

Table 4
Uniform Trust Code States

| State | Citation | Notable Statutory Provisions and/or Case Law |
|---------|--|---|
| Alabama | Ala. Code §19-3B-501 through §19-3B-506 | These statutes are substantially similar to the relevant spendthrift provisions of the UTC. |
| | Ala. Code §19-3B-505 (Creditor's claim against settlor.) | <p>(b) With respect to claims, expenses, and taxes in connection with the settlement of a trust that was revocable at the settlor's death:</p> <p>(1) Any 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.</p> <p>(2) A 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 in writing 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 trustee, 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.</p> <p>(3) If 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, then no trustee shall be chargeable for any assets that the trustee may pay or distribute in good faith in satisfaction of any lawful claims, expenses, or taxes or to any beneficiary before the claim was presented. A payment or distribution of assets by a trustee shall be deemed to have been made in good faith unless the creditor can prove that the trustee had actual knowledge of the claim at the time of the payment or distribution. The six-month period shall not be interrupted or affected by the death, resignation, or removal of a trustee, except that the time during which there is no trustee in office shall not be counted as part of the period.</p> <p>(4) 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</p> |

| | | |
|---------|---|---|
| | | trust to the extent the assets of the decedent's probate estate are inadequate. |
| Arizona | A.R.S. §14-10501 through §14-10506. | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC; however, Arizona does not provide a statutory exception to spendthrift protection for a beneficiary's spouse or former spouse</i> |
| | A.R.S. §14-10504 (Discretionary trusts; effect of standard; definition) | <p>D. Whether or not a trust contains a spendthrift provision:</p> <ol style="list-style-type: none"> 1. A creditor of a trust beneficiary may not compel a distribution from insurance proceeds payable to the trustee as beneficiary to the extent state law exempts such insurance proceeds from creditors' claims if it had been paid directly to the trust beneficiary. 2. To the extent that under Arizona law life insurance proceeds, policy cash surrender values or other distributions or payments are exempt from attachment or garnishment by, execution on or otherwise the reach of creditors, if the death benefit is payable to an individual beneficiary, the life insurance proceeds, policy cash surrender values or other distributions or payments are also exempt from attachment or garnishment by, execution on or otherwise the reach of creditors if payable to a trust of which a beneficiary is that individual. |
| | A.R.S. §14-10505 (Creditor's claim against settlor) | <p>C. For the 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.</p> <p>D. For the 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, employees, beneficiaries or agents. Powers, duties or responsibilities granted to or reserved by the settlor pursuant to the trust and any actions or omissions taken pursuant to the trust are deemed to be the powers, responsibilities, duties, actions or omissions of the settlor and not those of its directors, officers, shareholders, partners, members, managers, employees, beneficiaries or agents.</p> <p>E. For the purposes of this section, amounts and property contributed to the following trusts are not deemed to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts shall not be treated as a settlor:</p> <ol style="list-style-type: none"> 1. An irrevocable inter vivos marital trust that is treated as qualified terminable interest property under § 2523(f) of the internal revenue code if the settlor is a beneficiary of the trust after the death of the settlor's spouse. |

| | | |
|----------------------|---|---|
| | | <ol style="list-style-type: none"> 2. An irrevocable inter vivos marital trust that is treated as a general power of appointment trust under § 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. An irrevocable inter vivos trust for the settlor's spouse that does not qualify for the gift tax marital deduction if the settlor is a beneficiary of the trust after the death of the settlor's spouse. 4. An irrevocable inter vivos trust created by the settlor's spouse for the benefit of the settlor, regardless of whether or when the settlor also created an irrevocable inter vivos trust with respect to which such spouse is a beneficiary. <p>F. For the purposes of subsection E, a person is a beneficiary whether so named under the initial trust instrument or through the exercise by that person's spouse or by another person of a limited or general power of appointment.</p> <p>G. Subsections C and D do not apply to:</p> <ol style="list-style-type: none"> 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 or entities listed in those subsections. 2. A trust that would be treated as a grantor trust pursuant to §§ 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 § 1361(d) of the internal revenue code. |
| | <i>Arizona Bank v. Morris</i> , 436 P.2d 499 (Ariz. App.,1968) | A settlor may not place the assets of a trust beyond the reach of his creditors and the settlor's creditors may use recognized judicial procedures to reach the trust assets. |
| Arkansas | A.C.A. §28-73-501 through §28-73-506 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC.</i> |
| | A.C.A. §28-73-503 (Exceptions to Spendthrift Provisions) | Reserved |
| | <i>Halliburton Co. v E.H. Owen Family Trust</i> , 28 Ark. App. 314, 773 S.W.2d 453 (1989) | A settlor cannot establish a trust under which he is to receive income as a beneficiary while at the same time attempt to protect the trust assets from his creditors. |
| District of Columbia | D.C. Code. Ann. 19-1305.01 through D.C. Code. Ann. 19-1305.06 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC; however, the District of Columbia does not provide a statutory exception to spendthrift protection for a beneficiary's former spouse or former spouse.</i> |

