

Irrevocable Trusts Under Attack: The Domestic Relations Angle

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A. The Institution Of Marriage (And Divorce)

1. *Question:* What percent of the U.S. population gets married?
 - a. According to the U.S. Bureau of the Census, 85 percent of the population of the United States will marry at least once. U.S. Bureau of the Census, 2006.
 - i. For the twelve months ending with September 2007, there were approximately 2,169,000 marriages in the United States. Sutton PD, "Births, marriages, divorces, and deaths: Provisional Data for September 2007," *National Vital Statistics Reports* Vol. 56 No. 18 (National Center for Health Statistics, Hyattsville, MD 2008).
2. *Question:* What percent of the U.S. population gets divorced?
 - a. The American divorce rate is between 40 and 50 percent. www.nwamarriages.com/about/marriage_facts.php
 - b. In 2005, there were 1.2 million divorces. *Id.*
 - c. About 9.9 percent of the U.S. population (almost 20 million people) are currently divorced. *Id.*
 - d. Statistically, 40 percent of first marriages, 60 percent of second marriages, and 73 percent of third marriages end in divorce. *Id.*

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i. The probability of a first marriage ending in separation or divorce within five years is 20 percent. Bramlett MD and Mosher WD, “Cohabitation, Marriage, Divorce, and Remarriage in the United States,” *Vital Health Stat* 23(22) (National Center for Health Statistics 2002).

(1) After 10 years, the probability of a first marriage ending in separation or divorce is 33 percent. *Id.*

ii. The probability of a second marriage ending in separation or divorce within five years is 23 percent. *Id.*

(1) After 10 years, the probability of a second marriage ending in separation or divorce is 39 percent. *Id.*

3. *Question:* What percent of the U.S. population gets married more than once?

a. In 2004, 52.2 percent of men previously divorced were remarried. www.census.gov/population/www/socdemo/marr-div/2004detailed_tables.html

b. In 2004, 43.5 percent of women previously divorced were remarried. *Id.*

B. The Prevalence Of Trusts

1. *Question:* How many trusts are created each year?

a. There is no way to determine the number of new trusts created each year because the Internal Revenue Service does not provide specific information regarding the number of trusts created each year. However, in 2006, 3.7 million estates and trusts filed income tax returns. Table 2. Number of Returns Filed, by Type of Return, Fiscal Years 2005 and 2006, available at www.irs.gov/taxstats/compliancestats/article/0,,id=97168,00.html

2. *Question:* How much property is held in trust, approximately?

a. Again, there is no way to determine the value of property held in trust. However, one might extrapolate the significance of trust-owned property from the fact that, in 2003, estates and trusts reported aggregate gross income worth \$85.2 billion, of which approximately 71 percent, or \$60.6 billion, was trust income. Lisa Schreiber, Fiduciary Income Tax Returns, Filing Years 2003 and 2004, available at www.irs.gov/taxstats/indtaxstats/article/0,,id=96425,00.html

C. Why Should We Care About These Statistics?

1. At the risk of stating the obvious, the confluence of multiple marriages, and multiple divorces, with hundreds of billions or trillions of dollars of property held in trust for the benefit of one or the other of the spouses breeds contention over the issue of when trust property should be available to meet the obligations of a beneficiary to pay alimony (hereinafter generally referred to as “spousal support” or simply “support”).

D. What Is This Outline/Presentation About?

1. In the Summer 2002 edition of the Asset Protection Journal, Vol. 4, No. 2, the author presented an article entitled “When Your Child’s Marriage Goes Bad, So Might Your Child’s Trust: Spousal and Child Support Exceptions to Spendthrift Trust Protections.” This outline will serve to examine, in further and updated detail, the issue of spendthrift (and other types of trust) protections against attacks by a spouse or former spouse for support.
 - a. For a quick reference on this issue, please refer to the state by state chart (with the District of Columbia included as well) at the end of this outline.

E. Types Of Trusts

1. As a preliminary matter, it is important to note the various types of trusts that may bear on the issue under discussion. Notably, trusts may contain features pertaining to one or more of the various types of trusts under discussion.
2. *Spendthrift Trusts*
 - a. “The term ‘spendthrift trust’ refers to a trust that restrains voluntary and involuntary alienation of all or any of the beneficiaries’ interests.” *Restatement (Third) of Trusts* §58, General Comment (ALI 2003).
 - b. “Trusts in which the interest of a beneficiary cannot be assigned by him or reached by his creditors have come to be known as ‘spendthrift trusts.’” 2A Austin W. Scott & William F. Fratcher, *The Law of Trusts* §151, at 83 (4th ed. 1987).
3. *Discretionary Trusts*
 - a. A “discretionary” trust is a trust in which distributions to the beneficiary are left wholly within the discretion of the trustee, generally without regard to any ascertainable standard.
 - b. A discretionary trust is a trust “where the trustee or another party has the right to accumulate (rather than pay out) the income for each year. Depending on the terms of the trust instrument, such income may be accumulated for future distributions to the income beneficiaries or added to corpus for the benefit of the remaindermen.” *Black’s Law Dictionary* 467 (6th ed. 1990).
4. *Support Trusts*
 - a. A “support trust” is “[a] trust in which the trustee has the power to pay the beneficiary only so much of the trust income as is necessary for the beneficiary’s support, education and maintenance.” *Black’s Law Dictionary* 1513 (6th ed. 1990). *See also, Restatement (Second) of Trusts* §154, cmt. d (1959) (A “support trust” is one in which “by the terms of the trust the amount to be paid to or applied for the beneficiary is limited to so much of the income or principal as is in fact necessary for his education or support.”)
 - c. In essence, support trusts are a subset of discretionary trusts in which the trustee’s discretion to make a distribution to the beneficiary is limited to reasons of the beneficiary’s support.

i. The legal distinction between “discretionary” trusts and “support” trusts is, however, disappearing.

