

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

Minutes of November 6, 2019

Participants

In person:	By phone:
• Connie Eyster, Chair	• Joe Hodges
• Steve Brainerd	• Shelby Martin
• John Buckley	• Jean Stewart
• Darla Daniel	
• Stan Kent	
• Michael Kirtland	
• Georgine Kryda	
• Kevin Millard	
• Eric Solomon	
• Carl Stevens	

The meeting was held at CBA offices, 1290 Broadway, Suite 1700 in Denver.
The meeting was called to order at 9:10 a.m. by the Chair and adjourned at 10:30 a.m.
Minutes of 10/2/19 were approved.

Section 503, Exceptions to spendthrift provisions. – Connie

- Carl expressed concern regarding the use of word “disability” in 503 as MAGI, Medicaid, and food stamps have revised wording, and criteria.
- The committee considered the following wording for 503(d):

(d)SUBSECTION (b) DOES NOT APPLY TO SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A ~~DISABLED~~ PERSON IF THE APPLICATION~~BILITY~~ 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 APPLICATION~~BILITY~~ 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.
- Eric noted that MAGI would come under the second clause of the above subsection. Attorney fees would be (continue to be) recognized as a necessary expense.
- Steve B. and John B. will monitor 503 and update 504 to coordinate.

Discussion of C.R.S. § 15-5-411:

- 411(1) says if one petitions the court, and the settlor and all beneficiaries agree, the court may then terminate the trust.
- 411(2) says that, if the trust is not a special needs trust, the trust may be terminated without the settlor's consent, if all beneficiaries agree and termination does not violate a material purpose of the trust.
- Eric raised the issue that the Social Security Fairness Act permits people to create trusts without court action, which could eviscerate the intent of the statutory language (i.e., reliance on a court order).
- Discussion regarding whether to add reference to C.R.S. § 15-14-412.8 in addition to 42 U.S.C. sec. 1396p (d)(4) in 411(2).
 - No trust under § 1396p (d)(4) may be terminated except upon the consent of the beneficiaries.
 - Consensus not to add the state statute to 411(2) in order to keep focus on the federal statute instead of state statute and regulations.
 - See the 2005 Colorado committee's comments regarding Colorado specifically adding this provision in 411(2).

Motion to suggest to SRC to remove "by court order" from 411(2) approved unanimously.

- The subcommittee further decided to propose adding C.R.S. § 15-5-411(6) only for reference to termination, not modification, of special needs trusts only with the consent of all beneficiaries. Michael K. and Eric S. will lead this effort.
- Discussion and agreement to circulate the 411(6) language to the UTC-5 subcommittee, and then take it to Elder Law and UTC-5 on 12/4/19.

Section 505, Creditor's Claim Against Settlor. - Georgine

- The subcommittee looked at the Illinois language for 505.
- Connie: Per an ACTEC source, the wording of the Illinois statute was designed to retain its list of instruments/actions which could be considered settled/protected trusts. Thus, do we want to list any specific types of trusts or circumstances?
 - John B. would like to look more closely at Arizona's wording in its Section 19-3B-505(E), particularly with regard to QTIPs.
 - Kevin M. would like to look more closely at Wisconsin's § 701.0505(1)(a)2 and its provision for a court order, versus the UTC language, regarding a trustee making payments from income or principal to or for a settlor.
 - Reference to Robert T. Danforth, Article Five of the UTC and the Future of Creditors' Rights in Trusts, 27 Cardozo L. Rev. 2551 (2006), which Georgine has provided to Connie to redistribute to the subcommittee.

- Stan K.: In summary, we have two issues with respect to 505,
 1. Substitute WI for (a)(2) with a “subject to”
 2. And intervivos QTIP and list of trusts/circumstances to which it will not apply.
 - The subcommittee concurred with Stan’s summary of the status of 505.
- Georgine and Connie will review Georgine’s spreadsheet summarizing the versions of Section 505 as enacted by other states and the District of Columbia in order to highlight specific provisions for consideration by the subcommittee prior to 12/4/19.

