 103(11)

Trusts are frequently drafted in which a trustee is also a beneficiary. A common example is what is often referred to as a bypass trust, under which the settlor's spouse will frequently be named as both trustee and beneficiary. An amount equal to the exemption from federal estate tax will be placed in the bypass trust, and the trustee, who will often be the settlor's spouse, will be given discretion to make distributions to the beneficiaries, a class which will usually include the spouse/trustee. To prevent the inclusion of the trust in the spouse-trustee's gross estate, the spouse's discretion to make distributions for the spouse's own benefit will be limited by an ascertainable standard relating to health, education, maintenance, or support.

The UTC, as previously drafted, did not specifically address the issue of whether a creditor of a beneficiary may reach the beneficial interest of a beneficiary who is also a trustee. However, Restatement (Third) of Trusts §60, comment g, which was approved by the American law Institute in 1999, provides that the beneficial interest of a beneficiary/trustee may be reached by the beneficiary/trustee's creditors. Because the UTC is supplemented by the common law (see UTC Section 106), this Restatement rule might also apply in states enacting the UTC. The drafting committee has concluded that adoption of the Restatement rule would unduly disrupt standard estate planning and should be limited. Consequently, Section 504 is amended to provide that the provisions of this section, which generally prohibit a creditor of a beneficiary from reaching a beneficiary's discretionary interest, apply even if the beneficiary is also a trustee or cotrustee. The beneficiary-trustee is protected from creditor claims to the extent the beneficiary-trustee's discretion is protected by an ascertainable standard as defined in the relevant Internal Revenue Code sections. The result is that the beneficiary's trustee's interest is protected to the extent it is also exempt from federal estate tax. The amendment thereby achieves its main purpose, which is to protect the trustee-beneficiary of a bypass trust from creditor claims.

The protection conferred by this subsection, however, is no greater than if the beneficiary had not been named trustee. If an exception creditor can reach the beneficiary's interest under some other provision, the interest is not insulated from creditor claims by the fact the beneficiary is or becomes a trustee. In addition, the definition of "power of withdrawal" in Section 103 is amended to clarify that a power of withdrawal does not include a power exercisable by the trustee that is limited by an ascertainable standard. The purpose of this amendment is to preclude a claim that the power of a trustee-

	<p>beneficiary to make discretionary distributions for the trustee-beneficiary's own benefit results in an enforceable claim of the trustee-beneficiary's creditors to reach the trustee-beneficiary's interest as provided in Section 505(b). Similar to the amendment to Section 504, the amendment to "power of withdrawal" is being made because of concerns that Restatement (Third) of Trusts Section 60, comment g, otherwise might allow a beneficiary-trustee's creditors to reach the trustee's beneficial interest.</p> <p>The Code does not specifically address the extent to which a creditor of a trustee/beneficiary may reach a beneficial interest of a beneficiary/trustee that is not limited by an ascertainable standard. For the definition of "ascertainable standard," see Section 103(2).</p>
<p>5. 2005 COLORADO COMMITTEE COMMENTS</p>	<p>While trusts with valid spendthrift provisions directly prevent beneficiaries from assigning their interests and creditors of such beneficiaries from attaching their interests (with certain exceptions as we have seen), the very nature of beneficial interests in discretionary trusts and trusts subject to a standard indirectly bar the reach of creditors of a beneficiary. A creditor who has attached a discretionary interest (because of the absence of a spendthrift provision or because a spendthrift exception applies) cannot, as a general rule, force exercise of discretion. Thus, the indirect protection against creditor claims.</p> <p><i>Restatement (Second) of Trusts, sections 154 and 155 provide:</i></p> <p><i>§154. Trusts for Support</i></p> <p><i>Except as stated in §§156 and 157, if by the terms of a trust it is provided that the trustee shall pay or apply only so much of the income and principal or either as is necessary for the education or support of the beneficiary, the beneficiary cannot transfer his interest and his creditors cannot reach it.</i></p> <p><i>§155. Discretionary Trusts</i></p> <p><i>(1) Except as stated in § 156, if by the terms of a trust it is provided that the trustee shall pay to or apply for a beneficiary only so much of the income and principal or either as the trustee in his uncontrolled discretion shall see fit to pay or apply, a transferee or creditor of the beneficiary cannot compel the trustee to pay any part of the income or principal.</i></p> <p><i>(2) Unless a valid restraint on alienation has been imposed in accordance with the rules stated in §§ 152 and 153, if the trustee pays to or applies for the beneficiary any part of the income or principal with knowledge of the transfer or after he has been served with</i></p>

process in a proceeding by a creditor to reach it, he is liable to such transferee or creditor.

Restatement (Third) of Trusts section 60 provides:

Transfer or Attachment of Discretionary Interests

Subject to the rules stated in sections 58 and 59 (on spendthrift trusts), if the terms of a trust provide for a beneficiary to receive distributions in the trustee's discretion, a transferee or creditor of the beneficiary is entitled to receive or attach any distributions the trustee makes or is required to make in the exercise of that discretion after the trustee has knowledge of the transfer or attachment. The amounts a creditor can reach may be limited to provide for the beneficiary's needs (Comment c), or the amounts may be increased where the beneficiary is either the settlor (Comment f) or holds the discretionary power to determine his or her own distributions (Comment g).

