

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

Minutes of October 2, 2019

Participants

In person:	By phone:
• Connie Eyster, Chair	• John Buckley
• Steve Brainerd	• Joe Hodges
• Darla Daniel	• Richard Lyndsey
• Mike Holder	• Jean Stewart
• Stan Kent	• Allie Taylor
• Michael Kirtland	
• Georgine Kryda	
• 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 9/4/19 were approved.

Section 503, Exceptions to spendthrift provisions. – Connie

- See Connie’s email of 10/1/19 for one-page “clean” copy of proposed Section 503.
- Discussion regarding use of simpler, clearer language for consideration in 503(d) of special needs trusts, supplemental needs trusts, similar trusts used for disabled versus poorer versus elderly clients, and any trust that a settlor would want to not disqualify a beneficiary for public benefits.
- Look to Colorado Decanting Statute. What if remove “trustee believes” and re-word to say, “... would not be a resource...”?
 - The committee favors consistent wording between Colorado statutes, especially if the Decanting Statute is eventually moved to the Colorado Uniform Trust Code.
 - When this section was presented to Elder Law, the alternative language drawing from the Decanting Statute was not offered.
- Add §503(b)(3) as special needs trust?
 - C.R.S. §15-16-913 has a comment regarding special needs trusts.
 - Discussion of: “A special needs trust is a trust that administrators of governmental benefits may not consider for governmental benefits.”
 - What if administrator requires spend down before a beneficiary qualifies?
- Discussion regarding potential benefits of proceeding with Section 503 as presented in Connie’s email of 10/1/19.
 - Carl to report back after further discussion.

- Section 504 team to suggest complementary language for 504 once 503 is finalized at 11/6/19 meeting.

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

See Connie's email of 10/1/19 for redlined version of Section 505 and Wisconsin's list of contributions to trusts that are not considered to have been contributed by the settlor as appears in Wisconsin § 701.0505, Creditor's claim against settlor, Subsection (2)(e)(1).

Discussion regarding Wisconsin § 505(2)(d), "A beneficiary of a trust is not a settlor solely because the beneficiary is entitled to nondiscretionary distributions from the trust."

- Committee believes that this potential issue has already been addressed with respect to overdue distributions, and one would not normally assume this as an argument.

Discussion regarding Wisconsin §505(2)(e)(1) and concerns regarding joint trusts and does the committee want to incorporate any of this language into Colorado's § 505?

- Wisconsin has community property, so their drafting may be addressing those statutes.
- If have a joint trust, what portion of the trust is revocable by the settlor?
- Carl: Will look up a Colorado case regarding joint trusts.
- Stan: Wisconsin's subsection 1 is Uniform Law; we should spend more time considering Wisconsin's subsection 2.
 - Connie: If have a QTIP, settlor-spouse has only a reversionary interest. After spouse's death, though, there is an irrevocable trust for benefit of the settlor-spouse. Would not want to consider this trust as part of the settlor's estate; however, it would likely be considered as a self-settled trust.
 - Steve: How would such a trust be treated under current Colorado law?
 - Discussion regarding whether creditor could access the trust for the benefit of the surviving settlor, which would have been contrary to original QTIP purpose.
- Steve B.: For a hypothetical, what if a settlor anticipates creditor issues, can pass fraudulent transfers prohibitions, and the trust cannot be used to fulfill settlor's support obligation, and the settlor makes the trust for benefit of a minor child until the child turns 18 years old and then reverts to settlor, can that arrangement escape a creditor?
 - Mike H.: From creditor perspective, settlor has vested remainder interest.
 - Connie: However, creditor has no immediate access because no distributions.
 - Discussion: Settlor owns the vested remainder interest, and could sell it for the discounted rate.
- Stan: These are all self-settled trusts, and Colorado has already decided that such trusts are not recognized.
 - Discussion of whether this is a bright line rule?