(1) “[T]his Restatement Third does not attempt to draw a bright line between ‘discretionary’ interests . . . and ‘support’ interests The so-called ‘support trust,’ for example, is viewed here as a discretionary trust with a support standard. This in turn requires asking and examining all of the questions that follow from that view, such as how a particular standard, in context, is to be interpreted and whether a beneficiary’s other resources are to be taken into account in making a fiduciary judgment about appropriate distributions to the beneficiary.” *Restatement (Third) of Trusts* §60, Comment a.

(2) The Uniform Trust Code similarly provides but a single rule and a single section for all discretionary trusts, including ones in which the trustee’s discretion is subject to a support standard.

5. *Trusts With Forfeiture Provisions*

a. A trust might contain a provision that would effect a forfeiture of a beneficiary’s trust interest upon an attempt by the beneficiary to transfer it or an attempt by the beneficiary’s creditors to reach it.

i. An example provided by the *Restatement (Second) of Trusts* illustrates:

(1) “A transfers property to B in trust to pay the income to C for life and to pay the principal, on C’s death, to D. By the terms of the trust, if C conveys his interest or if his creditors should attempt to reach it, or if he should become bankrupt, his interest under the trust should cease and the income should be paid to C’s wife during the remainder of C’s life. C becomes bankrupt. His interest under the trust terminates.” *Restatement (Second) of Trusts* §150, illust. 1 (1959).

F. The Nature Of The Protection

1. Each of the various types of trusts provides some protection against spousal support claims, but the basis behind the protection differs depending on the type of trust. It is, obviously, important to understand why a trust may or may not be protective.

2. *Spendthrift Trusts*

a. Spendthrift trusts are free from creditors’ claims because the settlor has explicitly provided, through the incorporation of a spendthrift provision in the governing instrument, that the trust fund shall be exempt from the claims of the beneficiary’s creditors. The spendthrift trust carries out a stated intent of the settlor.

3. The maxim “cujus est dare, ejus est disponere,” or “[w]hose it is to give, his it is to dispose” is frequently cited in connection with references to the validity of spendthrift trust restrictions.

a. “The validity of a spendthrift provision in a trust is predicated upon the [public policy] consideration that a person is free to make any desired disposition of his property.” *Estate of Johnson*, 252 Cal. App.2d 923, 925 (1967).

b. According to the United States Supreme Court in *Nichols v. Eaton*, 91 U.S. 716 at 725 (1875):

We concede that there are limitations which public policy or general statutes impose upon all dispositions of property, such as those designed to prevent perpetuities and accumulations of real estate . . . We also admit that there is a just and sound policy . . . to protect creditors against frauds upon their rights . . . But the doctrine, that the owner of property . . . cannot so dispose of it, but that the object of his bounty . . . must hold it subject to the debts due his creditors . . . is one which we are not prepared to announce as the doctrine of this court.

4. It is often said that the use of a spendthrift trust takes nothing from the beneficiary's creditor that the creditor had previously.

The doctrine that property may be made inalienable by such declaration of a [spendthrift] trust rests upon the theory that a donor has the right to give his property to another upon any conditions which he sees fit to impose, and that, inasmuch as such a gift takes nothing from the prior or subsequent creditors of the beneficiary to which they previously had the right to look for payment, they cannot complain that the donor has provided that the property or income shall go or be paid personally to the beneficiary and shall not be subject to the claims of creditors. *Parscal v. Parscal*, 148 Cal.App.3d at 1102-1103.

5. *Discretionary Trusts*

a. The effect of a discretionary trust is to limit the extent of the beneficiary's interest in the trust so as to make it sufficiently tenuous so that it does not qualify as a property right that is subject to attachment by creditors. In effect, the beneficiary's interest will only come into existence when and to the extent that the trustee decides to make a distribution.

b. "[I]f by the terms of a trust it is provided that the trustee shall pay to or apply for a beneficiary only so much of the income and principal or either as the trustee in his uncontrolled discretion shall see fit to pay or apply, a transferee or creditor of the beneficiary cannot compel the trustee to pay any part of the income or principal." *Restatement (Second) of Trusts* §155(1) (ALI 1959).

i. "In a discretionary trust it is the nature of the beneficiary's interest rather than a provision forbidding alienation which prevents the transfer of the beneficiary's interest. The rule . . . is not dependent upon a prohibition of alienation by the settlor; but the transferee or creditor cannot compel the trustee to pay anything to him because the beneficiary could not compel payment to himself or application for his own benefit." *Restatement (Second) of Trusts* §155 cmt. b (ALI 1959).

ii. "A transferee or creditor of a trust beneficiary cannot compel the trustee to make discretionary distributions if the beneficiary personally could not do so." *Restatement (Third) of Trusts* §60, cmt. e (ALI 2003).

