

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

Minutes of September 4, 2019

Participants

In person:	By phone:
• Connie Eyster, Chair	• Steve Brainard
• Michael Kirtland	• John Buckley
• Georgine Kryda	• Michael Reagor
• Kevin Millard	• Jean Stewart
• Daniella Ronchetti	• Kim Willoughby
• Carl Stevens	

The meeting was held at CBA offices, 1290 Broadway, Suite 1700 in Denver. The meeting was called to order at 9:05 a.m. by the Chair and adjourned at 10:30 a.m. Minutes of 8/7/19 were approved.

Section 503, Exceptions to spendthrift provisions. – Connie

- See Connie's email of 9/3/19. Page 1 is the original draft; pages 2 & 3 contain the August 2019 draft; and pages 4 & 5 (with highlighting) contain the latest version based on emails among committee members Stan K., Mike H., John B., and others.
- Kevin M. noted that in (d) regarding the special needs trust, it says that "the exception in (b) is unenforceable". It would be clearer to say, "subsection (b) does not apply".
- Connie to present a clean copy in October, with the Section 504 team suggesting complementary language for Section 504.

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

Section 505(a)(1): No comments or concerns.

Section 505(a)(2):

- Carl raised concerns regarding joint trusts.
- Consensus: Let subcommittee think about 505(a)(2), and limiting access only to assets of the debtor settlor.

Section 505(a)(3):

- C.R.S. § 15-15-103 covers non-probate transfers
- Discussion regarding:
 - coordination with the one-year statutory limit and with publication of notice being able to cut off claims earlier than one year;
 - whether we can simply refer to C.R.S. § 15-15-103;
 - what if there are two revocable trusts; and
 - consensus to avoid creating a new, separate process for notice.

- Redlined language for Section 505(a)(3) to be voted on at October 2, 2019 meeting:

(a)(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].~~

Discussion:

- Michael K.: Do we want to discuss protection of trustees via notice publication? If the trustee follows notice for claims under probate rules, can the trustees enjoy the same time limit protections as if a probate proceeding were open. Alabama enacted a provision requiring a trustee to give notice to any known creditor, and to publish notice for unknown creditors.
- Georgine: Other jurisdictions, such as D.C., modified their versions of Section 505 to include such a provision for the trustee to provide notice if no probate had been opened.
- Connie: Might there be constitutional issues with respect to creditors' rights, notice, and judicial proceeding? We would need to recreate C.R.S. § 15-12-Part 8 in the CUTC. Why not have a PR?
- Consensus: Put any fix in C.R.S. § 15-15-103 in order to address all non-probate transfers, versus doing so in the CUTC.
 - Kevin: Another issue for revision of C.R.S. § 15-15-103 is life insurance payable to a revocable trust.
 - Consensus: Perhaps bring C.R.S. § 15-15-103 issues to SRC's attention.

Section 505(b)(1)&(2) – Pertains to the case, University National Bank v. Rhoadarmer, 827 P.2d 561 (Colo. App.1991).

- Consensus:
 - Would like to preserve property subject to a general power of appointment so that it is not subject to creditors.
 - 505(b) should be "Reserved."
- Discussion: Do not enact (b)(1); do not want to overrule Rhoadarmer, but it appears that the courts are inching toward that.

Georgine reviewed observations regarding other states' changes regarding Section 505.

- Committee members requested Wisconsin's list of contributions to trusts that are not considered to have been contributed by the settlor, and Wisconsin's entire Section 505.
- The entire Wisconsin version of Section 505 is available at: <http://docs.legis.wisconsin.gov/statutes/statutes/701/V/0505>

Section 501 – Steve B.

Steve proposed adding the following sentence to the end of the latest version of Section 501:

Nothing in this Section 501 modifies other Colorado law governing (a) limitations on the amount of a creditor's claim, or (b) the procedures by which a creditor may attempt to satisfy a claim.

Discussion:

- Wait for Mike H. to review and comment before vote.
- Kevin M.: Should this refer to the entire Part, or just to this section?
- Concerns regarding unintended consequences
- Connie: Remember that we are only trying to address whether a creditor can satisfy a claim with these assets.
- Desirable to add latest iterations of sections to a centralized location.

For October 2, 2019, review and discuss:

- Steve's language for Section 501;
- Connie's "clean" version of Section 503;
- Edited Section 504 incorporating modified language from Section 503;
- Section 505, including redlined language for 505(a)(3) and Wisconsin statute; and
- Vote.

The next meeting will be on October 2, 2019 at 9 a.m. at the CBA offices, 1290 Broadway, Suite 1700 in Denver.

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.

(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].~~

Wisconsin's version of Section 505 as of 9/4/19 states in its entirety:

701.0505 Creditor's claim against settlor.

(1)(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 claims of a settlor's creditors:

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 that is not a trust for an individual with a disability, upon application of a judgment creditor of the settlor, the court may, if the trust instrument requires or authorizes the trustee to make payments of income or principal to or for the settlor, order 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, presently or in the future, or which are payable in the trustee's discretion. If a trust has more than one settlor, the amount the judgment creditor of a particular settlor may reach may not exceed the settlor's interest in the 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.

(b) Assets of a trust that are exempt from claims of creditors under other statutes are not subject to par. (a).

(2) 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 settlor of a revocable 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. A power described under par. (c).

2. The beneficiary's right to withdraw part of the trust property, to the extent that the value of the property affected by the lapse, waiver, or release in any year does not exceed the greater of the following:

a. The amount referenced in section [2041](#) (b) (2) or [2514](#) (e) of the Internal Revenue Code.

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 holds, exercises, or allows in any capacity, any of the following:

1. A presently exercisable power to consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary if the power is any of the following:
 - a. Exercisable only with the consent of another person holding an interest adverse to the beneficiary's interest.
 - b. Limited by an ascertainable standard of the beneficiary.
2. A presently exercisable power to 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.
3. A testamentary power of appointment.
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. Contributions to the following trusts are not considered to have been contributed by the settlor:

- a. An irrevocable marital trust that is treated as qualified terminable interest property under section [2523](#) (f) 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.
- b. An irrevocable marital trust that is treated as a general power of appointment trust under section [2523](#) (e) 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.
- 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.
- 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 person was the settlor of an irrevocable trust for the benefit of that spouse.
- 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 another person.

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

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

History: [2013 a. 92](#) ss. [99](#), [108](#) to [110](#).

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 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.