- Discussion of Cohen [In re Cohen, 8 P.3d 429 (Colo. 1999)]; and Baum [In re Baum, 22 F.3d 1014 (10th Cir., 1994)] cases to argue that self-settled trusts are not permitted.
 - Committee does not believe there are more recent cases.
 - Self-settled trusts exist in Colorado, but may be pierced.
- Committee decided to look more closely at Wisconsin’s language. Refer to Connie’s emails of 8/6/19 for spreadsheet of how states worded their § 505 language.
 - Georgine to add Connecticut and Illinois language for § 505 to the spreadsheet and circulate prior to 11/6/19 meeting.

Section 505(a)(2)

- Carl: Prefer to have § 505(a)(2) to apply to revocable, as well as irrevocable, trusts.
 - Supported by John B.
- Michael K.: What happens if one spouse contributes \$100K and the other contributes \$1M? How trace?
- Connie: What is deemed “contributed” versus “owned”?
- Creditor can reach settlor’s interest, but how to define the settlor’s interest? By the terms of the trust?

For November 6, 2019:

- 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 to add Connecticut’s and Illinois’ language for Section 505 to the master spreadsheet, and to circulate prior to November 6, 2019;
- Further review and discussion of Section 505; and
- Discussion regarding next steps.

The next meeting will be on November 6, 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](#).

UTC 505 by State, as of 4/29/2019, CT & IL as of 10/30/2019

State	Year Enacted	Bill	Link	505
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 (4) The pr decendent (c) For purpose (1) during revocable

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Arizona

2008 HB2806

<https://www.azleg.gov/viewdocument/?docName=ht>
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D. For the purpose of this section, a corporation, partnership, trust, estate, or other entity shall be treated as a corporation, partnership, trust, estate, or other entity if it is a corporation, partnership, trust, estate, or other entity for the purpose of this section.

E. For the purpose of this section, a corporation, partnership, trust, estate, or other entity shall be treated as a corporation, partnership, trust, estate, or other entity if it is a corporation, partnership, trust, estate, or other entity for the purpose of this section.

1. An irrevocable trust that is a revenue trust.

2. An irrevocable trust that is a revenue trust.

3. An irrevocable trust that is a revenue trust.

4. An irrevocable trust that was the subject of a trust agreement.

5. An irrevocable trust in another jurisdiction.

F. For the purpose of this section, a corporation, partnership, trust, estate, or other entity shall be treated as a corporation, partnership, trust, estate, or other entity if it is a corporation, partnership, trust, estate, or other entity for the purpose of this section.

G. Subsections (1) through (5) shall not apply to a trust that is a revenue trust.

1. A trust that is a revenue trust or an entity that is a revenue trust.

2. A trust that is not a revenue trust and does not apply to the trust code.

Arkansas	2005 SB336	https://law.justia.com/codes/arkansas/2010/title-28/subtitle-5/chapter-73/subchapter-5/28-73-505/	28-73-505. Cre
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Connecticut	2019 HB07104	https://trackbill.com/bill/connecticut-house-bill-7104-an-act-concerning-adoption-of-the-connecticut-uniform-trust-code/1679947/	Connecticut no

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Florida

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2019 HB1471

<http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=4001&ChapterID=61>

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Kentucky	2014 HB78	https://law.justia.com/codes/kentucky/2014/chapter-386b/subchapter-5/section-5.5-040/	386B.5-040 Cr

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C. After the date of the will that was in effect at the settlor's death, the expenses of the trust shall be paid out of the settlor's personal estate.

2. Holder of power

A. During the term of the trust, the trustee shall have the power to

B. Upon the termination of the trust, the trustee shall have the power to distribute the trust property as later authorized by the instrument creating the trust.

Maryland

2014 HB83

<https://law.justia.com/codes/maryland/2015/article-14.5/subtitle-5/section-14.5-508/>

(a) In general.

(1) During the term of the trust, the trustee shall have the power to

(2) With respect to the trust property, the trustee shall have the power to

(3) If a trust instrument provides that the trustee shall have the power to

(4) With respect to the trust property, the trustee shall have the power to distribute the trust property to the beneficiaries in accordance with the terms of the trust instrument.