Restatement (Third) of Trusts recognizes the common law right of a beneficiary's creditor to attach his or her discretionary interest unless a valid spendthrift provision applies to the interest. Restatement (Third) of Trusts section 60 cmt. a.

In a departure from the Restatement (Second) of Trusts, with respect to creditor rights, Restatement (Third) applies to discretionary interests whether expressed in the form of a standard or not. Restatement (Third) of Trusts section 60 cmt. a and Rptr's Notes on cmt. a.

Under Restatement (Third), self-settled discretionary interests are not protected against creditor claims whether or not there is a spendthrift provision. Restatement (Third) of Trusts section 60 cmt. f.

Under the Third Restatement where a discretionary beneficiary is also trustee, his or her creditors are able to reach the maximum amount that the trustee/beneficiary can properly take. Restatement (Third) of Trusts section 60 cmt. g.

As a general rule, a creditor of a beneficiary cannot compel the trustee to make discretionary distributions if the beneficiary cannot do so. However, the Restatement (Third) of Trusts points out that it is rare that a beneficiary is so powerless taking into account the beneficiary's circumstances, the terms of the discretionary power and the purposes of the trust. Thus, the exercise or non-exercise of discretion is always subject to judicial review to prevent abuse. Restatement (Third) of Trusts section 60 cmt. e.

	<p>Compared with the <i>Restatement</i> position, the rule codified in the Uniform Trust Code is much more protective of discretionary interests with respect to creditor claims. The UTC makes it clear that, whether or not there is a spendthrift provision in the terms of the trust, no creditor of a beneficiary can compel a distribution that is subject to the trustee's discretion whether such discretion is expressed in the form of a standard or not, even if the trustee has abused discretion or failed to comply with the standard. Thus, under the UTC, even a creditor who has provided support to the beneficiary of a support trust is unable to force exercise of discretion.</p> <p>Section 504(c) of the Uniform Trust Code makes a public policy exception with respect to a discretionary beneficiary's child, spouse or former spouse who has a judgment for support. Such a creditor can force exercise of discretion but only if the trustee has abused discretion or failed to comply with the standard. However, this UTC provision only authorizes the court to force exercise of discretion in satisfaction of the judgment. It does not require it. If a court does act, the UTC requires the court to direct the trustee to distribute to the creditor only an amount that is equitable taking into account the discretionary beneficiary's circumstances.</p> <p>2005 Amendment.</p> <p><i>Restatement (Third) of Trusts</i> section 60, cmt. g. provides that the beneficial interest of a beneficiary/trustee may be reached by his or her creditors. This <i>Restatement</i> position would apply in the case of the surviving spouse serving as trustee and beneficiary of a family (exemption) trust. This 2005 NCCUSL amendment is intended to eliminate such a result and thereby protect estate plans employing a traditional family trust arrangement, provided the trustee's power to make discretionary distributions to self is limited by an ascertainable standard.</p>
<p>6. COLORADO LAW</p>	<p>Colorado courts have recognized the <i>Restatement (Second)</i> position with respect to discretionary trusts in the context of determining whether a discretionary interest is "property" for purposes of division of property in divorce. <u>Absent an abuse of discretion</u>, a beneficiary cannot compel exercise of discretion and therefore, the discretionary interest is not "property" for this purpose. See for example <i>In Re Marriage of Rosenblum</i>, 602 P.2d 892 (Colo. App. 1979); <i>In Re Marriage of Jones</i>, 812 P.2d 1152 (Colo. 1991); and <i>In Re McCart</i>, 847 P.2d 184 (Colo. App. 1992.)</p> <p>These Colorado decisions do not address whether and under what circumstances a beneficiary's creditor can force exercise of discretion. The <i>Restatement (Third)</i> position recognizes the common law right of a creditor to force an exercise of discretion. If the trustee has abused</p>

	<p>discretion it is possible, but not likely, that the beneficiary's creditor could obtain a court order forcing exercise of discretion. <i>Restatement (Third) of Trusts</i>, Section 60 cmt. e.</p> <p>UTC section 504 is more protective than the <i>Restatement</i> position. Under this section, no creditor is permitted to force a trustee's exercise of discretion, even if the trustee has abused discretion (e.g. acted dishonestly with an improper motive or failed to exercise judgment or act at all). However, a beneficiary's child, spouse or former spouse, who has a judgment against the beneficiary for support or maintenance, may obtain a court ordered distribution from the trust if the child, spouse or former spouse can demonstrate that the trustee has abused discretion. Any such court ordered distribution must be equitable taking into account the beneficiary's interest. Moreover, such court ordered distribution cannot exceed the amount that the trustee would have distributed if the trustee had not abused discretion.</p>
<p>7. OTHER STATES</p>	<p>Alabama – adopted 504 verbatim</p> <p>Arizona – excepts child only (does not apply exceptions to special needs trusts)</p> <p>Arkansas – omitted 504(c)</p> <p>District of Columbia – reserved</p> <p>Florida – creditors, including exception creditors under 504(2) (child, spouse, former spouse), may not compel a distribution or attach or otherwise reach the interest a beneficiary might have as a result of the trustee’s discretion to make distributions to or for the benefit of the beneficiary</p> <p>Kansas – omitted 504</p> <p>Kentucky – excepts child and spouse</p> <p>Maine – omitted 504(c)</p> <p>Maryland – excepts (a) trust property subject to withdrawal power, and (b) contributions to trust by beneficiary</p> <p>Mass. – reserved 504</p> <p>Michigan – (.7505) no exceptions to discretionary trust provision; trust property not subject to enforcement of a judgment until income or principal is distributed directly to trust beneficiary.</p> <p>Minn. – no exception creditors</p>