Table 4: Uniform Trust Code States, Page 3 of 9

| | | |
|---------|---|--|
| | D.C. Code. Ann. 19-1305.04 (Discretionary Trusts; Effect of Standard) | Reserved |
| | D.C. Code. Ann. 19-1305.05 (Creditor's claim against settlor) | <p>(c) If a proceeding other than a small estate proceeding is commenced in the District of Columbia to administer the estate of a deceased settlor as provided in 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 not properly presented in the estate proceeding.</p> <p>(d) If a proceeding as described in subsection (c) of this section has not been commenced, the trustee of the trust of which the decedent was a settlor may publish a notice substantially similar to, and in the same manner as provided for the notice described in section 20-704, and thereby obtain for the trust the same protection from claims afforded to a decedent's estate under section 20-903. Claims against a deceased settlor are barred as against the trustees and the trust property unless presented to the trustee at the address provided in the notice within 6 months after the date of the first publication of the notice. Except to the extent inconsistent with this subsection, Chapter 9 of Title 20 applies to the trustee and trust created by a deceased settlor in the same manner as it applies to a personal representative and decedent's estate.</p> <p>(e) If a notice under subsection (d) of this section is published and a proceeding to administer the settlor's estate is later commenced, claims against a deceased settlor are barred as against the trustee and trust property as of the date provided in subsection (d) of this section, and not the date provided in section 20-903.</p> |
| Florida | F.S.A. §736.0501 through §736.0506 | These statutes are substantially similar to the relevant spendthrift provisions of the UTC. |
| | F.S.A. §736.0502 (Spendthrift provision) | (4) A valid spendthrift provision does not prevent the appointment of interests through the exercise of a power of appointment. |
| | F.S.A. § 736.0505 (Creditor's claim against settlor) | <p>(2) For purposes of this section:</p> <p>(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.</p> <p>(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:</p> <ol style="list-style-type: none"> 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 |

Table 4: Uniform Trust Code States, Page 4 of 9

| | | |
|--------|---|--|
| | | <p>Internal Revenue Code of 1986, as amended.</p> <p>(3) Subject to the provisions of s. 726.105, for purposes of this section, the assets in:</p> <p>(a) A 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(f) of the Internal Revenue Code of 1986, as amended, has been made; and</p> <p>(b) Another 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.</p> |
| | <i>Bacardi v. White</i> , 463 So.2d 218, (Fla. 1985) | Disbursements from spendthrift trusts, in certain limited circumstances, may be garnished to enforce court orders or judgments for alimony before such disbursements reach debtor beneficiary; also, order or judgment for attorney fees awarded incident to divorce or enforcement proceedings may be collected in same manner. |
| | <i>In Re Brown</i> , 303 F.3d 1261, (11 th Cir. Fla. 2002) | Self-settled trusts may be reached by the settlor's creditors even if settlor is solvent at the time the trust was created and no fraud was intended. |
| Kansas | K.S.A. §58a-501 through. §58a-506 | These statutes are substantially similar to the relevant spendthrift provisions of the UTC. |
| | §58a-503 (Exceptions to Spendthrift Provision) | Reserved |
| | §58a-504 (Discretionary Trusts; Effect of Standard) | Reserved |
| | K.S.A. §33-101 | All gifts and conveyances of goods and chattels, made in trust to the use of the person or persons making the same shall, to the full extent of both the corpus and income made in trust to such use, be void and of no effect, regardless of motive, as to all past, present or future creditors; but otherwise shall be valid and effective. |
| Maine | 18-B M.R.S.A. § 501 through §506 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC; however, Maine does not provide a statutory exception to spendthrift protection for a beneficiary's children, spouse, or former spouse. Maine did not adopt subsections (a) and (c) of section 504.</i> |
| | 18-B M.R.S.A. § 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: |

