

Article - Estates and Trusts

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§14.5–502.

(a) (1) A beneficiary of a discretionary distribution provision has no property right in a trust interest that is subject to a discretionary distribution provision.

(2) A beneficial interest that is subject to a discretionary distribution provision may not be judicially foreclosed, attached by a creditor, or transferred by the beneficiary.

(b) (1) The creditor of the beneficiary of a discretionary distribution provision created by someone other than that beneficiary has no enforceable right to trust income or principal that may be distributed only in the exercise of the discretion of the trustee.

(2) Trust property that is subject to a discretionary distribution provision is not subject to the enforcement of a judgment until income or principal or both is distributed directly to the beneficiary.

(c) A creditor of a beneficiary may not compel a distribution that is subject to a discretionary distribution provision created by someone other than that beneficiary.

(d) A trust may contain a discretionary distribution provision with respect to one or more but less than all beneficiaries.

(e) If a beneficiary of a discretionary distribution provision has a power of withdrawal created by someone other than that beneficiary:

(1) During the period the power may be exercised, the portion of the trust the beneficiary may withdraw may not be deemed to be subject to the discretionary distribution provision with respect to that beneficiary;

(2) During the period the power may be exercised, the portion of the trust the beneficiary may not withdraw shall be deemed to be subject to the discretionary distribution provision with respect to that beneficiary; and

(3) During periods in which the beneficiary does not have a power of withdrawal, the trust interest of the beneficiary shall be deemed to be subject to the discretionary distribution provision with respect to that beneficiary.

(f) If a beneficiary and one or more others have made contributions to a trust subject to a discretionary distribution provision, the portion of the trust attributable to the contributions of the beneficiary may not be deemed to be subject to that discretionary distribution provision with respect to that beneficiary, but the portion of the trust attributable to the contributions of others shall be deemed to be subject to the discretionary distribution provision with respect to that beneficiary.

(g) The interest of a beneficiary who is blind or disabled as defined in 42 U.S.C. § 1382c(a)(3) may be subject to a discretionary distribution provision notwithstanding:

(1) Precatory language in the trust instrument regarding the intended purpose of the trust of providing supplemental goods and services to or for the benefit of the beneficiary, and not to supplant benefits from public assistance programs; or

(2) A prohibition against providing food, clothing, and shelter to the beneficiary.

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