iii. Similarly:

Where by the terms of the trust a beneficiary is entitled only to so much of the income or principal as the trustee in his uncontrolled discretion shall see fit to give him, he cannot compel the trustee to pay to him or to apply for his use any part of the trust property. In such a case, an assignee of the interest of the beneficiary cannot compel the trustee to pay any part of the trust property, nor can creditors of the beneficiary reach any part of the trust property . . . If the beneficiary himself cannot compel the trustee to pay over any part of the trust fund, his assignee and his creditors are in no better position. *Scott & Fratcher, supra*, §155, at 152-54.

c. The courts will generally not substitute their judgment for the judgment of a trustee as long as the trustee exercises the trustee's judgment in good faith and within reasonable bounds.

d. In general, a court will only interfere with a trustee's exercise of or failure to exercise a discretionary distribution power when an abuse of discretion has been shown to have occurred.

i. “At the heart of this issue, then, is the critical inquiry whether any court can substitute its discretion for that which a settlor has vested exclusively in the trustee, and thereby force the premature distribution of trust property by distributing same not to the beneficiary but to his seizing creditors. We are persuaded that question must be answered in the negative.” *Read v. U.S. ex rel. Department of Treasury*, 169 F.3d 243, 254 (5th Cir. 1999).

6. *Support Trusts*

a. Like a discretionary trust (and unlike a spendthrift trust), a support trust is protective of the beneficiary’s interest because of the nature of the beneficiary’s trust interest: the beneficiary is only entitled to distributions that are, within the trustee’s discretion, required for the beneficiary’s support.

b. “[I]f by the terms of a trust it is provided that the trustee shall pay or apply only so much of the income and principal or either as is necessary for the education or support of the beneficiary, the beneficiary cannot transfer his interest and his creditors cannot reach it.” *Restatement (Second) of Trusts* §154 (ALI 1959).

i. “In a trust for support it is the nature of the beneficiary’s interest rather than a provision forbidding alienation which prevents the transfer of the beneficiary’s interest. The rule stated in this Section is not dependent upon a prohibition of alienation by the settlor; but the transferee or creditor cannot compel the trustee to pay anything to him, because the beneficiary could not compel payment or compel application in any way except for the restricted purpose set out in the terms of the trust.” *Restatement (Second) of Trusts* §154 cmt. b (ALI 1959).

7. *Trusts With Forfeiture Provisions*

a. As noted, a spendthrift trust is protective of the beneficiary’s interest because of a demonstration of the settlor’s intent that the trust be held for the benefit of the beneficiary, and not the beneficiary’s creditors, and the beneficiary’s creditors have no real basis to complain since they have lost nothing that they had previously. And, again as noted, a discretionary trust or a support trust is protective of a beneficiary’s interest because the tenuous nature of the beneficiary’s interest does not rise to the level of a property interest subject to attachment. A trust with a forfeiture provision combines each of these elements:

i. The forfeiture provision is an expression of the settlor’s intent that the beneficiary’s creditors not have access to the trust fund, and the beneficiary’s creditors have no basis for complaint since they have lost nothing that they had previously.

ii. The forfeiture clause might also be thought to be the epitome of a tenuous beneficial interest.

G. Why Would Spousal Support Claims Be An Exception To Trust Protections?

1. Spouses with support claims are sometimes called “exception creditors” because their claims are “excepted” from trust protections under certain circumstances. For purposes of comparison, other exception creditors sometimes include:

a. Creditors with claims for necessities provided to the beneficiary;

- b. Creditors with claims for services to protect the beneficiary's interest in the trust;
 - c. Claims by a governmental entity;
 - d. Children with child support claims; and
 - e. (Very rarely) involuntary tort creditors.
2. The exception for spousal support claims and the claims of dependent children is recognized in both the Restatement of the Law of Trusts and, to a significantly lesser extent, the Uniform Trust Code.
 - a. Section 59(a) of the *Restatement (Third) of Trusts* (ALI 2003), provides that “[t]he interest of a beneficiary in a valid spendthrift trust can be reached in satisfaction of an enforceable claim against the beneficiary for support of a child, spouse, or former spouse.”
 - b. This section is carried forward from section 157 of the *Restatement (Second) of Trusts* (ALI 1959), which provided that “[a]lthough a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary by the wife or child of the beneficiary for support, or by the wife for alimony.”
 - c. Uniform Trust Code §503(b) and (c) provide that:

[a] spendthrift provision is unenforceable against a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance....A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.
 - d. The comment to this section of the Uniform Trust Code notes that the quoted subsection “does not authorize the spousal or child claimant to compel a distribution from the trust.” Instead, Uniform Trust Code §504(c) provides that:

To the extent a trustee has not complied with a standard of distribution or has abused a discretion: (1) 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 (2) 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.
 - e. Per the comment to section 504 of the Uniform Trust Code:

Before fixing this amount, the court having jurisdiction over the trust should consider that in setting the respective support award, the family court has already considered the respective needs and assets of the family.
 3. There are several theoretical bases under which spouses holding support claims are held to be entitled to special access against an otherwise protected trust.
 4. *The Settlor's Intent*
 - a. The court may find that the settlor did not actually intend for the trust's spendthrift protections to apply against the beneficiary's spouse or minor dependents. Similarly, the court may find the beneficiary's spouse or minor dependent to be an additional, if implied, beneficiary of the trust.
 - i. Consider the absurdity of believing that the settlor actually intended to name the future ex-in-law or ex-daughter-in-law as a beneficiary of the settlor's largess. Perhaps the most that might be said here of the settlor's “intent” is that the settlor never actually considered the matter.