For December 4, 2019:

- Michael K. and Eric S. will draft proposed language for C.R.S. §15-5-411(6), which will reference only termination, not modification, of a trust with the consent of all beneficiaries,
 - and circulate the wording among the UTC-5 subcommittee prior to presenting it to the Elder Law section on 12/4/19 and bringing it back to UTC-5 on 12/4/19;
- The subcommittee will consider whether to ask SRC to:
 - remove “by court order” from C.R.S. §411(2) approved, and
 - consider a final version of C.R.S. §15-5-411(6);
- Final review and vote on Section 503;
- Steve B.’s, Mike H’s, and John B’s Section 504 edit to incorporate new language from Section 503;
- Georgine and Connie will review Georgine’s spreadsheet summarizing the versions of Section 505 as enacted by other states and the District of Columbia in order to highlight specific provisions for consideration by the subcommittee prior to 12/4/19;
- Further subcommittee review and discussion of, and potential vote on, Section 505; and
- Discussion regarding next steps.

The next meeting will be on December 4, 2019 at 9 a.m. at the CBA offices, 1290 Broadway, Suite 1700 in Denver.

15-5-503. Exceptions to spendthrift provision.

(a) DEFINITIONS.

(1) "CHILD" INCLUDES ANY PERSON OR ENTITY WHO CAN ENFORCE A CHILD SUPPORT ORDER 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. IF A CHILD SUPPORT ORDER IS COMBINED WITH AN ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT, THE TERM "CHILD SUPPORT ORDER" SHALL NOT INCLUDE ANY PORTION OF THE ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT.

(b) A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST:

(1) A CHILD 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 ESSENTIAL SERVICES FOR THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE TRUST.

(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) SUBSECTION (b) DOES NOT APPLY TO SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A PERSON IF THE APPLICATION 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 APPLICATION OF SUCH A PROVISION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING SUCH PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING, BUT NOT LIMITED TO, MEDICAID AND SSI.

SECTION 505. 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.
- (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.

- (i) None 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 (or nonexercise) 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 law imposing the tax.
- (ii) 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 governing the transfer to such a trust.

Commented [CTE1]: Consider adding this language from the Ohio statute

Commented [CTE2]: "nonexercise" is not part of the Ohio statute, but consider whether it could/should be added.

Commented [CTE3]: Consider adding this language from Vermont

(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, except as otherwise provided by §13-54-102 C.R.S. or other applicable statutes,~~ the property of a trust that was revocable at the settlor's death is subject to claims AND ALLOWANCES AS PROVIDED IN § 15-15-103, C.R.S. 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].

(b) RESERVED. 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 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 case as in effect on [the effective date of this [Code]] [, or as later amended].

15-5-411. Modification or termination of noncharitable irrevocable trust by consent

(1) If, upon petition, the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's consent to a trust's modification or termination may be given by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust, by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized, or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(2) Other than a trust established ~~by court order~~ under Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p (d)(4), a noncharitable irrevocable trust may:

- (a) Be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust; or
- (b) Be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(3) A spendthrift provision in the terms of a trust is not presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust pursuant to subsection (1), ~~(2)~~ or (6) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(5) If not all of the beneficiaries consent to a proposed modification or termination of a trust pursuant to subsection (1), ~~or (2)~~ or (6) of this section, the modification or termination may be approved by the court if the court is satisfied that:

- (a) If all of the beneficiaries had consented, the trust could have been modified or terminated pursuant to this section; and
- (b) The interests of a beneficiary who does not consent will be adequately protected.

~~(6) A trust established under Title XIX of the federal "Social Security Act", 42 U.S.C. sec. 1396p (d)(4), may:~~

~~(a) Be terminated only upon consent of all of the beneficiaries and the trustee.~~

~~(b) Be modified upon consent of all of the beneficiaries or if the court concludes that modification is not inconsistent with a material purpose of the trust meets the criteria in subsection (5).~~

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Commented [CTE1]: Is "only" necessary here? Also, is "beneficiaries" the right class? Should it be limited to consent of the disabled person and the trustee? Is the Department a necessary party?

