

Part 5 Creditor's Claims - Spendthrift and Discretionary Trusts

Effective until 9/1/2024

75-7-501 Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not protected by a spendthrift provision or Section 25-6-502, 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 relief as is appropriate under the circumstances.

Amended by Chapter 204, 2017 General Session

Effective 9/1/2024

75-7-501 Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not protected by a spendthrift provision or Section 75B-1-302, 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 relief as is appropriate under the circumstances.

Amended by Chapter 364, 2024 General Session

75-7-502 Spendthrift provisions for beneficiaries other than the settlor.

- (1) A spendthrift provision for a beneficiary other than the settlor is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest, even if the beneficiary is the trustee or cotrustee of the trust.
- (2) A term of a trust providing that the interest of a beneficiary other than the settlor 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.
- (3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

Enacted by Chapter 89, 2004 General Session

75-7-503 Exceptions to spendthrift provision.

- (1) As used in this section:
 - (a) "Child" includes any person for whom an order or judgment for child support has been entered in this or another state.
 - (b) "Civil accounts receivable" means the same as that term is defined in Section 77-32b-102.
 - (c) "Civil restitution of judgment" means the same as that term is defined in Section 77-32b-102.
 - (d) "Restitution" means the same as that term is defined in Section 77-38b-102.
 - (e) "Victim" means the same as that term is defined in Section 77-38b-102.
- (2) Even if a trust contains a spendthrift provision, the following persons may obtain an order from a court that attaches present or future distributions to the beneficiary:

- (a) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance;
 - (b) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust;
 - (c) a victim who has a judgment requiring the beneficiary to pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act, or similar provision in another state; or
 - (d) the Office of State Debt Collection, created in Section 63A-3-502, for collecting payment on a civil accounts receivable or a civil judgment of restitution.
- (3) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

Amended by Chapter 260, 2021 General Session

75-7-504 Discretionary trusts -- Effect of standard.

- (1) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.
- (2) Except as otherwise provided in Subsection (3), 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
 - (b) the trustee has abused the discretion.
- (3) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:
- (a) 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, spouse, or former spouse; and
 - (b) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as 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.
- (4) 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.

Enacted by Chapter 89, 2004 General Session

Effective until 9/1/2024

75-7-505 Creditor's claim against settlor.

Regardless of whether 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 the claims of the settlor's creditors. If a revocable 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.
- (2)
- (a) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-502, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit.

- (b) With respect to an irrevocable trust that has more than one settlor, other than an irrevocable trust that meets the requirements of Section 25-6-502, the amount a 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.
- (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the creditor's claim from an irrevocable trust solely because the trustee may make a discretionary distribution reimbursing the settlor for income tax liability of the settlor attributable to the income of the irrevocable trust, when the distribution is:
 - (i) subject to the discretion of a trustee who is not the settlor;
 - (ii) subject to the consent of an advisor who is not the settlor; or
 - (iii) at the direction of an advisor who is not the settlor.
- (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, 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 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.

Amended by Chapter 421, 2023 General Session

Effective 9/1/2024

75-7-505 Creditor's claim against settlor.

Regardless of whether 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 the claims of the settlor's creditors. If a revocable 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.
- (2)
 - (a) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 75B-1-302, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit.
 - (b) With respect to an irrevocable trust that has more than one settlor, other than an irrevocable trust that meets the requirements of Section 75B-1-302, the amount a 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.
 - (c) Notwithstanding Subsections (2)(a) and (b), a creditor of a settlor may not satisfy the creditor's claim from an irrevocable trust solely because the trustee may make a discretionary distribution reimbursing the settlor for income tax liability of the settlor attributable to the income of the irrevocable trust, when the distribution is:
 - (i) subject to the discretion of a trustee who is not the settlor;
 - (ii) subject to the consent of an advisor who is not the settlor; or
 - (iii) at the direction of an advisor who is not the settlor.
- (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, 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 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.

Amended by Chapter 364, 2024 General Session

75-7-506 Overdue 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 required distribution date.

Enacted by Chapter 89, 2004 General Session

75-7-507 Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Enacted by Chapter 89, 2004 General Session

75-7-508 Notice to creditors.