b. “Where the trust is created for the support of the beneficiary . . . the fact that he has dependents is to be taken into consideration . . . The result is much the same as though the trust were created, not solely for the benefit of the beneficiary, but for the benefit of himself and his dependents.” Scott & Fratcher, *The Law of Trusts* §157.1, at 190–191.

c. In *Schwager v. Schwager*, 109 F.2d 754 (7th Cir. 1940), the Seventh Circuit Court of Appeals noted that:

no decision, other than predicated upon a statutory provision, has permitted a wife or child to reach a spendthrift trust created by a third party for the benefit of the husband without relying in whole or in part upon an intention express or implied, that the trust fund be thus employed . . .

d. The *Schwager* court further noted, however, that:

courts have extended themselves at great length to ascertain a favorable intent on the part of the settlor and, in fact, in some of the cases have indulged in a reasoning indicative of the desire sought to be achieved. In such cases, the intent has been found because of a failure to express a non-intent. *Id.* at 757.

5. Definition Of “Creditor” And “Debt”

a. Not necessarily distinct from the question of the settlor’s intent, the court may find that the beneficiary’s spouse, ex-spouse, and dependent children are not true “creditors” of the beneficiary. Similarly, the court may find that the beneficiary’s legal obligation of support is not a “debt.” On either of these bases, a spendthrift provision, at least, would not apply to prevent access to the trust fund by a spouse, ex-spouse, or dependent child for support.

i. “The will under which the trust in the instant case is created contains a spendthrift clause, prohibiting payment to creditors of the cestui, and it is urged that this provision bars the application. The obligation of a parent for the support of his child does not arise from a creditor-debtor relationship. It is not a debt within the contemplation of the testatrix or the interpretation of the clause.” *Marsh v. Scott*, 63 A.2d 275, 279 (N.J. Super. Ct. Ch. Div. 1949).

ii. “In this State alimony is not a debt. It is a social obligation as well as a pecuniary liability; it is founded on public policy and is for the good of society.” *England v. England*, 223 Ill. App. 549 (Ill. App. 3 Dist. 1922), *citing Deen v. Bloomer*, 191 Ill. 416 (Ill. 1901).

iii. “The question thus presented is whether or not a wife, seeking support from her husband, is a creditor within the meaning of the word as it is used in §3536 and in ITEM II of the will. If the wife is a creditor, then seizure of any of the trust assets on her behalf is prohibited by the terms of §3536 and of ITEM II of the will. The Chancellor concluded that the wife was not a creditor in that meaning of the word, and we agree with that conclusion . . . A wife, under such circumstances, can hardly be a creditor who is defined as ‘one to whom a debt is owing by another person who is the debtor’, Black’s Law Dictionary, Rev. 4th ed.” *Garretson v. Garretson*, 306 A.2d 737, 740–741 (Del. 1973).

b. The suggestion, however, that the beneficiary’s spouse, ex-spouse, and dependent children are not true “creditors” of the beneficiary, or that the beneficiary’s legal obligation of support is not a “debt,” is far from universally conceded.

i. See, for example, *Spencer v. Spencer*, 802 A.2d 215, 223 (Conn. App. Ct. 2002) (“Because the plaintiff obtained a judgment against the defendant for alimony and child support, her status is that of a creditor”).

c. Moreover, consider the difficulty that a former spouse making a claim pursuant to a marital contract might have avoiding being branded a “creditor” seeking to enforce a “debt.” Also, consider whether the spouse entitled to support would be considered a “creditor” for fraudulent transfer purposes if the moneyed spouse had fraudulently transferred all of his or her assets to a new spouse.

6. *Public Policy Considerations*

a. A trust beneficiary should not be allowed to benefit from a trust while at the same time neglecting social and legal obligations to the beneficiary’s child, spouse, or former spouse.

b. “[F]reedom of disposition in this country allows a property owner to impose conditions and limitations on beneficial interests he or she creates in a trust, but only to the extent they are not illegal or contrary to public policy.” Reporter’s Notes on §59 of the *Restatement (Third) of Trusts*, Comments a–a(2).

c. “Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against him [or her] for support by his [or her spouse] or children....[because the] beneficiary should not be permitted to have the enjoyment of his [or her] interest under the trust while neglecting to support his [or her] dependents.” *Restatement (Second) of Trusts* §157, cmt. b.

d. Paragraph (b) of the General Comment to section 59 of the *Restatement (Third) of Trusts* provides that “[o]n public-policy grounds, the beneficiary should not be permitted to enjoy a beneficial interest in a trust while neglecting the support of dependents.”

e. Stated more emphatically, “[i]t would be shocking indeed to permit a husband to receive and enjoy the whole of the income from a large trust fund and to make no provision for his needy dependents.” Scott & Fratcher, *supra*, §157.1, at 192.

i. In addition, it has been said that the state has an interest in ensuring that those who suffer as a result of nonpayment of support and alimony do not become wards of the state.