	<p>Mississippi – reserved all of Part 5</p> <p>Missouri – creditor cannot attach, force judicial sale, or compel distributions or reach by any other means present or future discretionary distributions</p> <p>Montana – no exception creditors</p> <p>Nebraska – adopted 504 verbatim</p> <p>New Hampshire – court may compel discretionary distribution to child, spouse, or former spouse in such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused discretion; and, with respect to alimony, only for and to the extent that the judgment or court order expressly specifies the alimony amount attributable to the most basic food, shelter and medical needs of the former spouse.</p> <p>New Mexico – enacted 504 verbatim</p> <p>North Carolina – excepts child only</p> <p>North Dakota – adopted 504 verbatim</p> <p>Ohio – 508.04(D) unless the settlor has explicitly provided in the trust that the beneficiary’s child or spouse or both are excluded from benefiting from the trust, if there is a failure to apply standard or an abuse of discretion, then the court may order a distribution only if it is available for the beneficiary’s support – but not for the satisfaction of a judgment for the support of a former spouse.</p> <p>Oregon – omitted 504</p> <p>Pennsylvania – adopted 504 verbatim</p> <p>South Carolina – exception only for children (but does not apply to special needs trusts)</p> <p>Tennessee – no exception creditors</p> <p>Utah – adopted 504 verbatim</p> <p>Vermont – adopted 504 verbatim</p> <p>Virginia – exceptions only for children</p>
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	<p>West Virginia - exceptions only for children</p> <p>Wisconsin – substantial reworking of text: no exception creditors; specifically provides that interest in discretionary trust is not “property”; general principles do not apply if beneficiary can make purely discretionary distributions to self or without consent of adverse party</p> <p>Wyoming – no exception creditors; and may not compel a distribution or reach or attach the interest of a beneficiary until a distribution is received by the beneficiary, even if the trustee makes distributions directly to third parties for the benefit of the beneficiary.</p>
<p>8. RECOMMENDATION</p>	

1. Part 5 UTC SECTION	505
2. SUBJECT	Creditor's Claim Against Settlor
3. Part 5 UTC STATUTE	<p>(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:</p> <ul style="list-style-type: none"> (1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors. (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. (3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, and, <u>except as otherwise provided by §13-54-102 C.R.S. or other applicable statutes</u>, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowancesto a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. <p>(b) For purposes of this section:</p> <ul style="list-style-type: none"> (1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and (2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, In each <u>either</u> case as in effect on the effective date of this {Code}}, or as later amended.
4. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS COMMENTS	Subsection (a)(1) states what is now a well-accepted conclusion, that a revocable trust is subject to the claims of the settlor's creditors while the settlor is living. See Restatement (Third) of Trusts Section 25 cmt. e (Tentative Draft No. 1, approved 1996). Such claims were not allowed at common law, however. See Restatement (Second) of

Trusts Section 330 cmt. o (1959). Because a settlor usually also retains a beneficial interest that a creditor may reach under subsection (a)(2), the common law rule, were it retained in this Code, would be of little significance. See Restatement (Second) of Trusts Section 156(2) (1959).

Subsection (a)(2), which is based on Restatement (Third) of Trusts Section 58(2) and cmt. e (Tentative Draft No. 2, approved 1999), and Restatement (Second) of Trusts Section 156 (1959), follows traditional doctrine in providing that a settlor who is also a beneficiary may not use the trust as a shield against the settlor's creditors. The drafters of the Uniform Trust Code concluded that traditional doctrine reflects sound policy. Consequently, the drafters rejected the approach taken in States like Alaska and Delaware, both of which allow a settlor to retain a beneficial interest immune from creditor claims. See Henry J. Lischer, Jr., *Domestic Asset Protection Trusts: Pallbearers to Liability*, 35 Real Prop. Prob. & Tr. J. 479 (2000); John E. Sullivan, III, *Gutting the Rule Against Self-Settled Trusts: How the Delaware Trust Law Competes with Offshore Trusts*, 23 Del. J. Corp. L. 423 (1998). Under the Code, whether the trust contains a spendthrift provision or not, a creditor of the settlor may reach the maximum amount that the trustee could have paid to the settlor-beneficiary. If the trustee has discretion to distribute the entire income and principal to the settlor, the effect of this subsection is to place the settlor's creditors in the same position as if the trust had not been created. For the definition of "settlor," see Section 103(15).

This section does not address possible rights against a settlor who was insolvent at the time of the trust's creation or was rendered insolvent by the transfer of property to the trust. This subject is instead left to the State's law on fraudulent transfers. A transfer to the trust by an insolvent settlor might also constitute a voidable preference under federal bankruptcy law.