- (1)
 - (a) A trustee for an inter vivos revocable trust, upon the death of the settlor, may publish a notice to creditors:
 - (i) once a week for three successive weeks in a newspaper of general circulation in the county where the settlor resided at the time of death; and
 - (ii) in accordance with Section 45-1-101 for three weeks.
 - (b) The notice required by Subsection (1)(a) shall:
 - (i) provide the trustee's name and address; and
 - (ii) notify creditors:
 - (A) of the deceased settlor; and
 - (B) to present their claims within three months after the date of the first publication of the notice or be forever barred from presenting the claim.
- (2) A trustee shall give written notice by mail or other delivery to any known creditor of the deceased settlor, notifying the creditor to present the creditor's claim within 90 days from the published notice if given as provided in Subsection (1) or within 60 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the notice described in Subsection (1) or a similar notice.
- (3)
 - (a) If the deceased settlor received medical assistance, as defined in Section 26B-3-1001, at any time after the age of 55, the trustee for an inter vivos revocable trust, upon the death of the settlor, shall mail or deliver written notice to the Director of the Office of Recovery Services, on behalf of the Department of Health and Human Services, to present any claim under Section 26B-3-1013 within 60 days from the mailing or other delivery of notice, whichever is later, or be forever barred.
 - (b) If the trustee does not mail notice to the director of the Office of Recovery Services on behalf of the department in accordance with Subsection (3)(a), the department shall have one year from the death of the settlor to present its claim.

- (4) The trustee is not liable to any creditor or to any successor of the deceased settlor for giving or failing to give notice under this section.
- (5) The notice to creditors shall be valid against any creditor of the trust and also against any creditor of the estate of the deceased settlor.

Amended by Chapter 330, 2023 General Session

75-7-509 Limitations on presentation of claims.

- (1) All claims against a deceased settlor which arose before the death of the deceased settlor, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust, unless presented within the earlier of the following:
 - (a) one year after the settlor's death; or
 - (b) the time provided by Subsection 75-7-508(2) or (3) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection 75-7-508(1) for all claims barred by publication.
- (2) In all events, claims barred by the nonclaim statute at the deceased settlor's domicile are also barred in this state.
- (3) All claims against a deceased settlor's estate or trust estate which arise at or after the death of the settlor, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor, unless presented as follows:
 - (a) a claim based on a contract with the trustee within three months after performance by the trustee is due; or
 - (b) any other claim within the later of three months after it arises, or the time specified in Subsection (1).
- (4) Nothing in this section affects or prevents:
 - (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the deceased settlor's estate or the trust estate;
 - (b) to the limits of the insurance protection only, any proceeding to establish liability of the deceased settlor or the trustee for which he is protected by liability insurance;
 - (c) collection of compensation for services rendered and reimbursement for expenses advanced by the trustee or by the attorney or accountant for the trustee of the trust estate; or
 - (d) the right to recover medical assistance provided to the settlor under Title 26B, Chapter 3, Part 10, Medical Benefits Recovery.

Amended by Chapter 330, 2023 General Session

75-7-510 Manner of presentation of claims.

- (1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be presented as follows:
 - (a) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed. The claim is considered presented upon the receipt of the written statement of claim by the trustee or the trustee's attorney of record. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature

of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

- (b) The claimant may commence a proceeding against the trustee in any court where the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased settlor's estate or the trust estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the deceased settlor which were pending at the time of the deceased settlor's death.
- (2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be commenced more than 60 days after the trustee has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the trustee may consent to an extension of the 60-day period, or to avoid injustice, the court, on petition, may order an extension of the 60-day period, but in no event may the extension run beyond the applicable statute of limitations.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-511 Classification of claims.

- (1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient to pay all claims in full, the trustee shall make payment in the following order:
 - (a) reasonable funeral expenses;
 - (b) costs and expenses of administration;
 - (c) debts and taxes with preference under federal law;
 - (d) reasonable and necessary medical and hospital expenses of the last illness of the deceased settlor, including compensation of persons attending the deceased settlor, and medical assistance if Section 26B-3-1013 applies;
 - (e) debts and taxes with preference under other laws of this state; and
 - (f) all other claims.
- (2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Amended by Chapter 330, 2023 General Session

75-7-512 Allowance of claims.

