

386B.5-020 Spendthrift trusts.

- (1) As used in this section, unless the context otherwise requires, "spendthrift trust" means a trust in which by the terms of the instrument creating it a valid restraint on the voluntary and involuntary alienation of the interest of a beneficiary is imposed.
- (2) Estates of every kind held or possessed in trust shall be subject to the debts and charges of the beneficiaries thereof the same as if the beneficiaries also owned the similar legal interest in the property, unless the trust is a spendthrift trust.
- (3) Specific language shall not be necessary to create a spendthrift trust, and it shall be sufficient if the instrument creating the trust manifests an intention to create a spendthrift trust.
- (4) If an instrument creating a trust provides that a beneficiary is entitled to receive income of the trust and that his interest shall not be alienable by him and shall not be subject to alienation by operation of law or legal process, the restraint on the voluntary and involuntary alienation of his right to income due and to accrue shall be valid.
- (5) If an instrument creating a trust provides that a beneficiary is entitled to receive principal of the trust at a future time and that his interest shall not be alienable by him and shall not be subject to alienation by operation of law or legal process, the restraint on the voluntary and involuntary alienation of his right to principal shall be valid.
- (6) Although a trust is a spendthrift trust, the interest of the beneficiary shall be subject to the satisfaction of an enforceable claim against the beneficiary:
 - (a) By the spouse or child of the beneficiary for support, or by the spouse for maintenance;
 - (b) If the trust is not a trust described in subsection (7)(b) of this section, by providers of necessary services rendered to the beneficiary or necessary supplies furnished to him; and
 - (c) By the United States or this Commonwealth for taxes due from him or her on account of his or her interest in the trust or the income therefrom.
- (7)
 - (a) If a person creates for his or her own benefit a trust with a provision restraining the voluntary or involuntary alienation of his or her interest, his or her interest nevertheless shall be subject to alienation by operation of law or legal process.
 - (b) This subsection shall not be construed to subject to alienation any interest in an individual retirement account or annuity, tax-sheltered annuity, simplified employee pension, pension, profit-sharing, stock bonus, or other retirement plan described in the Internal Revenue Code of 1986, as amended, which qualifies for the deferral of current income tax until the date benefits are distributed.
 - (c) For purposes of this subsection, a person has not created a trust for such person's own benefit solely because a trustee who is not such person is authorized under the trust instrument to pay or reimburse such person for, or pay directly to the taxing authorities, any tax on trust income or principal that

is payable by such person under the law imposing the tax.

- (8) (a) For the purposes of this section, amounts and property contributed to the following trusts are not deemed to have been contributed by the settlor of the trust, 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:
1. An irrevocable inter vivos marital trust that is treated as qualified terminable interest property under 26 U.S.C. sec. 2523(f), as amended, if the settlor is a beneficiary of the trust after the death of the settlor's spouse;
 2. An irrevocable inter vivos marital trust that is treated as a general power of appointment trust under 26 U.S.C. sec. 2523(e), as amended, 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 spouse of the settlor that does not qualify for the gift tax marital deduction if the settlor is a beneficiary of the trust only after the death of the settlor's spouse;
 4. A special needs trust as defined in KRS 387.860, including a trust established pursuant to judicial action under KRS 387.855;
 5. A trust created under 42 U.S.C. sec. 1396p(d)(4)(A) or (C); and
 6. A trust created under 42 U.S.C. sec. 1396p(c)(2)(B).
- (b) For the purposes of this subsection, 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.
- (c) For the purposes of this section, the settlor shall be any person who:
1. Created the trust;
 2. Contributed property to the trust; or
 3. Is deemed to have contributed property to the trust.

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