(5) After the termination of the trust, the trustee shall have the power to distribute the trust property to the beneficiaries in accordance with the terms of the trust instrument.

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			<p>(1) Whether or</p> <p>(a) During</p> <p>(b) AFTER t</p> <p>that at the</p> <p>and allow</p> <p>(c) With r</p> <p>(2) If a trust ha</p> <p>the settlor's inte</p> <p>(3) A trust bene</p> <p>(4) An individua</p> <p>follows the term</p> <p>(a) The in</p> <p>(b) The tr</p>

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Mississippi	2014 SB2727	https://law.justia.com/codes/mississippi/2014/title-91/chapter-8/	Mississippi did
Missouri	2004 HB1511	http://revisor.mo.gov/main/OneSection.aspx?section=456.5-505&bid=25757&hl=	456.5-505. Cre 1. Whether subject to claim 2. With resp that can be dis settlor may rea 3. With resp claims from the (1) WI (2) To

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Montana

2013 SB251

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Nebraska

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2004 HB1224

<https://law.justia.com/codes/new-hampshire/2010/titlelvi/chapter564-b/section564-b-5-505/>

564-B:5-505 C

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2016 AB2915

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(3) After the termination of a trust that is created by the settlor, the expenses of the trust shall not exceed the net income of the trust.

b. For purposes of this section, (1) during the life of the settlor, and (2) upon the death of the settlor,

New Mexico

2003 HB48

<https://law.justia.com/codes/new-mexico/2011/chapter46A/article5/section46A-5-505/>

46A-5-505. Creation of trust

A. Whether or not the trust is (1) during the life of the settlor, and (2) with respect to the settlor's property, the expenses of the trust shall not exceed the net income of the trust.

(3) after the termination of the trust that was created by the settlor, the expenses of the trust shall not exceed the net income of the trust.

B. For purposes of this section,

(1) during the life of the settlor, and

(2) upon the death of the settlor, the expenses of the trust shall not exceed the net income of the trust.

North Carolina

2005 SB679

<https://law.justia.com/codes/north-carolina/2014/chapter-36c/article-5/section-36c-5-505/>

36C-5-505. Creation of trust

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North Dakota	2007 HB1034	https://www.legis.nd.gov/cencode/t59c13.pdf#nameddest=59-13-05	<p>59-13-05. (505)</p> <p>1. The following revocable trust not been placed the maximum assignee of a p After the death revocable imm expenses of the probate estate includes any h period the pow extent of the pr only to the exte 2041(b)(2) or 2 provisions of fe</p>
Ohio	2006 HB416	http://codes.ohio.gov/orc/5805.06v1	<p>5805.06 Rights</p> <p>(A) Whether</p> <p>(1) During</p> <p>(2) Except the Revis distribute benefit th attributab subject to</p> <p>(3) With r division (determine</p> <p>(B) For purpc</p> <p>(1) The h subject to</p>

(2) Upon
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(3) None

Oregon

2005 SB275

<https://www.oregonlaws.org/ors/130.315>

(1) Whether or
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(c) If a trust
ORS 130
the settlor
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(2) For the purpose of this section, the extent of the credit shall be the period that

(3) Upon the lapse of the credit, the trust becomes subject to

(a) The amount of the credit shall be

(b) The amount of the credit shall be

(c) Twice the amount of the credit if the decedent was married at the time of his or her death

(4) The assets of the trust shall be included in the gross estate of the decedent for purposes of the credit deduction trust

(5) The assets of the trust shall be included in the gross estate of the decedent to the extent that the

(6) Subsections (a) through (e) shall not apply to a trust created by a will and who is also

Pennsylvania

2006 SB660

<https://www.legis.state.pa.us/cfdocs/legis/LI/consChack.cfm?txtType=HTM&ttl=20&div=0&chpt=77>

