CHAPTER 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

§501. Rights of beneficiary's creditor or assignee

To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. [PL 2005, c. 184, §10 (AMD).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §10 (AMD).

§502. Spendthrift provision

1. Restrains voluntary and involuntary transfers. A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

2. Terminology. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

3. No transfer by beneficiary; creditors and assignees. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§503. Exceptions to spendthrift provision

There are no exceptions to spendthrift provisions except as provided in sections 504, 505 and 506.
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§504. Discretionary trusts; effect of standard

1. Creditor may not compel distribution. Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

A. The discretion is expressed in the form of a standard of distribution; or [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

B. The trustee has abused the discretion. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

2. Right of beneficiary not limited. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for failure to exercise a discretionary power in

accordance with the terms and purposes of the trust or for failure to comply with a standard for distribution.
[PL 2005, c. 184, §11 (AMD).]

3. Creditor limited. If a trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.
[PL 2011, c. 42, §5 (RPR).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2005, c. 184, §§11,12 (AMD). PL 2011, c. 42, §5 (AMD).

§505. Creditor's claim against settlor

1. Creditor's claims. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply.

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

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

C. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, 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. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

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

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 the federal Internal Revenue Code of 1986, Section 2041(b)(2) or 2514(e) or the federal Internal Revenue Code of 1986, Section 2503(b), in each case as in effect on July 1, 2005, or as later amended. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]
[PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

§506. Overdue distribution

1. Definitions. As used in this section, unless the context otherwise indicates, "mandatory distribution" means a distribution of income or principal that a trustee is required to make to a

beneficiary under the terms of a trust, including a distribution upon termination of the trust. "Mandatory distribution" does not include a distribution subject to the exercise of the trustee's discretion even if:

A. The discretion is expressed in the form of a standard of distribution; or [PL 2011, c. 42, §6 (NEW).]

B. The terms of the trust authorizing a distribution couple language of discretion with language of direction. [PL 2011, c. 42, §6 (NEW).]

[PL 2011, c. 42, §6 (NEW).]

2. Unreasonable delay in distribution. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

[PL 2011, c. 42, §6 (NEW).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF). PL 2011, c. 42, §6 (RPR).

§507. Personal obligations of trustee

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt. [PL 2003, c. 618, Pt. A, §1 (NEW); PL 2003, c. 618, Pt. A, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 618, §A1 (NEW). PL 2003, c. 618, §A2 (AFF).

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