ii. Arguably, spendthrift trusts are sanctioned in the first instance to ensure that the beneficiary has necessary living expenses, and that part of a beneficiary’s necessary living expenses is the cost of supporting the beneficiary’s spouse and children. See, e.g., *Zinke v. Hipkins*, 135 N.E. 899 (1922).

f. Albeit with regard to child support, not spousal support, the holding of *Shelley v. Shelley*, 354 P.2d 282, 286 (Ore. 1960), notes that:

We have no hesitation in declaring that public policy requires that the interest of the beneficiary of a trust should be subject to the claims for support of his children Certainly, the defendant will accept the societal postulate that parents have the obligation to support their children. If we give effect to the spendthrift provision to bar the claims for support, we have the spectacle of a man enjoying the benefits of a trust immune from claims which are justly due, while the community pays for the support of his children We do not believe that it is sound policy to use the welfare funds of this state in support of the beneficiary’s children, while he stands behind the shield of immunity created by a spendthrift trust provision. To endorse such a policy and to permit the spectacle which we have described above would be to invite disrespect for the administration of justice.

g. “Although a spendthrift clause can often be construed as not intended to exclude the beneficiary’s dependents, that is neither the rationale nor the limit of this exception to the general effect . . . of spendthrift protection. On public-policy grounds, the beneficiary should not be permitted to enjoy a beneficial interest in a trust while neglecting the support of dependents.” Comments on Clause (a), Paragraph b, Section 59 of the *Restatement (Third) of Trusts* (ALI 2003).

h. According to the Reporter’s Notes on section 59, Comments a–a(2), of the *Restatement (Third) of Trusts*:

Significant policy support for the rule of this Section (and the manner of its implementation under this Comment) is also found in federal Bankruptcy Code § 523(a)(5), making nondischargeable the debtor’s obligations for alimony, maintenance, or support of a spouse, former spouse, or child.

i. 11 U.S.C. §523(a)(5) provides: “A discharge under . . . this title does not discharge an individual debtor from any debt . . . for a domestic support obligation.”

ii. See also 11 U.S.C. §523(a)(15), which provides:

A discharge under . . . this title does not discharge an individual debtor from any debt . . . to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit.

i. In a similar vein, the Employee Retirement Income Security Act of 1974 requires that each plan prohibit the assignment or alienation of benefits, but provides that benefits may be reached by a qualified domestic relations order for child support, alimony, and marital property rights. See 29 U.S.C. §1056(d)(1); I.R.C. §§401(a)(13)(B), 414(p).

i. But is reference to section 523(a)(5) (or section 523(a)(15) for that matter) of the Bankruptcy Code disingenuous? Although, without a doubt, the existence of an exception to discharge for obligations for alimony, maintenance, or support of a spouse, former spouse, or child does demonstrate a public policy, it can hardly be said to provide significant policy support for an exception to the protection afforded by a trust set up by a third party without any independent obligation to the beneficiary’s spouse, former spouse, or child.

ii. In this regard, consider section 541(c)(2) of the Bankruptcy Code, which excludes from the bankruptcy estate all property subject to a restriction on transfer that is enforceable under “applicable nonbankruptcy law” and contains no reference to any exception creditors independent of those that might exist under applicable nonbankruptcy law, thus demonstrating some circularity of reasoning in the comment to the Restatement.

j. Not all authority on the public policy question points to an exception for spouses with support claims. In a number of jurisdictions the dominant public policy consideration is the importance of effectuating the settlor’s intent. A key point in this regard is that, absent a self-settled spendthrift trust, the undeniably important duty of support is a duty imposed on the beneficiary, and is not a duty imposed on the settlor.

i. “When a trust of this kind has been created, the law holds that the donor has an individual right of property in the execution of the trust; and to deprive him of it would be a fraud on his generosityIt is always to be remembered that consideration for the beneficiary does not even

in the remotest way enter into the policy of the law; it has regard solely to the rights of the donor. Spendthrift trusts can have no other justification than is to be found in considerations affecting the donor alone. They allow the donor to so control his bounty, through the creation of the trust, that it may be exempt from liability for the donee's debts, not because the law is concerned to keep the donee from wasting it, but because it is concerned to protect the donor's right to property." *In re Morgan's Estate*, 72A, 498, 499 (1909).

ii. "It would serve no good purpose for us to enter into a castigation of the husband for his plain and apparently willful disregard of an obligation imposed upon him by the law of Wisconsin and, in fact, by the laws of all civilized jurisdictions. No doubt there is a thoroughly established public policy which imposes such obligation upon a husband. We are convinced, however, that there is nothing in such policy which requires or, in fact, permits the destruction of a spendthrift trust under the circumstances presented. In the first place, the policy that a person may dispose of his property according to his own wishes is equally well established. In the instant case, for instance, the testatrix was under no obligation to her son's wife and children. She was under no obligation to bequeath her property to her son in trust or otherwise. She was at perfect liberty to give it all to a stranger had she so desired. Being thus empowered, it is difficult to ascertain by any ordinary process of reasoning, how or why she should be precluded from disposing of it as she did. The wife and children were not damaged—they were no worse off than before. They were deprived of no means afforded by the law to enforce the duty imposed upon the husband for alimony and support. It seems to us that this public policy which plaintiffs seek to invoke, and which finds some support in the authorities referred to, has been inaptly applied. It is directed solely at the husband, and may be invoked only against him." *Schwager v. Schwager*, 109 F.2d 754, 759-60 (7th Cir. 1940).