Subsection (a)(3) recognizes that a revocable trust is usually employed as a will substitute. As such, the trust assets, following the death of the settlor, should be subject to the settlor's debts and other charges. However, in accordance with traditional doctrine, the assets of the settlor's probate estate must normally first be exhausted before the assets of the revocable trust can be reached. This section does not attempt to address the procedural issues raised by the need first to exhaust the decedent's probate estate before reaching the assets of the revocable trust. Nor does this section address the priority of creditor claims or liability of the decedent's other nonprobate assets for the decedent's debts and other charges. Subsection (a)(3), however, does ratify the typical pourover will, revocable trust plan. As long as the rights of the creditor or family member claiming a statutory allowance are not impaired, the settlor is free to shift liability from the probate estate to the revocable trust.

	<p>Regarding other issues associated with potential liability of nonprobate assets for unpaid claims, see Section 6-102 of the Uniform Probate Code, which was added to that Code in 1998.</p> <p>Subsection (b)(1) treats a power of withdrawal as the equivalent of a power of revocation because the two powers are functionally identical. This is also the approach taken in Restatement (Third) of Trusts Section 56 cmt. b (Tentative Draft No. 2, approved 1999). If the power is unlimited, the property subject to the power will be fully subject to the claims of the power holder’s creditors, the same as the power holder’s other assets. If the power holder retains the power until death, the property subject to the power may be liable for claims and statutory allowances to the extent the power holder’s probate estate is insufficient to satisfy those claims and allowances. For powers limited either in time or amount, such as a right to withdraw a \$10,000 annual exclusion contribution within 30 days, this subsection would limit the creditor to the \$10,000 contribution and require the creditor to take action prior to the expiration of the 30-day period.</p> <p>Upon the lapse, release, or waiver of a power of withdrawal, the property formerly subject to the power will normally be subject to the claims of the power holder’s creditors and assignees the same as if the power holder were the settlor of a now irrevocable trust. Pursuant to subsection (a)(2), a creditor or assignee of the power holder generally may reach the power holder’s entire beneficial interest in the trust, whether or not distribution is subject to the trustee’s discretion. However, following the lead of Arizona Revised Statutes Section 14-7705(g) and Texas Property Code Section 112.035(e), subsection (b)(2) creates an exception for trust property which was subject to a Crummey or five and five power. Upon the lapse, release, or waiver of a power of withdrawal, the holder is treated as the settlor of the trust only to the extent the value of the property subject to the power at the time of the lapse, release, or waiver exceeded the greater of the amounts specified in IRC Sections 2041(b)(2) or 2514(e) [greater of 5% or \$5,000], or IRC Section 2503(b) [\$10,000 in 2001].</p> <p>The Uniform Trust Code does not address creditor issues with respect to property subject to a special power of appointment or a testamentary general power of appointment. For creditor rights against such interests, see Restatement (Property) Second: Donative Transfers Sections 13.1-13.7 (1986).</p>
<p>5. 2005 COLORADO COMMITTEE COMMENTS</p>	<p>This UTC section follows Restatement (Second) of Trusts §156 (1959) which provides:</p>

§156. WHERE THE SETTLOR IS A BENEFICIARY

Where a person creates for his own benefit a trust with a provision restraining the voluntary or involuntary transfer of his interest, his transferee or creditors can reach his interest.

Where a person creates for his own benefit a trust for support or a discretionary trust, his transferee or creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit.

UTC Subsection (a) (1)

This subsection recognizes the modern view holding that a settlor's revocable trust is subject to the claims of such settlor's creditors while the settlor is living. See Restatement (Second) of Trusts §156 (2) (1959). At common law this was not so if the settlor reserved only a "naked" power to revoke. See Restatement (Second) of Trusts §330, comment o (1959). The Uniform Trust Code overrules this narrow common law position. The Official Comments to the UTC suggests that the common law rule has little significance today since settlors of revocable trusts typically retain a beneficial interest as well as a power to revoke.

UTC Subsection (a)(2)

A. Whether or not there is a spendthrift provision, in the case of a beneficiary who is also a settlor of an irrevocable trust, the creditor of such beneficiary can reach the maximum amount that the trustee can distribute for the beneficiary. The creditor "stands in the beneficiary's shoes" with respect to the beneficial interest in such a trust. If there are more than one settlor/beneficiary, the creditor of one of them can reach only the interest attributable to that settlor/beneficiary.

This codification is in accord with Restatement (Third) of Trusts section 58(2) which provides that: "A restraint on the voluntary and involuntary alienation of a beneficial interest retained by the settlor of a trust is invalid."

There does not have to be a fraudulent conveyance for this subsection to apply.

UTC Subsection (a) (3)

B. Following one of the principal policies underpinning Restatement (Third) of Trusts this subsection recognizes that revocable trusts are truly will substitutes, and that disposition of property under revocable trusts should be treated the same as disposition under wills. Therefore, this subsection provides that creditors of decedents who die with property devolving under revocable trusts should be treated the same as creditors of decedents who

die with property devolving under wills. See Restatement (Third) of Trusts §25, comments d and e (tentative draft no. 1)

Thus, this subsection codifies the well-established modern trend in case law holding that; (i) assets of a deceased settlor's revocable trust do not escape liability for the claims of such settlor's creditors to the extent (ii) the settlor's probate estate is insufficient to satisfy such claims.