Commented [MF2R1]: From Eric Solem: "Only" seems to be redundant. Beneficiary is the right class. Department is a necessary party because by statute it is a beneficiary under Colorado law. Modification by Court should use same criteria as (5) because more expansive than (6)(b)

Uniform Trust Code Part 5 (Creditors' Rights) Subcommittee
Notes Regarding Section 505, Creditor's Claim Against Settlor
for the December 4, 2019 Meeting

Background

- At the November 6, 2019 meeting, the subcommittee considered the fact that many of the states which have already enacted Section 505, Creditor's Claim Against Settlor, have customized the ULC's proposed language – particularly in § 505(a)(3), and/or with additional considerations.
- Chair, Connie Eyster, and Georgine Kryda met on November 19, 2019 to review Georgine's spreadsheet compilation of Section 505 as enacted by the other states, and now present these notes to assist the subcommittee with finalizing its proposed language for Colorado's version of Section 505 at its December 4, 2019 meeting.

Key Questions for Section 505 and Language from other States' Statutes

Connie and Georgine considered four key questions for Section 505, and identified language from other states' statutes that may be useful for Colorado's version of Section 505.

1. What if the settlor is a beneficiary as a result of the exercise of a power of appointment, or the choice of someone else? That is, what if there is an intervening action?

a. Missouri:

505(3). With respect to an irrevocable trust with a spendthrift provision, a spendthrift provision will prevent the settlor's creditors from satisfying claims from the 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.

505(4). In the event that a trust meets the requirements set forth in subsection 3 of this section, a settlor's creditors may not reach the settlor's beneficial interest in that trust regardless of any testamentary power of appointment retained by the settlor that is exercisable by the settlor in favor of any appointees other than the settlor, the settlor's estate, the settlor's creditors, or the creditors of the settlor's estate.

b. Ohio:

505(3). None 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 law imposing the tax.

2. How should holders of Crummey powers be addressed? Should a power of withdrawal make assets available to creditors [as long as the powerholder is not the settlor]? Suggest that Colorado not limit protection as other states have.

a. North Carolina:

505(b). For purposes 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 of the trust, both of the following shall apply:

(1) The 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 lapse, 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 treated as a settlor of the trust.

b. Arkansas:

505(b). 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 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 case as in effect on January 1, 2005.

3. How should QTIPs and SLATs be addressed?

a. **Wisconsin** (Stan had not favored):

701.0505(2)(e)1.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.

b. **Ohio** (appears simpler for QTIP, and (B)(3) addresses the tax reimbursement clause seen in IGITs; but missing a SLAT provision or where the settlor is one of several beneficiaries for discretionary distributions):

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

(3) None 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 law imposing the tax.

4. Do we need an exception for self-settled special needs trusts (SNTs)? Perhaps add bracketed text?

a. **North Dakota:**

(505) 1. The following rules apply 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 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. 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 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 probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. For purposes of this section, "statutory allowances" includes any 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 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, or corresponding future provisions of federal tax law.

b. Vermont (a2 contains the reference to SNTs):

505(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.

(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 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 governing the transfer to such a 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.

1 **15-5-505. Creditor's claim against settlor.** (a) WHETHER OR
2 NOT THE TERMS OF A TRUST CONTAIN A SPENDTHRIFT PROVISION, THE
3 FOLLOWING RULES APPLY:

4 (1) DURING THE LIFETIME OF THE SETTLOR, THE PROPERTY OF A
5 REVOCABLE TRUST IS SUBJECT TO THE CLAIMS OF THE SETTLOR'S
6 CREDITORS. IF A TRUST HAS MORE THAN ONE SETTLOR, THE AMOUNT THE
7 CREDITOR OR ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT
8 EXCEED THE SETTLOR'S INTEREST IN THE PORTION OF THE TRUST
9 ATTRIBUTABLE TO THE SETTLOR'S CONTRIBUTION.

