

Effective 5/7/2025

75B-2-505 Creditor's claim against settlor.

Regardless of whether the terms of a trust contain a spendthrift provision, the following rules apply:

- (1)
 - (a) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors.
 - (b) 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 Chapter 1, Part 3, Asset Protection Trust, 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 Chapter 1, Part 3, Asset Protection Trust, 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.

Renumbered and Amended by Chapter 310, 2025 General Session