

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

Minutes of August 7, 2019

Participants

| In person: | By phone: |
|------------------------|----------------|
| • Connie Eyster, Chair | • John Buckley |
| • Steve Brainard | • Joe Hodges |
| • Darla Daniel | |
| • Marc Darling | |
| • Mike Holder | |
| • Stan Kent | |
| • Georgine Kryda | |
| • Kevin Millard | |
| • Carl Stevens | |
| • Tracy Tirey | |

The meeting was held at CBA offices, 1290 Broadway, Suite 1700 in Denver.
The meeting was called to order at 9:00 a.m. by the Chair and adjourned at 10:30 a.m.
Minutes of 6/12/19 were approved.

Section 503, Exceptions to spendthrift provisions. – Connie

- Connie expressed appreciation for Kim Willoughby's suggestion to talk with Colorado's Child Support Enforcement Division ("CO's CSED"). See two-page handout from Connie's email of 8/6/2019.
 - CO's CSED suggested defining:
 - "child" as any person or entity who can enforce a child support order in Colorado or another state;
 - CO's CSED suggested including "entity" because CO's CSED has standing to enforce such an order,
 - but our subcommittee sees that "entity" is already included in the definition; and
 - "child support order" based on the language to suspend a CO driver's license for lack of payment of child support in C.R.S. § 26-13-123;
 - Steve B: Thus, we can use the word "order" and not consider the other language such as "judgment."
- Section 503(b)(1): What if we say only "child"?
 - CO's CSED must seek spousal maintenance as well as child support (i.e., the amounts are undivided) pursuant to federal statute.

- Connie: This usually affects people applying for benefits.
- John B.: The division’s policy is not law; what is the statute?
- Carl S.: Maintenance is “combined” with a child support order in state statute, in federal statute, and in the uniform act from 10 years ago.
- Connie: CO’s CSED is open to creative solutions, and with respect to what we think is an acceptable level of exception creditor.
 - Ex. \$100, of which \$40 is child support and \$60 is maintenance. CO’s CSED cannot guarantee the division, but could our statute say that the child is limited to the amount of child support (\$40)?
 - Stan K. & Marc D.: We want to avoid someone with an order for maintenance attempting to pierce the spendthrift. We should make it clear in the definitions as a starting point.
 - Carl: Federal law still pre-empts state law, though.
- Committee discussion of proposed language for a definition of “child support order”:
 - May be combined with maintenance order?
 - Steve B: Put into 503(c) for remedies.
 - Consider the definition in 503(a)(2): Perhaps put a period after “medical support” for the definition of child support?
 - “To the extent such order is combined with spousal maintenance, a child support order shall not include any portion of the order attributable to spousal maintenance.”
 - “To the extent such order is combined with spousal maintenance, only the child support portion shall be an exception to spendthrift protection.”
 - Stan: The exception needs to follow 503(b)(1), so use “subject to”
 - Relief is only available with respect to support to which child is entitled.
- Committee to consider language, placement [preference for 503(c)], and statute citations (federal and state), and to vote on a final version to send to CO’s CSED in September 2019.
- Kevin M. and Drafting Notes
 - 503(a) “In this section” (used in UTC and C.R.S.) vs. “as used in this Part 5”
 - If we repeat the definition in 504, then we delete “as used in this Part 5”
 - 503(a) “Unless the context otherwise requires”
 - Retain for now, or repeat in 504 as the Uniform Act does.

- Marc D.: Regarding 503(b)(2), add “essential” to services to note special or necessary.
- The committee confirmed that 503(d) has been finalized pursuant to Carl Glatstein’s and Michael Kirtland’s responses.

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

- Need to mirror what is happening in 503.
- Mike H.: Make it clear that orders for trustees to make payments, especially to a third party, have to comply with CO law re: attachments and executions.
 - Mike H.’s suggested language: “‘Attached or attachment’ means to subject trust property to: 1. A writ of attachment, or 2. A writ of garnishment or of continuing garnishment, or 3. A writ of execution including actions in aid of execution” (which would include charging orders and the like).
 - Different rules apply with respect to attachment and to execution.
- Stan: Need a bifurcated 504 for whether there is a spendthrift.
 - 501 is the default: when there is no spendthrift, there is no protection and a court will order what is equitable.
 - If there is no protection via 503 or 504, then look at 501 for limits for how and what can be enforced against the trust estate.
 - But, we are attaching only the beneficial interest in the res – be it mandatory, discretionary, HEMS, etc. -- not the trust property itself (which is titled in the name of the trustee).
- 501: The court shall limit the relief it grants by other principles, procedures, rules, and may limit the award as other circumstances.
 - Kevin M. & Stan K.: What if there are six beneficiaries with a sprinkling interest and beneficiary #5 is behind on child support?
 - Comes back to trustee’s decision, and that will be specific to the trust instrument.
 - Thus, Mike H. should add “... and subject to trustee’s discretionary power” to his suggested wording unless there’s been an abuse of discretion or a breach of trust.
 - Connie: If we define it, are we leaving anything out?
 - Marc: Is there any universe of limitations to point to?
- Regarding “attach or reach”: Does “reach” imply reaching all the way to the trust res?
 - Could be “reach” with respect to both attachment and execution.
 - We removed “reach” beneficiary’s interest by ... from 501.
 - Add “reach” back in because it is used in 504.