§ 7745. Credit

Whether or not

(1) During the life of the decedent

(2) A judgment or decree of a court of law

the settlor or the trustee

attributable to the decedent

solely because of the decedent's

any income or assets

(3) After
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§ 7748. Prope
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South Carolina

2005 SB422/HB3487 <https://www.scstatehouse.gov/code/t62c007.php>

SECTION 62-7

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Tennessee

2004 HB743/SB560

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

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Utah	2004 SB47	https://le.utah.gov/xcode/Title75/Chapter7/75-7-S505.html?v=C75-7-S505_2017050920170509	<p>75-7-505. Creditor's claim against trust.</p> <p>Whether or not the trust was created during the settlor's lifetime, the settlor's claim against the trust attributable to the trust's obligations with respect to the settlor's estate shall not exceed the amount of the trust's assets after the settlor's death was reduced by the settlor's expenses from the trust's assets.</p>
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Vermont	2009 SB86	https://legislature.vermont.gov/statutes/section/14A/005/00505	<p>§ 505. Creditor's claim against trust.</p> <p>(a) Whether or not the trust was created during the settlor's lifetime, the settlor's claim against the trust attributable to the trust's obligations with respect to the settlor's estate shall not exceed the amount of the trust's assets after the settlor's death was reduced by the settlor's expenses from the trust's assets.</p> <p>(b) For purposes of this section, "trust" means a trust created during the settlor's lifetime, a trust created after the settlor's death, or a trust created by will.</p>
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Virginia

2005 SB891

<https://law.justia.com/codes/virginia/2016/title-64.2/chapter-7/section-64.2-747/>

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West Virginia	2011 HB2551	https://law.justia.com/codes/west-virginia/2011/chapter44d/article5/44d-5-505/	<p>(a) Whether or</p> <p>(1) During the l</p> <p>(2) During the l that can be dis grantor may re</p> <p>(3) After the de was revocable</p> <p>(A) The c</p> <p>(B) Reasc</p> <p>(C) Debts</p> <p>(D) Unpai</p> <p>(E) Debts</p> <p>(F) Reasc attending</p> <p>(G) All oth</p> <p>(b) For purpose</p> <p>(1) During revocable</p> <p>(2) Upon property & Section 2</p>
Wisconsin	2014 SB384	https://law.justia.com/codes/wisconsin/2014/chapter-701/section-701.0505/	<p>701.0505(1)(a)</p> <p>701.0505(1)(a)</p> <p>701.0505(1)(a)</p> <p>701.0505(1)(a)</p>

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Wyoming

2003 HB77

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

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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 payable 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.

With respect to claims, expenses, and taxes in connection with the settlement of a trust that was revocable at the settlor's death:

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.

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, the trust property and the creditors and beneficiaries of the trust. Any person who presents a claim on or before the date specified in the notice may not later increase the claim following the expiration of the 90-day period.

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. A trustee shall be chargeable for any assets that the trustee may pay or distribute in good faith in satisfaction of any lawful claims. 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.

Notwithstanding 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

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), 2503(b), or 2514(e) of Internal Revenue Code of 1986, in each case as in effect on January 1, 2007, or as later amended.

Creditor'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. 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.

Notwithstanding 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 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, except to the extent that state or federal law requires the distribution 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.

Notwithstanding the 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.

Notwithstanding 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.

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:

1. 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.

2. 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.

3. 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.

4. 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 the settlor of an irrevocable trust for the benefit of that spouse.

5. 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 that person of a 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 named in the trust instrument or 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 amount specified in 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.

(c) 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.

Section 2042 of the Internal Revenue Code permits domestic asset protection trusts. With its 2019 version of the Uniform Trust Code, the following sections pertain to creditors' claims against settlors.