Table 4: Uniform Trust Code States, Page 5 of 9

| | | |
|----------------|--|--|
| | | <p>A. The discretion is expressed in the form of a standard of distribution; or</p> <p>B. The trustee has abused the discretion.</p> <p>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.</p> <p>3. Creditor limited. A creditor may not reach the interest of a beneficiary who is also a trustee, or otherwise compel a distribution, if the trustee's discretion is limited by an ascertainable standard.</p> |
| | <i>In Re Kwaak</i> , 42 B.R. 599, (Bkrtcy Me. 1984) | “Though spendthrift trusts are valid in Maine . . . case law describing their characteristics is scarce. Generally speaking, a spendthrift trust is one which, by the terms of the trust or by statute, restrains the voluntary or involuntary transfer of the beneficiary's interest . . . Under the common law of trusts, a spendthrift trust which names the settlor as beneficiary is invalid, and as a consequence, existing or future creditors can reach the settlor's interest.” |
| Nebraska | Neb. Rev. Stat. §30-3846 through §30-3851 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC.</i> |
| New Hampshire | N.H. Rev. Stat. §564-B:5-501 through §564-B:5-506 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC.</i> |
| New Mexico | N.M.S.A. §46A-5-501 through §46A-5-506 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC.</i> |
| North Carolina | N.C.G.S.A. §36C-5-501 through §36C-5-501 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC; however, North Carolina does not provide a statutory exception to spendthrift protection for a beneficiary's spouse or former spouse.</i> |
| | <i>Swink v. Swink</i> , 6 N.C. App. 161, 169 S.E.2d 539 (N.C. App., 1969). | Alimony, child support and attorney fees may be paid from income of a spendthrift trust. |
| North Dakota | N.D.C.C. §59-13-01 through §59-13-06 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC.</i> |
| | N.D.C.C. § 59-13-03 (Exceptions to spendthrift provisions) | 3. The exceptions contained in subsection 2 do not apply to a self-settled special needs trust or a third-party special needs trust under chapter 59-08 nor to any trust that meets the qualifications of 42 U.S.C. 1396p(d). |
| Ohio | R.C. §5805.01 through §5805.06 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC; however, Ohio does not provide a statutory exception to spendthrift protection for a</i> |

Table 4: Uniform Trust Code States, Page 6 of 9

| | | |
|--------------|--|---|
| | | <i>beneficiary's former spouse.</i> |
| | R.C. §5805.01 | (c) . . . Real property or tangible personal property that is owned by the trust but that is made available for a beneficiary's use or occupancy in accordance with the trustee's authority under the trust instrument shall not be considered to have been distributed by the trustee or received by the beneficiary for purposes of allowing a creditor or assignee of the beneficiary to reach the property. |
| | R.C. §5805.03 | Notwithstanding anything to the contrary in division (B) of section 5805.02 of the Revised Code, no creditor or assignee of a beneficiary of a wholly discretionary trust may reach the beneficiary's interest in the trust, or a distribution by the trustee before its receipt by the beneficiary, whether by attachment of present or future distributions to or for the benefit of the beneficiary, by judicial sale, by obtaining an order compelling the trustee to make distributions from the trust, or by any other means, regardless of whether the terms of the trust include a spendthrift provision. |
| | <i>Metz v. Ohio Dept. of Human Serv.</i> , 762 N.E.2d 1032 (Ohio.App.6. Dist. Ottawa. Co 2001) | Spendthrift provisions in a self-settled trust are void because they are contrary to public policy. |
| | <i>Mathews v. Mathews</i> , 450 N.E.2d 278 (Ohio App., 1981) | Income from a trust which is neither a purely discretionary nor a strict support trust and which contains no express exclusion therefrom of beneficiary's children may be attached for purpose of paying judgment against beneficiary for child support. |
| Oregon | O.R.S. § 130.300 through § 130.320 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC; however, Oregon has omitted the "Discretionary Trusts; Effect of Standards" section of the UTC.</i> |
| | <i>Shelley v. Shelley</i> , 223 Or. 328, 354 P.2d 282 (Or. 1960) | Beneficiary's interest in income of trust, under spendthrift provisions, was subject to claims of his divorced wife for alimony and to claims for support of his children as provided under the divorce decree. |
| Pennsylvania | 20 Pa.C.S.A. §7741 through §7746 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC.</i> |
| | 20 Pa.C.S.A. §7743(b) (Exceptions to Spendthrift Provision) | (2) any other person who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary's interest in the trust's income; |
| | 20 Pa.C.S.A. §7744(b)(3) (Discretionary trusts; effect of standard) | (b) Distribution not compelled.-- Except as otherwise provided in subsection (c), 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: * * * |