H. Planning For The Possibility Of A Domestic Relations Attack

1. Use A Discretionary Trust

- a. Because the interest of a beneficiary of a discretionary trust does not, in the first instance, qualify as a property right, even preferred creditors are often precluded from accessing a discretionary trust in satisfaction of their claims against the beneficiary. *See, e.g., First Northwestern Trust Co. of South Dakota v. Internal Revenue Service*, 622 F.2d 387 (8th Cir. 1980).
- b. "Courts appear more willing to allow claims against spendthrift trusts and trusts for support than against discretionary trusts In a trust that contains a spendthrift clause as the only protective device, the beneficiary has an absolute right to distributions of income, principal, or both. The spendthrift clause protects the assets as long as they remain in the trustee's hands. Because there is no question that the beneficiary will ultimately receive the distributions, the only real question for the decision maker is whether the public policy favoring payment of support or alimony obligations outweighs the settlor's intent that the assets be protected A trust that provides that the trustee is to make distributions for the support of the beneficiary is conceptually similar to a spendthrift trust. The amount to which the beneficiary is entitled is based on his support needs. The trustee has no power over distributions When a discretionary trust is involved, however, the beneficiary does not have a right to distribution until the trustee exercises discretion." Dessin, Carolyn L.,

Feed a Trust and Starve a Child: The Effectiveness of Trust Protective Techniques Against Claims for Support and Alimony, 10 Ga. St. U. L. Rev. 691, at 707-08.

- c. Some states distinguish between the protection afforded by discretionary trusts and mere spendthrift trusts by statute. For example, section 5805.02(B) of the Ohio Revised Code provides that:

A spendthrift provision is unenforceable against...[t]he beneficiary's child or spouse who has a judgment or court order against the beneficiary for support, but only if distributions can be made for the beneficiary's support or the beneficiary is entitled to receive mandatory distributions under the terms of the trust.

- i. Conversely, §5805.03 of the Ohio Revised Code provides that:

Notwithstanding anything to the contrary in division (B) of section 5805.02 of the Revised Code, no creditor or assignee of a beneficiary of a wholly discretionary trust may reach the beneficiary's interest in the trust, or a distribution by the trustee before its receipt by the beneficiary, whether by attachment of present or future distributions to or for the benefit of the beneficiary, by judicial sale, by obtaining an order compelling the trustee to make distributions from the trust, or by any other means, regardless of whether the terms of the trust include a spendthrift provision.

2. *Clearly State The Settlor's Intent*

- a. In those jurisdictions that do not specifically cite that a spouse with a support claim is an exception creditor, either under governing caselaw or pursuant to statutory authority, the issue is governed by the settlor's intent.

i. "The donee's obligation to pay alimony or support money, paramount though it may be, should not, in our opinion, transcend the right of the donor to do as he pleases with his own property and to choose the object of his bounty If alimony or support money is to be an exception to the protection offered by spendthrift provisions, it must be by some justifiable interpretation of the donor's language by which such implied exception may be fairly construed into the instrument of trust. It cannot logically arise out of the character of the obligation." *Erickson v. Erickson*, 266 N.W.2d 161,164 (Minn. 1943).

ii. "It is the donor's intent, not the character of the donee's obligation, that controls the availability and disposition of the trust. . . . The donee's obligation to pay maintenance does not transcend the right of the donor to do as she pleases with her own property." *In Re the Marriage of Vallie B. Kritz v. James J. Kritz, Jr.*, 1996 WL 291616, at *1, (Minn. Ct. App. June 4, 1996).

I. **Some Final Thoughts**

1. Regarding the public policy in favor of providing for the support of dependents:
 - a. Is it the job of the judiciary to determine public policy when the legislature has not yet spoken? When spendthrift trust protections are set forth by statute, the absence of statutory exception creditors would seem to indicate a legislative determination that the strong public policy in favor of enforcing the settlor's intent trumps any public policy in favor of providing for the support of dependents out of trust assets.
 - b. If "public policy" should compel the attachment of assets held within an otherwise protective trust, why does it not impinge on an individual's freedom of disposition more broadly? Does public policy not also require the imposition of some sort of forced heirship, at least in favor of one's dependent children?

- c. Is it not an important public policy to provide for the enforcement of the legitimate claims of creditors of all stripes? For example, are involuntary tort creditors less worthy of collecting on their claims than a sophisticated business person who chose to marry knowing that his or her potential future claims for spousal support might not be subject to recovery from the future ex-spouse's beneficial trust interest? The creation of even a limited class of exception creditors is a slippery slope that "opens the door" to arguments by other classes of creditors.
 - d. The creation of a class of exception creditors has the potential to harm other trust beneficiaries who are innocent of whatever issues form the claim against the debtor beneficiary.
 2. One must distinguish between including the beneficiary's minor children as exception creditors and including the spouse as an exception creditor:
 - a. Not distinguishing between the beneficiary's minor children and the beneficiary's spouse fails to recognize the substantial equalization of the sexes that has occurred in American society over the course of the past century.
 - b. Contrary to the suggestion of most authorities, in the author's opinion the beneficiary's spouse is significantly more like a contract creditor who proceeded to extend credit cognizant of the potential future difficulty of collection than the involuntary tort creditor who could not protect his or her own interests in the creditor's interaction with the beneficiary. After all, all states recognize and enforce prenuptial agreements, which are becoming more and more common, including among individuals of more modest means.
 - c. Consider the conflict inherent in including both a spouse and dependent children as exception creditors. Consider further the conflict inherent in including spouses and dependents of multiple marriages as exception creditors.
 3. Consider that provision under the law for exception creditors is merely a trap for the unwary, be that the settlor or the settlor's attorney. Alternatively, consider that for those who are aware of the issue, the effect of exception creditors is to cause the settlor to alter the settlor's dispositive plan and to leave his or her bounty to someone other than the beneficiary that the settlor truly wanted to inherit.
 - a. Consider the absurdity of the following situation, which is a real client matter with which the author is currently involved:
 - i. W-2 is married to H. Before getting married, W-2 and H entered into a prenuptial agreement that included mutual waivers of estate rights, including any applicable right of election.
 - ii. H was previously married to W-1. H has a substantial ongoing support obligation to W-1, which he is unable to meet and which he has also been unable to modify, either by consent or through the courts. H is currently in default of his support obligation to W-1.