(NEW) (Effective January 1, 2020) (a) For all purposes under this section and section 39 of this act, a creditor of a beneficiary, or a creditor of the settlor if the settlor is a beneficiary of the trust, may not attach or compel a distribution of property that is:

power of withdrawal held by the beneficiary if the value of the property subject to the power does not exceed the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, and the regulations thereunder, or Section 2503(b) of said Internal Revenue Code and the regulations thereunder, in each case as in effect on January 1, 2020;

power, whether mandatory or discretionary, held by the trustee of the trust, including a power held by the beneficiary as the sole trustee or a cotrustee of the trust, to make distributions to or for the benefit of the beneficiary, if the power is exercisable by the trustee only in accordance with an ascertainable standard relating to such beneficiary's individual health, education, support or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, and the regulations thereunder, as in effect on January 1, 2020; or

power, whether mandatory or discretionary, held by the trustee of the trust, including a power held by the beneficiary as the sole trustee or a cotrustee of the trust, to make distributions to or for the benefit of a person who the beneficiary has an obligation to support, if the power is exercisable by the trustee only in accordance with an ascertainable standard relating to such person's individual health, education, support or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, and the regulations thereunder, as in effect on January 1, 2020.

A beneficiary holding a power set forth in subsection (a) of this section shall not, during the period the power may be exercised or upon the exercise, release or waiver of the power, be treated as a settlor of the trust.

(NEW) (Effective January 1, 2020) The settlor of an irrevocable trust shall not be deemed to have a beneficial interest in the trust merely because the trustee is authorized under the trust instrument or any other provision of law to (1) pay or reimburse the settlor or for any tax on trust income or trust principal that is payable by the settlor under the law imposing such tax; or (2) pay any tax directly to the taxing authorities. No creditor of the settlor of an irrevocable trust shall be entitled to reach any trust

. (NEW) (Effective January 1, 2020) (a) Notwithstanding any provision of the general statutes, no action of any kind, including, mitigation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a disposition, unless the action is brought pursuant to section 52-552h of the general statutes. In any such action, the creditor has on to prove each element by clear and convincing evidence.

withstanding the provisions of section 52-552j of the general statutes, a creditor may not bring an action under subsection (a) of this

creditor's claim against the transferor arose before the qualified disposition was made, unless the action is brought within four or the qualified disposition is made or, if later, within one year after the qualified disposition was or could reasonably have been ed by the creditor; or

. (NEW) (Effective January 1, 2020) (a) A qualified disposition shall be avoided only to the extent necessary to satisfy the r's debt to the creditor at whose instance the disposition had been avoided, together with any costs, including attorney's fees, that may allow.

qualified disposition is avoided pursuant to subsection (a) of this section, the following rules apply:

he court is satisfied that the trustee has not acted in bad faith in accepting or administering the property that is the subject of the disposition:

e trustee has a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to cost, including attorney's fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the qualified n;

e qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interest of the trustee and edecessor trustee that has not acted in bad faith; and

r purposes of this subdivision, it shall be presumed that the trustee did not act in bad faith merely by accepting the property.

court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject nt of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the trustee of the ch power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition.

oses of this subdivision, it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

litor has the burden of proving by clear and convincing evidence that a trustee or beneficiary acted in bad faith as set forth in

n (b) of this section, except, in the case of a beneficiary who is also the transferor, the burden on the creditor is to prove by a rance of the evidence that the transferor-beneficiary acted in bad faith. The provisions of this subsection shall be construed to

Creditor's claim against settlor.

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

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

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

ne 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
; 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,
; and allowances
poses of this section:

g 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
ne lapse, release, or waiver of the power, the holder is treated as the settlor or 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
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
ter (March 10, 2004) or as later amended
ing other than a small estate proceeding is commenced in the District of Columbia to administer the estate of a deceased settlor
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
esented in the estate proceeding.

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

nder subsection (d) of this section is published and a proceeding to administer the settlor's estate is later commenced, claims
ased settlor are barred as against the trustee and trust property as of the date provided in subsection (d) of this section, and not
ed in section 20-903.

creditors' claims against settlor.—

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

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 would otherwise be exempt by law if owned directly by the settlor.

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.