State Street Bank and Trust Co. v. Raiser, 389 N.E.2d 768 (1979) where citing the rule in Restatement (Second) of Trusts §156 the court said that "it is excessive obedience to the form in which property is held to prevent creditors from reaching property placed in trust [following the creditor's death.];" and Johnson v. Commercial Bank, 588 P.2d 1096 (1978). See also Restatement of Property §328 comment a (1940).

This section is an "enabling" section making clear that revocable trust assets do not escape liability for creditor claims. The UTC drafters have left to other state law the procedure to follow in reaching such assets postmortem.

Colorado is now considering new UPC §6-102 which, if enacted, will establish such procedures in Colorado.

If Colorado enacts UPC §6-102 it is important that UTC §505(a)(3) coordinate with such enactment. Subsection (a)(3) has been drafted accordingly.

UTC Subsection (b)(1)

According to the official comments, this subsection "...treats a presently exercisable general power of appointment as the functional equivalent of a power of revocation." Thus, the policy of UTC §505 and Restatement (Third) of Trusts is brought to bear on the property subject to such a power. The power holder is treated as the settlor of a revocable trust to the extent of property subject to the power.

UTC Subsection (b)(2)

This subsection provides that the holder of a power of withdrawal continues to be treated as a settlor of a trust with respect to property that had been subject to the withdrawal power even after lapse, release or waiver of the power, but only to the extent that the value of the property subject to the withdrawal power exceeds the 5x5 limit or the annual gift tax exclusion amount. Thus, for example, after lapse of a Crummey withdrawal power, property which had been subject to the power will no longer be subject to the power holder's creditors' claims to the extent the value of the property subject to the

	<p>lapsed power is less than the 5 x 5 limit or the annual gift tax exclusion amount.</p> <p>2018-2019 Committee: UTC Subsection 502 comment referring to Subsection 505 A spendthrift provision is ineffective against a beneficial interest retained by the settlor. See Restatement (Third) of Trusts §58(2), (Tentative Draft No. 2, approved 1999). This is a necessary corollary to Section 505(a)(2), which allows a creditor or assignee of the settlor to reach the maximum amount that can be distributed to or for the settlor's benefit. This right to reach the trust applies whether or not the trust contains a spendthrift provision. A valid spendthrift provision makes it impossible for a beneficiary to make a legally binding transfer, but the trustee may choose to honor the beneficiary's purported assignment. The trustee may recommence distributions to the beneficiary at any time. The beneficiary, not having made a binding transfer, can withdraw the beneficiary's direction but only as to future payments. See Restatement (Third) of Trusts § 58 cmt. d (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts § 152 cmt. i (1959).</p>
<p>6. COLORADO LAW</p>	<p>From 2005 Report: <i>Self Settled Trusts.</i> Some have suggested that section 38-10-111 C.R.S. applies only to creditors existing at the time a self settled trust is created and, therefore, that creditors arising after creation of such a trust can't reach the settlor/beneficiary's interest. This position has been refuted by the Colorado Supreme Court in dicta in <u>In re: Cohen</u>, 8 P. 3d 429, 432 (Colo. 1999) citing Restatement (Second) of Trusts section 156 (1959).</p> <p><i>Powers of Appointment/Withdrawal.</i> The Court of Appeals has taken a position with respect to creditors' rights in property subject to a currently exercisable general power of appointment. In <u>University National Bank v. Rhoadarmer</u>, 827 P.2d 561 (Colo. App.1991), a trust beneficiary held a currently exercisable power to withdraw trust principal up to \$5,000.00 or 5% of the current market value of the trust principal. The beneficiary's creditor attempted garnishment of this interest. The Court of Appeals held: (i) that a currently exercisable power of appointment is not "property" of the power holder and is therefore not subject to garnishment; (ii) that absent exercise of the power, the beneficiary has no "property" held by the trust susceptible to garnishment; and (iii) the existence of a spendthrift provision in the trust terms prevents invasion of trust property for benefit of the power holder's creditors.</p> <p>Enactment of UTC §505 (b) (1) and (2) will overrule the holding in <u>Rhoadarmer</u>.</p>

From Stan Kent's 2006 Estate Planning Retreat Materials (p. 30):

Newly enacted section 15-15-103 C.R.S. (effective July 1, 2006) establishes a clear rule in accord with the Restatement position concerning creditors' rights in revocable trust property postmortem. The statute says: "... (A) transferee of a nonprobate transfer (including a revocable trust) is subject to liability to any probate estate of the decedent for allowed claims against the decedent's probate estate...." [explanation added].

From Kevin Millard's 2004 Article (p. 29):

For irrevocable trusts: "The leading case on the ability of creditors of the settlor-beneficiary to reach the assets of a self-settled discretionary trust is Ware v. Gulda, 117 N.E. 2d 137 Mass.1954). See Restatement (Third) of Trusts §60 cmt. f (2001) Restatement (Second) of Trusts § 156(2) (1959).

For revocable trusts: After the death of the settlor of a revocable trust, the trust assets are subject to claims of the settlor's creditors, costs of administration of the settlor's estate, expenses of funeral and disposal of remains, and statutory allowances for the surviving spouse and children, to the extent that the probate estate is insufficient to satisfy those claims. UTC § 505(a)(3). See Uniform Probate Code § 6-102 Liability of Nonprobate Transferees for Creditor Claims and Statutory Allowances (added to the UPC in 1998 and not yet adopted in Colorado, which spells out the mechanism by which a creditor may reach the assets of the deceased settlors' revocable trust and other nonprobate transfers).