iii. Although, as noted, the prenuptial agreement between W-2 and H included mutual waivers of estate rights, including the right of election, W-2 wants H to continue to enjoy the lifestyle to which he has become accustomed while married to W-2, should he survive W-2.

iv. If W-2 and H live in a jurisdiction that includes spouses with support claims as exception creditors, W-2 has only the following two options:

(1) Disinherit H.

(2) Provide for H, and by implication W-1, even though W-2 might leave H his inheritance in trust.

4. An interesting approach is taken by Professor Adam Hirsch in *Spendthrift Trusts and Public Policy: Economic and Cognitive Perspectives*, 73 Washington U. L.Q. 1, 82-83 (1995). Professor Hirsch writes:

I would permit involuntary creditors in general to reach spendthrift trusts, but at the same time permit benefactors to name in the instrument of trust specific involuntary creditors who are nonetheless barred from tapping into it. This “exception to the exception” would apply where the benefactor is aware of an existing claim or anticipates a claim by an individual creditor whom she specifically desires not to satisfy—hence, where a rule permitting satisfaction by that creditor is most likely to induce the benefactor to take preemptive measures. I hasten to add that not a single jurisdiction follows this approach today, but a pervasive analogy can be found in a close relative of the spendthrift trust, known as the “supplemental needs trust.”

5. To the extent that a spouse with a support claim is to be made an exception creditor, however, the author’s preferred approach is that of the Uniform Trust Code, which, of course, provides that a spouse or former spouse may obtain a court order attaching present or future distributions to or for the benefit of the beneficiary, but cannot force a sale of the beneficiary’s interest. This approach negates the possibility of the beneficiary enjoying a large trust fund while the beneficiary’s needy dependents “starve” or are required to seek support from the state and, to the greatest extent possible, respects the settlor’s freedom of disposition.

STATE	STATUTE AND/OR RELEVANT CASELAW	GENERAL RULE
Alabama	Ala. Code §§ 19-3B-503(b)(1), (c)	A spendthrift provision is unenforceable against a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance. The claimant may obtain a court order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.
Alaska	Alaska Stat. §§ 34.40.110(a), (b)(4)	A person who in writing transfers property in trust may provide that the interest of a beneficiary of the trust, including a beneficiary who is the settlor of the trust, may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee. There is no stated statutory exception for alimony creditors. However, it should be noted that a creditor of the settlor holding a child support judgment or order may satisfy that claim out of the trust if at the time of the transfer to the trust the settlor was in default by thirty or more days of making a payment due under a child support judgment or order.
Arizona	Ariz. Rev. Stat. Ann. § 14-10501 et seq.	A court of competent jurisdiction may, in its discretion, allow the beneficiary's spouse to reach the beneficiary's interest in satisfaction of an enforceable alimony claim against the beneficiary.
Arkansas	Ark. Code Ann. § 28-73-502; <i>Council v. Owens</i> , 770 S.W.2d 193 (Ark. Ct. App. 1989)	No statutory exception for alimony exists under the spendthrift provision of the Arkansas Trust Code. However, a judicial exception for alimony creditors predates the enactment of the current iteration of the Arkansas Trust Code.
California	Cal. Prob. Code §§ 15305(c), (d)	Notwithstanding any provision in the trust instrument, and whether or not the beneficiary has the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, the court may, to the extent that the court determines it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of a judgment for support of the trust beneficiary's spouse or former spouse out of all or part of future payments that the trustee, pursuant to the exercise of the trustee's discretion, determines to make to or for the benefit of the beneficiary.
Colorado	<i>Snyder v. O'Conner</i> , 102 Colo. 567 (1938); <i>In re Marriage of Balanson</i> , 25 P.3d 28 (Colo. 2001)	As a matter of caselaw, spendthrift trusts are valid. There is no caselaw that indicates an exception to spendthrift trust protections for spousal support claims. There is, however, caselaw to the effect that a beneficiary's remainder interest in a trust from which a trustee may, in the trustee's discretion, distribute income and principal, constitutes "property" for purposes of property division in a marital dissolution case.
Connecticut	Conn. Gen. Stat. Ann. § 52-321; <i>Spencer v. Spencer</i> , 802 A.2d 215 (App. Ct. 2002)	Caselaw has held that the exercise of discretion by the trustee of a spendthrift trust is subject to the court's control only to the extent that an abuse has occurred and bars creditors, including alimony and child support creditors, from reaching a distribution unless, and until, it is in the hands of the beneficiary.
Delaware	Del. Code Ann. tit. 12 § 3536(a); <i>Garretson v. Garretson</i> , 306 A.2d 737 (Del. 1973)	A creditor of a trust beneficiary shall have only such rights against the beneficiary's interest in the trust or the property of the trust as shall be expressly granted to the creditor by the terms of the instrument that creates or defines the trust or by the laws of Delaware. This rule applies regardless of the nature or extent of the beneficiary's interest or of any action taken or that might be taken by the beneficiary. Notwithstanding the foregoing, however, caselaw has determined that a spouse, seeking support from other spouse, is not a creditor within the meaning of the word as it is used in the statute.