Notwithstanding the provisions of paragraph (b), the assets of an irrevocable trust may not be subject to the claims of an existing or potential 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 liability. The 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.

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. 2523(e) 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.

5 (This Section may contain text from a Public Act with a delayed effective date) Sec. 505. Creditor's claim against settlor.

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 to the extent the property would not otherwise be exempt by law if owned directly by the settlor.

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.

Notwithstanding paragraph (2), the assets of an irrevocable trust may not be subject to the claims of an existing 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 trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust principal that is payable by the settlor under the law imposing the tax.

Paragraph (2) does not apply to the assets of an irrevocable trust established for the benefit of a person with a disability that

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. Distributees of the trust take property only after payment of such claims; subject to the following conditions:

a) sums recovered by the personal representative of the settlor's estate must be administered as part of the decedent's probate estate and the liability created by this subsection does not apply to any assets to the extent that the assets are otherwise exempt under the law of this State or under federal law;

b) with respect to claims, expenses, and taxes in connection with the settlement of the settlor's estate, any claim of a creditor that is barred against the personal representative of a settlor's estate or the estate of the settlor is barred against the trust property of a trust that was revocable at the settlor's death, the trustee of the revocable trust, and the beneficiaries of the trust; and

c) Sections 18-10 and 18-13 of the Probate Act of 1975, detailing the classification and priority of payment of claims, expenses, and debts from the probate estate of a decedent, or comparable provisions of the law of the deceased settlor's domicile at death if not applicable, do not apply to a revocable trust to the extent the assets of the settlor's probate estate are inadequate and the personal representative or the taxing authority of the settlor's estate has perfected its right to collect from the settlor's revocable trust.

After the death of a settlor, a trustee of a trust that was revocable at the settlor's death is released from liability under this Section with respect to assets distributed to the trust's beneficiaries in accordance with the governing trust instrument if:

a) the trustee made the distribution 6 months or later after the settlor's death; and

b) the trustee did not receive a written notice from the decedent's personal representative asserting that the decedent's probate

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 the 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.

Settlor's claim against settlor.

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 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 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, 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.

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, 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.

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; and (3) After 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 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, but no property added to a revocable trust after the settlor's death from a source other than the settlor's estate or another revocable trust created by the settlor shall be subject to the 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. (2) For 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 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.

(3) 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

(4) Upon the lapse, release, or waiver of the power, the holder is not treated as the settlor of the trust.

§ 20.1-10. Claims against settlor.

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. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2(AFF).]

(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. [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

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 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.

where. For purposes of this section:

for 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 [2003, c. 618, Pt. A, §1 (NEW); 2003, c. 618, Pt. A, §2 (AFF).]

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 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 amended.

-- 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 creditors of the settlor;

With respect 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;

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

With respect 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 subsection (2) of this subsection to the relief that is appropriate under the circumstances, considering among other factors determined by the court, the supplemental needs of the beneficiary; and

At the death of a settlor, and subject to subsection (b) of this section and the right of the settlor to direct the source from which liabilities 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. --

Whether 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 of this article is commenced to administer the estate of a deceased settlor as provided in Title 5 of this article, property of a trust that was created 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 settlor that are not properly presented in the estate proceeding within the time periods specified in § 8-103 of this article or disallowed and barred as provided in § 8-107 of this article.

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

The notice 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: .

ublication 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 and beneficiaries 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 a notice in accordance with paragraph (2) of this subsection;

(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.

A claim may not be deemed to have been presented to the trustee unless the claimant has provided all the information specified in paragraph (ii) 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 a 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 (i) 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.

creditor's claim against settlor

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

(1) If the trust is revocable during the lifetime of the settlor, the property of a revocable trust shall be 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 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 reachable 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.

(3) 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 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 statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to pay those claims, expenses and allowances.
Subsection (b).]

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

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

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

(2) 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 by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.

(3) 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.

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

(5) 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.