2018-2019 Committee:

In In re the Estate of Sheldon K. Beren, deceased, 321 P.3d 615 (Colo.App.2013), the Court of Appeals noted that "Rhoadarmer did not address whether trust funds subject to mandatory distribution must be distributed before they could be garnished." 321 P.3d at 622. The Court of Appeals then reasoned:

"Despite some contrary authority [from Missouri and Vermont] garnishment principles support the view that 'the rights of the creditors [should] depend upon the beneficiary's interest in the property, not on the actual distribution of the fund.' Brent, 537 A.2d at 231. Under C.R.C.P.103, section (2)(c), 'indebtedness . . . owed to . . . the judgment debtor . . . shall be subject to the process of garnishment.' In other words, '[i]f the debtor could bring an immediate action to recover the debt from the garnishee, then the debt is due and payable within the meaning of the section.' Anderson Boneless Beef, Inc. v. Sunshine Health Care Ctr., Inc., 852 P.2d 1340, 1343 (Colo. App. 1993). And one of the purposes of garnishment is to allow creditors to reach assets of the judgment debtor in the hands of third parties by 'preventing

	<p>their loss or dissipation.’ <u>TCF Equip. Fin., Inc. v. Pub. Tr. for City & Cnty. of Denver</u>, 297 P.3d 1048, 2013 COA 8, ¶ 8.</p> <p>“Requiring the creditor of a beneficiary to await distribution by a trustee who must distribute frustrates these principles in two ways. First, because the trustee has no choice, the funds subject to mandatory distribution are ‘owed to’ the beneficiary, who could sue to compel distribution. Second, if the creditor had to wait until the funds came under the control of the beneficiary, the funds might be placed beyond the reach of the creditor before a writ of garnishment could be served.”</p> <p>The Colorado Supreme Court in <u>In re Pandy</u>, 372 P.3d 1047 (Colo. 2016), stated:</p> <p>“A determination that property held in a revocable trust is subject to the claims of the settlor's creditors is consistent with section 13-52-105, C.R.S. (2015), which provides, in pertinent part, ‘Every interest in land, legal and equitable, shall be subject to levy and sale under execution’ See also <u>Shepler v. Whalen</u>, 119 P.3d 1084, 1087 (Colo. 2005) (‘A lien may attach to any interest the judgment debtor has in land, whether legal or equitable.’).</p> <p>“Such a determination is also consistent with our recognition, albeit in a different context, that (1) a debtor may not tie up his or her property in a trust in such a way as to allow the debtor to enjoy the property while preventing his or her creditors from reaching it and (2) an oral irrevocable spendthrift trust could not and did not protect the settlor-beneficiary from future creditors. See <u>In re Cohen</u>, 8 P.3d 429, 433 (Colo. 1999).”</p>
<p>7. OTHER STATES</p>	<p>States allowing protection of trust property (2005 Committee):</p> <p>ALASKA STAT. § 34.40.1 10(a)-(b) (2004);</p> <p>Del. CODE ANN. Tit. 12, §§ 3570-3576 (2001 & Supp. 2004) ;</p> <p>Mo. Rev. Stat. § 456.5-505(3) (West Supp. 2005);</p> <p>Nev. Rev. Stat. Ann. § 166.010 (LexisNexis 2003); R.I. Gen. Laws §§ 18-9.2 (2003);</p> <p>Utah Code Ann. § 25-6-1 4(a)(ii) (Supp. 2005).</p>

	<p>2018-2019 Committee, States that have enacted the Uniform Trust Code & their treatment of 505:</p> <p>Alabama (2006) Arizona (2008) Arkansas (2005) District of Columbia (2004) Florida (2006) Kansas (2002) Kentucky (2014) Maine (2004) Maryland (2014) Massachusetts (2012) Michigan (2009) Minnesota (2015) Mississippi (2014) Missouri (2004) Montana (2013) Nebraska (2003) New Hampshire (2004) New Jersey (2016) New Mexico (2003) North Carolina (2005) North Dakota (2007) Ohio (2006) Oregon (2005) Pennsylvania (2006) South Carolina (2005) Tennessee (2004) Utah (2004) Vermont (2009) Virginia (2005) West Virginia (2011) Wisconsin (2014) Wyoming (2003)</p> <p>Maine, Montana, New Jersey, New Mexico, North Dakota, and Vermont enacted UTC 505 without material change.</p> <p>Maryland and Missouri added specific notice requirements.</p> <p>Arkansas eliminated subsection 505(a)(3).</p> <p>Massachusetts, Michigan, Minnesota, Pennsylvania, Tennessee, and Utah eliminated subsection 505(b).</p> <p>North Carolina, Wisconsin, and Wyoming drafted subsection 505(b) to affirm that no holder of a power of withdrawal may be considered a settlor in any circumstance.</p>
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	<p>The other states' modifications are presented in the accompanying spreadsheet.</p> <p>Colorado (2018) – exclusive of Part 5</p> <p>Connecticut (Introduced 2019)</p> <p>Illinois (Introduced 2019)</p>
<p>8. RECOMMENDATION</p>	<p>From the 2005 Report:</p> <p>Under existing Colorado law, death benefits payable to designated beneficiaries under life insurance policies and benefits payable to designated beneficiaries pursuant to pension and retirement plans are exempt from the claims of the insureds'/participants' creditors after death.</p> <p>Section 13-54-102 C.R.S. Reference to §13-54-102 C.R.S. in the UTC section should be added to apply this policy in the case of such benefits payable to an insured's revocable trust after the insured's death.</p> <p>The overruling of the holding in <u>Rhodarmer</u>, supra, by subsections (b)(1) and (2) is a policy matter that should be brought to the attention of the legislature.</p> <p>Otherwise, UTC Section 505, as modified by specific reference to §13-54-102 C.R.S., should be approved.</p> <p>2018-2019 Committee:</p>