- Steve B. reading the NCCUSAL comments for 501:
 - “Other creditor law of the State may limit the creditor to a specified percentage of a distribution” and
 - “This section does not prescribe the procedures (“other means”) for reaching a beneficiary’s interest or of priority among claimants, leaving those issues to the enacting State’s laws on creditor rights.”
 - Perhaps lift from the NCCUSAL comments and add as black letter to 501?
 - Next time: Steve B. to put in writing and suggest where to put in 501 (or in 106, but Part 5 is more logical).

For September 4, 2019:

- Continue discussion of Sections 503 and 504, and vote on both sections;
- For Section 503, consider language, placement [preference for 503(c)], and statute citations (federal and state), and vote on a final version to send to CO’s CSED;
- For Section 504, Steve B. to put in writing and suggest where put NCCUSAL comments for 501 as black letter in 501 (or in 106, but Part 5 is more logical); and
- Start Section 505.

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

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

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

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

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

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

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

§156. WHERE THE SETTLOR IS A BENEFICIARY

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

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

UTC Subsection (a) (1)

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

UTC Subsection (a)(2)

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

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

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

UTC Subsection (a) (3)

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

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

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

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

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

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

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

UTC Subsection (b)(1)

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

UTC Subsection (b)(2)

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

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

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

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

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

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

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

2018-2019 Committee:

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

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

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

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

DRAFT AS DISCUSSED BY CUTC COMMITTEE

15-5-503. Exceptions to spendthrift provision.

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

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

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

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

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

(c) THE ONLY REMEDY OF A CLAIMANT AGAINST WHOM A SPENDTHRIFT PROVISION CANNOT BE ENFORCED IS TO OBTAIN FROM A COURT AN ORDER ATTACHING PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY. THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES.

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

DRAFT AFTER DISCUSSIONS WITH STATE CHILD SUPPORT ENFORCEMENT DIVISION

15-5-503. Exceptions to spendthrift provision.

(a) ~~DEFINITIONS. IN THIS SECTION,~~

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

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

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

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

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

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

(c) THE ONLY REMEDY OF A CLAIMANT AGAINST WHOM A SPENDTHRIFT PROVISION CANNOT BE ENFORCED IS TO OBTAIN FROM A COURT AN ORDER ATTACHING PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY. THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES. TO THE EXTENT A CHILD SUPPORT ORDER IS COMBINED WITH SPOUSAL MAINTENANCE, ONLY THE CHILD SUPPORT PORTION OF THE ORDER IS AN EXCEPTION TO SPENDTHRIFT PROVISIONS.

(D) THE EXCEPTION IN SUBSECTION (B) IS UNENFORCEABLE AGAINST A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A DISABLED PERSON IF THE APPLICABILITY OF SUCH A PROVISION COULD INVALIDATE SUCH A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME (SSI) PURPOSES OR IF THE APPLICABILITY OF SUCH A PROVISION HAS THE EFFECT OR POTENTIAL EFFECT OF

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Commented [CTE3]: This last sentence was added August 7, 2019 – to be reviewed in September.

RENDERING SUCH DISABLED PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING, BUT NOT LIMITED TO, MEDICAID AND SSI.

DRAFT AFTER DISCUSSIONS WITH STAN AND OTHERS

15-5-503. Exceptions to spendthrift provision.

(a) ~~DEFINITIONS. IN THIS SECTION,~~

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

~~(2) CHILD SUPPORT ORDER MEANS ANY ADMINISTRATIVE OR COURT ORDER REQUIRING THE PAYMENT OF CHILD SUPPORT, CHILD SUPPORT ARREARS, CHILD SUPPORT DEBT, RETROACTIVE SUPPORT, OR MEDICAL SUPPORT. IF A CHILD SUPPORT ORDER IS COMBINED WITH AN ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT, THE TERM "CHILD SUPPORT ORDER" SHALL NOT INCLUDE ANY PORTION OF THE ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT, WHETHER OR NOT SUCH ORDER IS COMBINED WITH AN ORDER FOR MAINTENANCE.~~

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

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

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

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

(c) THE ONLY REMEDY OF A CLAIMANT AGAINST WHOM A SPENDTHRIFT PROVISION CANNOT BE ENFORCED IS TO OBTAIN FROM A COURT AN ORDER ATTACHING PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY. THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES. TO THE EXTENT A CHILD SUPPORT ORDER IS COMBINED WITH SPOUSAL MAINTENANCE, ONLY THE CHILD SUPPORT PORTION OF THE ORDER IS AN EXCEPTION TO SPENDTHRIFT PROVISIONS.

(D) THE EXCEPTION IN SUBSECTION (B) IS UNENFORCEABLE AGAINST A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A DISABLED PERSON IF THE APPLICABILITY OF SUCH A PROVISION COULD INVALIDATE SUCH A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME (SSI) PURPOSES OR IF THE

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APPLICABILITY OF SUCH A PROVISION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING SUCH DISABLED PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING, BUT NOT LIMITED TO, MEDICAID AND SSL.