10 (2) WITH RESPECT TO AN IRREVOCABLE TRUST, A CREDITOR OR
11 ASSIGNEE OF THE SETTLOR MAY REACH THE MAXIMUM AMOUNT THAT CAN
12 BE DISTRIBUTED TO OR FOR THE SETTLOR'S BENEFIT. IF A TRUST HAS MORE
13 THAN ONE SETTLOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A
14 PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S
15 INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT
16 SETTLOR'S CONTRIBUTION.

17 (3) AFTER THE DEATH OF A SETTLOR, AND SUBJECT TO THE
18 SETTLOR'S RIGHT TO DIRECT THE SOURCE FROM WHICH LIABILITIES WILL BE
19 PAID, AND, EXCEPT AS OTHERWISE PROVIDED BY SECTION 13-54-102,
20 C.R.S., OR OTHER APPLICABLE STATUTES, THE PROPERTY OF A TRUST THAT
21 WAS REVOCABLE AT THE SETTLOR'S DEATH IS SUBJECT TO CLAIMS OF THE
22 SETTLOR'S CREDITORS, COSTS OF ADMINISTRATION OF THE SETTLOR'S
23 ESTATE, THE EXPENSES OF THE SETTLOR'S FUNERAL AND DISPOSAL OF
24 REMAINS, AND STATUTORY ALLOWANCES TO A SURVIVING SPOUSE AND
25 CHILDREN TO THE EXTENT THE SETTLOR'S PROBATE ESTATE IS INADEQUATE
26 TO SATISFY THOSE CLAIMS, COSTS, EXPENSES AND ALLOWANCES.

27 (b) FOR PURPOSES OF THIS SECTION:

1 (1) DURING THE PERIOD THE POWER MAY BE EXERCISED, THE
2 HOLDER OF A POWER OF WITHDRAWAL IS TREATED IN THE SAME MANNER
3 AS THE SETTLOR OF A REVOCABLE TRUST TO THE EXTENT OF THE
4 PROPERTY SUBJECT TO THE POWER; AND

5 (2) UPON THE LAPSE, RELEASE, OR WAIVER OF THE POWER, THE
6 HOLDER IS TREATED AS THE SETTLOR OF THE TRUST ONLY TO THE EXTENT
7 THE VALUE OF THE PROPERTY AFFECTED BY THE LAPSE, RELEASE, OR
8 WAIVER EXCEEDS THE GREATER OF THE AMOUNT SPECIFIED IN SECTION
9 2041 (b) (2) OR 2514 (e) OF THE FEDERAL "INTERNAL REVENUE CODE OF
10 1986", OR SECTION 2503 (b) OF THE FEDERAL "INTERNAL REVENUE CODE
11 OF 1986", IN EITHER CASE AS IN EFFECT ON JANUARY 1, 2007, OR AS LATER
12 AMENDED.

13 **15-5-506. Overdue distribution.** WHETHER OR NOT A TRUST
14 CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR OR ASSIGNEE OF A
15 BENEFICIARY MAY REACH A MANDATORY DISTRIBUTION OF INCOME OR
16 PRINCIPAL, INCLUDING A DISTRIBUTION UPON TERMINATION OF THE TRUST,
17 IF THE TRUSTEE HAS NOT MADE THE DISTRIBUTION TO THE BENEFICIARY
18 WITHIN A REASONABLE TIME AFTER THE MANDATED DISTRIBUTION DATE.

19 **15-5-507. Personal obligations of trustee.** TRUST PROPERTY IS
20 NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE, EVEN IF THE
21 TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

22 PART 6

23 REVOCABLE TRUSTS

24 **15-5-601. Capacity of settlor of revocable trust.** THE CAPACITY
25 REQUIRED TO CREATE, AMEND, REVOKE, OR ADD PROPERTY TO A
26 REVOCABLE TRUST, OR TO DIRECT THE ACTIONS OF THE TRUSTEE OF A
27 REVOCABLE TRUST, IS THE SAME AS THAT REQUIRED TO MAKE A WILL.