

## Article - Estates and Trusts

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§14.5–511.

(a) In this section, “proceeds” means:

(1) Property acquired by the trustee on the sale, lease, license, exchange, or other disposition of property originally conveyed by a husband and wife to a trustee or trustees;

(2) Property collected by the trustee on, or distributed on account of, property originally conveyed by a husband and wife to a trustee or trustees;

(3) Rights arising out of property originally conveyed by a husband and wife to a trustee;

(4) Claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to property originally conveyed by a husband and wife to a trustee;

(5) Insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to property originally conveyed by a husband and wife to a trustee; or

(6) Property held by the trustee that is otherwise traceable to property originally conveyed by a husband and wife to a trustee or the property proceeds described in items (1) through (5) of this subsection.

(b) Property of a husband and wife that was held by them as tenants by the entirety and subsequently conveyed to the trustee or trustees of one or more trusts, and the proceeds of that property, shall have the same immunity from the claims of the separate creditors of the husband and wife as would exist if the husband and wife had continued to hold the property or the proceeds from the property as tenants by the entirety, as long as:

(1) The husband and wife remain married;

(2) The property or the proceeds from the property continue to be held in trust by the trustee or trustees or the successors in trust of the trustee or trustees;

(3) Both the husband and wife are beneficiaries of the trust or trusts; and

(4) The trust instrument, deed, or other instrument of conveyance provides that this section shall apply to the property or the proceeds from the property.

(c) After the death of the first of the husband or wife to die, all property held in trust that was immune from the claims of their separate creditors under subsection (b)

of this section immediately prior to the death of the individual shall continue to have the same immunity from the claims of the separate creditors of the decedent as would have existed if the husband and wife had continued to hold the property conveyed in trust, or the proceeds from the property, as tenants by the entirety.

(d) The immunity from the claims of separate creditors under subsections (b) and (c) of this section may be waived, as to each specific creditor or all separate creditors of a husband and wife or specifically described trust property, or all former tenancy by the entirety property conveyed to the trustee or trustees, by:

- (1) The express provisions of a trust instrument; or
- (2) The written consent of both the husband and the wife.

(e) (1) Except as provided in paragraph (2) of this subsection, immunity from the claims of separate creditors under subsections (b) and (c) of this section shall be waived if a trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors.

(2) Immunity is not waived under this subsection if the identity of the property that is immune from the claims of separate creditors is otherwise reasonably disclosed by:

(i) A publicly recorded deed or other instrument of conveyance by the husband and wife to the trustee;

(ii) A written memorandum by the husband and wife, or by a trustee, that is recorded among the land records or other public records in the county or other jurisdiction where the records of the trust are regularly maintained; or

(iii) The terms of the trust instrument, including a schedule or exhibit attached to the trust instrument, if a copy of the trust instrument is provided with the financial statement.

(3) A waiver under this subsection shall be effective only as to:

(i) The person to whom the financial statement is delivered by the trustee;

(ii) The particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement; and

(iii) The transaction for which the disclosure was sought.

(f) In a dispute relating to the immunity of trust property from the claims of a separate creditor of a husband or wife, the trustee has the burden of proving the

immunity of the trust property from the claims of the creditor.

(g) After a conveyance to a trustee described in subsection (b) of this section, the property transferred shall no longer be held by the husband and wife as tenants by the entirety.

(h) This section may not be construed to affect existing State law with respect to a tenancy by the entirety.

(i) This section applies only to tenancy by the entirety property conveyed to a trustee or trustees on or after October 1, 2010.

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