

Article 5.

Creditors' Claims; Spendthrift and Discretionary Trusts.

**§ 36C-5-501. Rights of beneficiary's creditor or assignee.**

(a) Except as provided in subsection (b) of this section, 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 or for the benefit of the beneficiary or other means. The court may limit the award to that relief as is appropriate under the circumstances.

(b) Subsection (a) of 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 that a beneficiary's interest is protected or restricted by any of the following:

- (1) A spendthrift provision.
- (2) A discretionary trust interest as defined in G.S. 36C-5-504(a)(2).
- (3) A protective trust interest as described in G.S. 36C-5-508. (2005-192, s. 2; 2007-106, s. 19.)

**§ 36C-5-502. Spendthrift provision.**

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) 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.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this Article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. (2005-192, s. 2.)

**§ 36C-5-503. Exceptions to spendthrift provision.**

(a) As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Even if a trust contains a spendthrift provision, or if the beneficiary's interest is a discretionary trust interest as defined in G.S. 36C-5-504(a)(2) or a protective trust interest as defined in G.S. 36C-5-508, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance may 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 relief that is appropriate under the circumstances. (2005-192, s. 2.)

**§ 36C-5-504. Discretionary trusts; effect of standard.**

(a) In this section:

- (1) "Child" includes any person for whom an order or judgment for child support has been entered in this or another state.
- (2) "Discretionary trust interest" means an interest in a trust that is subject to the trustee's discretion, whether or not the discretion is expressed in the form of a standard of distribution. A discretionary trust interest shall include an interest in any one or any combination of the following:

- a. A trust in which the amount to be received by the beneficiary, including whether or not the beneficiary, or a class of beneficiaries, is to receive anything at all, is within the discretion of the trustee.
- b. A trust in which the trustee has no duty to pay or distribute any particular amount to the beneficiary, but has only a duty to pay or distribute to the beneficiary, or apply on behalf of the beneficiary, those sums that the trustee, in the trustee's discretion, determines are appropriate for the support, education, or maintenance of the beneficiary.

(b) The beneficiary may not transfer a discretionary trust interest. Except as otherwise provided in this Article, a creditor or assignee of a beneficiary may not reach a discretionary trust interest or a distribution by the trustee before its receipt by the beneficiary.

(c) Except as provided in subsection (d) of this section, a creditor of a beneficiary may not compel a distribution from a trust in which the beneficiary has a discretionary trust interest even if the trustee has abused the trustee's discretion.

(d) To the extent that a trustee has not complied with a standard of distribution or has abused a discretion:

- (1) A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and
- (2) The court shall direct the trustee to pay to the child an amount that is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(e) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(f) A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard. (2005-192, s. 2.)

#### **§ 36C-5-505. Creditor's claim against settlor.**

(a) Subject to the other applicable law, whether or not the terms of a trust contain a spendthrift provision or the interest in the trust is a discretionary 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:

- (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.
- (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 shall not be entitled to reach any amount.

- (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 that the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by applicable law.

(b) For purposes 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 of the trust, both of the following shall apply:

- (1) The 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 lapse, 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 treated as a settlor of the trust.

(c) Subject to the Uniform Voidable Transactions Act, Article 3A of Chapter 39 of the General Statutes, for purposes of this section, property contributed to the following trusts is not considered 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 may not be treated as a settlor:

- (1) If the settlor is a beneficiary after the death of the settlor's spouse:
  - a. An irrevocable inter vivos marital trust that is treated as a general power of appointment trust described in section 2523(e) of the Internal Revenue Code.
  - b. An irrevocable inter vivos marital trust that is treated as a qualified terminable interest trust under section 2523(f) of the Internal Revenue Code.
  - c. An irrevocable inter vivos trust of which the settlor's spouse is a beneficiary during the spouse's lifetime but which does not qualify for the federal gift tax marital deduction, and during the lifetime of the settlor's spouse (i) the settlor's spouse is the only beneficiary or (ii) the settlor's spouse and any issue of the settlor or the settlor's spouse, or both, are the only beneficiaries.
  - d. Another trust, to the extent that the property of the other trust is attributable to property passing from a trust described in sub-subdivisions a., b., and c. of this subdivision.

For purposes of this subdivision, notwithstanding the provisions of G.S. 36C-1-103(3), the settlor is a beneficiary whether so named under the initial trust instrument or through the exercise of a limited or general power of appointment.

- (2) An irrevocable inter vivos trust for the benefit of a person if the settlor is the person's spouse, regardless of whether or when that person was a settlor of an irrevocable inter vivos trust for the benefit of the person's spouse.

For purposes of this subsection, the "settlor's spouse" refers to the person to whom the settlor was married at the time the irrevocable inter vivos trust was created, notwithstanding a subsequent

dissolution of the marriage. (2005-192, s. 2; 2007-106, s. 20; 2011-339, s. 2; 2013-91, s. 2(b); 2015-205, s. 9; 2017-212, s. 8.5(a).)

**§ 36C-5-506. Overdue distribution.**

(a) In this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term excludes a distribution subject to the exercise of the trustee's discretion, regardless of whether the terms of the trust (i) include a support or other standard to guide the trustee in making distribution decisions; or (ii) provide that the trustee "may" or "shall" make discretionary distributions, including distributions under a support or other standard.

(b) 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. (2005-192, s. 2.)

**§ 36C-5-507. Personal obligations of trustee.**

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt. (2005-192, s. 2.)

**§ 36C-5-508. Protective trusts.**

Except with respect to an interest retained by the settlor, a "protective trust interest" means an interest in a trust in which the terms of the trust provide that the interest terminates or becomes discretionary if:

- (1) The beneficiary alienates or attempts to alienate that interest; or
- (2) Any creditor attempts to reach the beneficiary's interest by attachment, levy, or otherwise; or
- (3) The beneficiary becomes insolvent or bankrupt. (2005-192, s. 2.)