- (1) As to claims presented in the manner described in Section 75-7-510 and within the time limit prescribed in Section 75-7-509, the trustee may mail a notice to any claimant stating that the claim has been allowed or disallowed. If, after allowing or disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall notify the claimant. The trustee may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has expired and the claim has been barred. If the notice of disallowance warns the claimant of the impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for allowance in the court or by commencing a proceeding against the trustee not later than 60 days after the mailing of the notice of disallowance or partial allowance. If the trustee fails to mail notice to a claimant of action on the claim within 60 days after the time for original presentation of the claim has expired, this failure has the effect of a notice of allowance.

- (2) Upon the petition of the trustee or a claimant in a proceeding for this purpose, the court may order any claim presented to the trustee or trustee's attorney in a timely manner and not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall be given to the claimant, the trustee, and those other persons interested in the trust estate as the court may direct by order at the time the proceeding is commenced.
- (3) A judgment in a proceeding in another court against the trustee to enforce a claim against a deceased settlor's estate is a court-ordered allowance of the claim.
- (4) Unless otherwise provided in any judgment in another court entered against a trustee, allowed claims bear interest at the legal rate for the period commencing six months after the deceased settlor's date of death unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-513 Payment of claims.

- (1) Upon the expiration of the earliest of the time limitations provided in Section 75-7-509 for the presentation of claims, the trustee shall pay the claims allowed against the deceased settlor's estate in the order of priority prescribed, after making provision for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for that purpose, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the trustee to pay the claim to the extent that funds of the deceased settlor's estate or trust estate are available for the payment.
- (2) The trustee at any time may pay any just claim that has not been barred, with or without formal presentation, but the trustee shall be personally liable to any other claimant whose claim is allowed and who is injured by the payment if:
 - (a) the payment was made before the expiration of the time limit stated in Subsection (1) and the trustee failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
 - (b) the payment was made, due to the negligence or willful fault of the trustee, in a way that deprived the injured claimant of his priority.

Renumbered and Amended by Chapter 89, 2004 General Session

Amended by Chapter 282, 2004 General Session

75-7-514 Secured claims.

Payment of a secured claim shall be upon the basis of the amount allowed if the creditor surrenders his security; but otherwise payment shall be based upon one of the following:

- (1) if the creditor exhausts his security before receiving payment, unless precluded by another provision of the law, upon the amount of the claim allowed less the fair value of the security; or
- (2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and trustee by agreement, arbitration, compromise, or litigation.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-515 Claims not due and contingent or unliquidated claims.

- (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the trust estate, and if the claim has been allowed or established by a proceeding, it shall be paid in the same manner as presently due and absolute claims of the same class.
- (2) In other cases the trustee, or, on petition of the trustee or the claimant in a special proceeding for that purpose, the court, may provide for payment as follows:
 - (a) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account; or
 - (b) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a beneficiary, or otherwise.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-516 Counterclaims.

- (1) In allowing a claim, the trustee may deduct any counterclaim which the deceased settlor's estate has against the claimant. In determining a claim against a deceased settlor's estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess.
- (2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based.
- (3) A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-517 Execution and levies prohibited.

- (1) No execution may issue upon nor may any levy be made against any property of the deceased settlor's estate under any judgment against a deceased settlor or a trustee.
- (2) This section may not be construed to prevent the enforcement of mortgages, pledges, or liens upon real or personal property in an appropriate proceeding.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-518 Compromise of claims.

When a claim against a deceased settlor's estate has been presented in any manner, the trustee may, if it appears in the best interest of the deceased settlor's estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Renumbered and Amended by Chapter 89, 2004 General Session

75-7-519 Encumbered assets.

- (1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge, lien, or other security interest, the trustee may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance, or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the

encumbrance has presented a claim, if it appears to be in the best interest of the deceased settlor's estate.

- (2) Payment of an encumbrance does not increase the share of the beneficiary entitled to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets, provides otherwise.

Renumbered and Amended by Chapter 89, 2004 General Session