Individual retains a beneficial interest in the trust income, trust principal, or both, which beneficial interest follows the termination of dual's spouse's prior beneficial interest in the trust.

EDITOR'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 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 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.

Not enacted Article 5

Editor'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 subject to claims of the settlor's creditors.

With respect to an irrevocable trust without a spendthrift provision, 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.

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

Where the conveyance of assets to the trust was fraudulent as to creditors pursuant to the provisions of chapter 428; or
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.

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

ee 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 subdivision (3) of this subsection once a week for four consecutive weeks in substantially the following form:

ersons interested in the estate of _____, decedent. I, the undersigned _____, is acting as 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 publication 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 publication 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 of being barred under the provisions of this subsection.

Each 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.

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

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 Sections 2041(b)(2), 2514(e) or 2503(b)

Internal Revenue Code

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

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. 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 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.

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 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.

respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or 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 be 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 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. 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 assets are otherwise exempt under the laws of this state or under federal law.

A 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 30-2734 to 30-2745 of any other 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.

Under 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), 2503(b), or 2514(e) of the Internal Revenue Code as defined in section 49-801.01.

Creditor'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.

respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or 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 an irrevocable "special needs trust" established for a disabled person as described in 42 U.S.C. 1396p(d)(4) or similar federal law relating to 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 or 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) 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 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 costs 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.

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. 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:

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

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 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.

er 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 at was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, uses 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 r's probate estate is inadequate to satisfy those claims, costs, expenses.

oses 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 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

editor's claim against settlor.

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

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

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

he 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 ; of the settlor's funeral and disposal of remains and statutory allowances to a surviving spouse and children to the extent the rrobate estate is inadequate to satisfy those claims, costs, expenses and allowances.

s of this section:

g 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 e trust to the extent of the property subject to the power; and

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), 2514(e) or 2503(b) of ial Revenue Code of 1986, as amended.

editor'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 settlor's 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 a trust exercisable by a holder of the power other than the settlor, 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 present 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 section 2514(e) 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 income 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.

§-505. Creditors' claims 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, and except to the extent that 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 property is not exempt from claims under the provisions of this section:

1. 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 Section 2056(b)(7)(B) of the 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 revocable immediately preceding the settlor's death is subject to claims of the settlor's creditors, costs of administration of 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, executor 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 created 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.

Notwithstanding the provisions of this section during the period a power of withdrawal may be exercised or upon the lapse, release, or waiver of the power, the trustee shall be 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 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 § 2503(b) of the 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.

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

Notwithstanding subdivision (a)(2) and subsection (g), the power of a trustee of an irrevocable trust for which the settlor made a qualified election pursuant to 26 U.S.C. § 2523(f), the power of a trustee, whether arising under the trust agreement or any other provision of the trust instrument, to make a distribution to or for the benefit of a settlor or to otherwise permit the settlor to use or benefit from trust property following the death of the settlor or 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 (a)(2) and subsection (g). This section shall not limit a creditor's remedies under the Uniform Fraudulent Transfer Act, compiled in title 66, chapter 3, part 3, of the Utah Code, or the settlor's transfers to such trust.

Notwithstanding subdivision (a)(2) and subsection (g), a person who is the holder of a power of withdrawal is not considered a settlor of the trust for purposes of this section to the extent of the exercise of that power of withdrawal or letting that power of withdrawal lapse.

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

Notwithstanding § 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 transfer is made.

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);

When 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 from 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 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.

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 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 a 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 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.

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. 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 if the transfer to such a trust is for the benefit of the disabled person.

Subject to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-502, a creditor or assignee of a 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 shall 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 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.

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 lapse, release, or waiver. (Added 2009. No. 20. § 1.)

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

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

As 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 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 or 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.

As 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 or 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

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.

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

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.

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 exists at the grantor's death is subject to claims of, to the extent the grantor's probate estate is inadequate to satisfy them:

costs and expenses of administration of the grantor's estate;

reasonable funeral expenses;

debts and taxes with preference under federal law;

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

debts and taxes with preference under other laws of the State of West Virginia;

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

other claims.