Table 4: Uniform Trust Code States, Page 7 of 9

| | | |
|----------------|---|---|
| | | (3) the beneficiary is the trustee or a cotrustee of the trust. |
| | <i>Morton v. Morton</i> , 147 A.2d 150 (Pa. 1959) | Where settlor is the beneficiary of his own created trust, the spendthrift clause does not preclude any creditor from reaching the interest of the settlor-beneficiary. |
| | <i>Gessler v. Gessler</i> , 124 A.2d 502, 181 Pa. Super. 357 (1956). | Where deserted wife furnished necessities out of her separate estate for the support of her minor children and herself, wife was entitled to look to the beneficial interests of her husband in two spendthrift trusts to recover the value of the necessities so furnished. |
| | <i>Lippincott v. Lippincott</i> , 37 A.2d 741, 349 Pa. 501 | As to claims for maintenance and support of deserted and neglected wives, not divorced, spendthrift trusts are invalid and deserted wife may seize by attachment her husband's interest in a spendthrift trust. |
| South Carolina | Code 1976 § 62-7-501 through §62-7-506 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC; however, South Carolina does not provide a statutory exception to spendthrift protection for a beneficiary's spouse or former spouse.</i> |
| | Code 1976 §62-7-501 | (b) This section shall not apply and a trustee shall have no liability to any creditor of a beneficiary for any distributions made to or for the benefit of the beneficiary to the extent a beneficiary's interest: (1) is protected by a spendthrift provision, or (2) is a discretionary trust interest as referred to in S.C. Code Section 62-7-504. |
| | <i>Albergotti v. Summers</i> , 26 S.E.2d 395 (S.C. 1943) | In order for a "spendthrift trust" to be valid, the interest of the donee cannot exceed an equitable life estate in the income of the property, the donee must be without title or right to the possession of the property itself, the legal title must be vested in a trustee, and the trust must be an active one. |
| Virginia | Va. Code Ann. §55-545.01 through § 55-545.06 | <i>These statutes are substantially similar to the relevant spendthrift provisions of the UTC; however, Virginia does not provide a statutory exception to spendthrift protection for a beneficiary's spouse or former spouse.</i> |
| | Va. Code Ann. §55-545.03:1 (Certain claims for reimbursement for public assistance) | A. Notwithstanding any contrary provision in the trust instrument, if a statute or regulation of the United States or Commonwealth requires a beneficiary to reimburse the Commonwealth or any agency or instrumentality thereof, for public assistance, including medical assistance, furnished or to be furnished to the beneficiary, the Attorney General or an attorney acting on behalf of the state agency responsible for the program may file a petition in chancery in the circuit court having jurisdiction over the trustee requesting reimbursement. The petition may be filed prior to obtaining a judgment. The beneficiary, the guardian of his estate, his conservator, or his committee shall be made a party. |

Table 4: Uniform Trust Code States, Page 8 of 9

| | | |
|--|--|---|
| | <p>Va. Code Ann. §55-545.03:1</p> | <p>B. Following its review of the circumstances of the case, the court may:</p> <ol style="list-style-type: none"> 1. Order the trustee to satisfy all or part of the liability out of all or part of the amounts to which the beneficiary is entitled, whether presently or in the future, to the extent the beneficiary has the right under the trust to compel the trustee to pay income or principal to or for the benefit of the beneficiary; or 2. Regardless of whether the beneficiary has the right to compel the trustee to pay income or principal to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of any future payments that the trustee chooses to make to or for the benefit of the beneficiary in the exercise of discretion under the trust. <p>C. A duty in the trustee under the instrument to make disbursements in a manner designed to avoid rendering the beneficiary ineligible for public assistance to which he might otherwise be entitled, however, shall not be construed as a right possessed by the beneficiary to compel such payments.</p> <p>D. The court shall not issue an order pursuant to this section if the beneficiary is a person who has a medically determined physical or mental disability that substantially impairs his ability to provide for his care or custody, and constitutes a substantial handicap.</p> |
| | <p>Va. Code Ann. §55-545.05 (Creditor's claim against settlor)</p> | <p>A. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:</p> <p>* * *</p> <ol style="list-style-type: none"> 3. . . .This section shall not apply to life insurance proceeds under § 38.2-3122. No proceeding to subject a trustee, trust assets or distributees of such assets to such claims, costs and expenses shall be commenced unless the personal representative of the settlor has received a written demand by a surviving spouse, a creditor or one acting for a minor or dependent child 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. |