**Colorado Bar Association Trusts & Estates Section
Uniform Trust Code Part 5 (Creditors' Rights) Subcommittee
of the Statutory Revisions Committee**

Minutes of June 12, 2019

Participants

In person:	By phone:
• Connie Eyster, Chair	• John Buckley
• Steve Brainard	• Darla Daniel
• Mike Holder	• Stan Kent
• Georgine Kryda	• Carl Stevens
• Kevin Millard	• Kim Willoughby
• Daniela Ronchetti	
• Katie Null (CBA)	

The meeting was held at CBA offices, 1290 Broadway, Suite 1700 in Denver.
The meeting was called to order at 9:00 a.m. by the Chair and adjourned at 10:20 a.m.
Minutes of 5/1/19 were approved.

Section 503, Exceptions to spendthrift provisions. – Connie

- Connie reviewed her redlined version of Section 503 and her document, “Considerations re: discussion UTC 503” attached to her email of 6/10/2019.
 - The “Considerations” document contains three concerns, primarily regarding the committee’s decision to add the language “or is a discretionary trust interest as provided in section 504” to Section 501.
 - The committee’s addition of “Except as provided in Section 504” makes sense in Section 501 because Section 504 starts with the situation where a trust contains a spendthrift provision.
 - The general rule for Section 501 is that it addresses a situation where there is a discretionary trust with no spendthrift clause.
 - Reference to May 2019 discussion: What if there is no spendthrift clause in a discretionary trust? Is that “better” (i.e., less subject to creditors’ reach) than a discretionary trust with a spendthrift clause?
 - John B: A purely discretionary trust would be more protective than one with a spendthrift clause. Is the committee moving toward saying a trust needs both discretion and a spendthrift clause to maximize protection?
 - Stan K.:
 - The spendthrift clause is one concept that runs through Sections 501, 502, and 503.
 - Section 504, though, addresses the ability to force an exercise of discretion.
 - Spendthrift provisions prevent reaching.

- If there is no spendthrift provision, then there is still a backup with having a discretionary trust and the language in Section 504 that “a creditor may not reach or compel distribution”.
 - In short, there are two different concepts at work in Article 5.
- Mike H.: A basic rule in obtaining money via the law is that law can attach the property of debtor. To the extent discretion is not exercised, property in a trust is not property of the debtor. Once discretion is exercised, then incidents of ownership arise.
 - Stan K.: Spendthrift provisions prevent alienation. If there is a purely discretionary interest, then one still has an interest. With Section 504, though, a creditor cannot step in the beneficiary’s shoes and force the exercise of the trustee’s discretion.
 - Carl S.: Colorado courts (e.g., *Balanson, Jones*) have ruled that discretionary interests are not property interests.
 - Stan K.: *Jones* is a domestic relations case. A discretionary interest or expectancy provides a thin wedge of property interests.
- Connie: So, we are okay in Section 501, and, for Section 503, a fully discretionary trust without a spendthrift clause is not any more protective than other trust with a spendthrift clause.
- Steve B.: Section 501 provides the general rule that a creditor can pursue a discretionary interest if there is no spendthrift provision. We dealt with that issue with the introductory phrase saying Section 504 can trump this result.
 - Section 501 says a court can authorize a creditor to attach.
 - Section 504 provides a way for a creditor to compel distribution.
- Kevin: There are few discretionary trusts without a spendthrift clause.
 - Section 501: a creditor could attach, but could not force a distribution.
 - Section 502: a trustee can make a distribution for the benefit of a beneficiary if there is a spendthrift clause, but a creditor cannot attach.
 - Thus, the result is that a creditor can attach future distributions, but cannot compel a trustee to make those distributions.
- Mike H.: Attachments (i.e., property claimed by someone who does not yet have a judgment) differ from executions (collections in satisfaction of judgment).
 - Attachment is like *lis pendens*, akin to a lien, not an execution, and can be released/undone by the court.
 - Connie: Section 501 says a creditor can reach a beneficiary’s interest by attachment. Do we need to fix that?
 - Mike H: Perhaps “in execution upon a judgment”
 - Connie: “OR execution upon a judgment”?

- Stan K.: Do we need a definition of “reach”?
 - Connie: Section 501 applies where there is no spendthrift clause, and thus is potentially available to more creditors.
- Connie: Is the “except for” language referring to Section 504 confusing in Section 501?
 - Consensus: Leave it in.
 - There is a difference between attaching and compelling distributions.
 - Connie to check with the child support contact provided by Kim W.