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 grantor 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 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(e) 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 a trust:

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 property of the trust is subject to claims of the creditor to the extent of the property of the trust.

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 property of a trust that exists at the settlor's death is subject to claims of, to the extent the settlor's probate estate is inadequate to satisfy them:

- (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 decedent with respect to the taxable 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) or 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 2523 (f) 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.b. 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 the 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 the 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) and 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. If the trust is a revocable trust, the property of a revocable trust contributed by the settlor, and all income and appreciation thereon and the property thereof, is subject to claims of the settlor's creditors;

2. For discretionary 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 receive 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 that can be distributed to or for the settlor's benefit is limited to the amount contributed to 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 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:

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

b. at least 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).

At the 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 remains 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 such claims, and costs of administration and expenses.

Notwithstanding the provisions of 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.

Notwithstanding the provisions of this section, a person who created a trust for his or her spouse under section 2523(e) of the Internal Revenue Code, or for his or her spouse under a provision 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

tlor of the trust.

William D. Haught, Impact of the Arkansas Trust Code on Revocable Trust Settlements, 43 Ark. Law. 14 - 2008

Lynn Foster, Arkansas's Trust Code and Trust Planning: A Ten-Year Perspective, 38 UALR L. Rev. 301 (2016)

Isabelle V. Taylor, Creditor Rights and the Missing Link in the Arkansas Trust Code: Is Death Strong Enough to Break the Chain, 65 Ark. L. Rev. 433 (2012)

itors' rights.

Courtney J. Maloney; Charles E. Jr. Rounds,
Massachusetts Uniform Trust Code: Context, Content, and
Critique, The, 96 Mass. L. Rev. 27 (2014)

The MUTC captures only "express trusts,

charitable or non-charitable, of a donative nature and trusts c

pursuant to a judgment or decree that requires the trust to b
in the manner of an express trust." p. 38

e settlor's lifetime.

Jennifer A. Maas, The New Minnesota Trust Code: Out with (Most of) the Old and in with (Most of) the UTC, 42 Mitchell Hamline L. Rev. 940 (2016)

Scot Boulton, How Uniform Will the Uniform Trust Code Be: Vagaries of Missouri Trust Law Versus Desires for Conformity, 67 Mo. L. Rev. 361 (2002)

James G. Blase, Missouri Asset Protection Trust, The, 61 J. Mo. B. 72 (2005)

William J. Jr. Lindsay, The Nebraska Uniform Trust Code
from the Trenches: A Practitioner's Guide to
Understanding Nebraska's New Uniform Trust Code, 37
Creighton L. Rev. 93 (2003)

S. Alan Medlin, The Impact of Significant Substantive Provisions of the South Carolina Trust Code, 57 S. C. L. Rev. 137 (2005)

C. Shawn O'Donnell, Exploring the Tennessee Uniform Trust Code, 38 U. Mem. L. Rev. 489 (2008)

sfer is made; and

Catherine Richmond, Uniform Trust Code - Clarifying and
Codifying Vermont Trust Law, *The*, 34 *Vt. B.J.* 58 - 2008

John E. Donaldson; Robert T. Danforth, The Virginia
Uniform Trust Code, 40 U. Rich. L. Rev. 325 (2005)

Christopher M. Reimer, The Undiscovered Country:
Wyoming's Emergence as a Leading Trust Situs
Jurisdiction, 11 Wyo. L. Rev. 165 (2011)

Notes

"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 2005,²¹ 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. ² 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.^{2 3} 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.^{2 °4} 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 t

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).

"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. 137 And it certainly has not extended it to donees of general testamentary powers of appointment" (p. 38).

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

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.

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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 disinheriting 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).

he benefit of a person, to the extent that the property of the trust was subject to a general power of appointment in another per

'son.25 This amendment will weaken creditors' rights against settlors' assets typically distributed to a surviving spouse and des

endants" (p. 322).