Section 504, Discretionary Trusts; Effect of Standard – Steve B., John B., & Mike H.

- Steve B. noted that the committee has discussed every subsection of Section 504 in conjunction with Sections 501 – 503.
- Steve B. read the UTC version of Section 504 and summarized as follows:
 - (a) Most support trusts still convey some discretion
 - (b) Creditor is prohibited from compelling a distribution, even if the trustee has abused the trustee’s discretion; but the power is not lost with respect to the beneficiary in subsection (d).
 - (c) Here is where we create exception creditors who will have the same right as a beneficiary to go to court to say discretion has been abused or a trustee has not complied with the distribution standard.
 - (e) This subsection was a latecomer to the UTC. It was not in the first round of the UTC. It was adopted after Restatement (Third) of Trusts was finalized. Restatement (Third) of Trusts § 60, cmt. g posited that contrary to Restatement (Second) of Trusts, if a trustee has the ability to make/participate in distributions for the trustee’s own benefit, then this “less checked” authority to distribute assets to the trustee’s self should be regarded as increased access to trust assets.
 - However, the Restatement (Third) position would affect by-pass trusts created at the death of the first spouse where the surviving spouse can make distributions for his/her personal benefit – and thus be exposed to enhanced creditor rights.
 - Subsection 504(e) anticipates this problem and has been adopted by most states adopting the UTC.
- Mike H.: Section 504(c)(1) & (2) are confusing. Does a creditor need a judgment?
 - § 504(c)(1): “to satisfy a judgment” is unclear
 - § 504(c)(2) appears to disregard limits in C.R.S. § 13-54-104.
 - Kevin: Perhaps cross reference to 13-54-104?
 - Stan K.: Section 504(c) does not involve any execution. It is the court’s jurisdiction to review the trustee’s exercise of discretion and the trustee’s actions. Section 504 is unrelated to a creditor reaching, attaching, or executing.

- Mike H.: C.R.S. § 13-54-104 addresses how much of disposable earnings (including monetary gifts) may be payable in satisfaction of child support order. A distribution from a trust is a gift from the grantor and thus becomes part of disposable earnings.
- Stan K.: But the threshold question is whether the trustee is complying with a duty or violating a standard. Section 504 is not related to any notion of spendthrift or execution, mandatory or discretionary.
- Connie: Do we have consensus that child support will be the only exception creditor and we will recommend eliminating spouses as did in Section 503? Yes.
- Connie: Summary Example – Assume \$100K trust and the trustee violated the standard.
 - Stan K.: If there is a spendthrift clause, then we are not dealing with rules for executions.
 - If it is a purely discretionary trust, then the standard is absolute discretion, and the court will not force a trustee to make a distribution.
 - If it is a standard support trust with discretion, then the trustee can distribute to the beneficiary and to those whom the beneficiary may be required to support. Thus, we need to know the terms of the trust.
 - Darla: Section 504(c), talks only about a court finding a trustee has abused discretion or has not complied with a standard. We only get to a court order if the trustee did not exercise discretion or did so with an improper motive.
 - Steve B: We are assuming court has made such a finding. Thus, should there be a limit on what the court can order given Title 13? Kim W. said this is a live issue, distributions from a trust should be treated as gifts, and they would be included in definition of disposable earnings.
 - Connie: But we only get to Section 504(c) if there is egregious activity.
 - Mike H.: “Amount that is equitable” is already defined in Title 13.
 - Kevin: But in a court of equity, the court may order less than a maximum.
 - Connie: Perhaps reword as, “Taking into consideration limits imposed by other statutes ...” possibly with a reference to Title 13?
 - Mike H.: Yes.
 - Kim W.: Family Law is disinclined to put limits on distributions imposed by other statutes, and thus would not want us to change the 504 language.
 - John B. understand Kim’s position, but if Family Law wants all exceptions (spouses, ex-spouses, creditors of spouses), then he disagrees.
 - The Section 504 issue of exception creditors is likely to be same as Section 503. Suggest deleting spouse and former spouse from 504(c)(2).
 - Connie to cc: Steve B., John B., and Mike H. on Kim’s contact with respect to child support.
- No concerns expressed regarding Section 504(d) or (e).

Summer Meetings & Plan

- The committee will meet on Wednesday, July 10 at the CBA offices from 9:00 - 10:30 a.m. to complete work on Sections 503 and 504.
- The committee will then meet during the next regularly scheduled committee day on August 7, 2019.
- If the committee can review Section 505 in August and September, the plan is to present UTC Part 5 to the Statutory Revisions Committee (SRC) in October or November and submit it to the Uniform Law Commissioners in December 2019.

For July 10, 2019 and August 7, 2019:

- Mike H. to draft proposed definition of “attach” for Section 503;
- Connie to follow up with Kim’s suggested contact regarding child support, and to cc: Steve B., John B., and Mike H. on that communication;
- Subcommittee for 504 to change Section 504(c)(2) akin to Section 503;
- Continue discussion of Sections 503 and 504, and hopefully vote on both sections; and
- Start Section 505 in August.

The next meeting may be on July 10, 2019 at 9 a.m. at the CBA offices, 1290 Broadway, Suite 1700 in Denver.