STATE	STATUTE RELEVANT CASELAW	AND/OR	GENERAL RULE
District of Columbia	DC Code §19-1305.02		A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under DC Code §19-1305.03 allowing a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance to attach present or future distributions when payable under the terms of the trust to or for the benefit of the beneficiary.
Florida	Fla. Stat. Ann. §§736.0503(2)(a), (3)		A spendthrift provision is unenforceable against a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance. The claimant may obtain from a court, or pursuant to the Uniform Interstate Family Support Act, an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. The remedy provided applies only as a last resort upon an initial showing that traditional methods of enforcing the claim are insufficient.
Georgia	Ga. Code Ann. §53-12-28(c)(4)		A spendthrift provision prohibiting involuntary transfers is not valid as to the alimony claims against a distribution to a beneficiary, other than a beneficiary who has a medically determined physical or mental disability that substantially impairs the beneficiary's ability to provide for the beneficiary's care or custody and constitutes a substantial handicap.
Hawaii	<i>Richard D. Welsh v. Alice Kamohala Campbell, et al.</i> , 41 Haw. 106 (Haw. 1955)		As a matter of caselaw, spendthrift trusts are valid. There is no caselaw that indicates an exception to spendthrift trust protections for spousal support claims.
Idaho	Idaho Code Ann. §15-7-502(1)		A settlor may provide in the terms of the trust that the beneficiary's interest in the income, the principal, or both may not be voluntarily or involuntarily transferred before the trustee's payment or delivery of the interest to the beneficiary. There is no stated statutory exception for alimony creditors.
Illinois	735 ILCS 5/2-1403; <i>Müller v. Miller</i> , 643 N.E.2d 288 (Ill. Ct. App. 1994), <i>appeal denied</i> , 647 N.E.2d 1011 (1995)		No court shall order the satisfaction of a judgment other than for unpaid child support obligations owed by the beneficiary out of any property held in trust for the judgment debtor if the trust has, in good faith, been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor. The legislature has shown its intent that garnishment of spendthrift trusts be restricted to collection of unpaid child support by the limitation in the language of this section to "child support," rather than to "maintenance and child support," or simply "support."
Indiana	Ind. Code §30-4-3-2(a); <i>Clay v. Hamilton</i> , 116 Ind. App. 214, 224 (1945)		The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee. Although there is no stated statutory exception for alimony creditors, "[i]t is well settled in Indiana that a judgment for alimony is not a "debt growing out of, or founded upon a contract, express or implied" and that a debtor cannot claim exemption of any property from execution upon such a judgment Therefore, we conclude that the net income of said farm in the hands of the trustee, or the beneficiary after the same has been paid by the trustee, is subject to seizure in satisfaction of appellee's judgment for alimony."

STATE	STATUTE RELEVANT CASELAW	AND/OR	GENERAL RULE
Iowa	Iowa Code §633A.2301; <i>Roorla v. Roorla, et al.</i> , 300 N.W. 294 (Iowa 1941)		A term of a trust providing that the interest of a beneficiary is held subject to a “spendthrift trust,” or words of similar import, is sufficient to restrain both voluntary and involuntary transfers of the beneficiary’s interest. There is no stated statutory exception for alimony creditors, and caselaw has also declined to provide an exception for alimony creditors.
Kansas	K.S.A. §58a-502		Kansas adopted a form of the Uniform Trust Code; its statute provides that a spendthrift provision is valid and a beneficiary may not transfer an interest in a trust in violation of the provision, nor may a creditor or assignee of the beneficiary reach the interest or a distribution by the trustee before its receipt by the beneficiary.
Kentucky	Ky. Rev. Stat. Ann. §381.180(6)(a)		Although a trust is a spendthrift trust, the beneficiary’s interest is subject to the satisfaction of an enforceable claim against the beneficiary by the spouse of the beneficiary for support or maintenance.
Louisiana	La. Rev. Stat. Ann. §9:2005(1)		Notwithstanding any stipulation in the trust instrument to the contrary, the proper court, in summary proceedings to which the trustee, the beneficiary, and the beneficiary’s creditor shall be parties, may permit seizure of any portion of the beneficiary’s interest in trust income and principal in its discretion and as may be just under the circumstances if the claim is based on a judgment for alimony or maintenance of a person whom the beneficiary is obligated to support.
Maine	Me. § Rev. Stat. Ann. tit. 18-B, §§502(3), 503		A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. A specific statutory provision provides that there are no exceptions to this rule, except as set forth in sections 504, 505, and 506 of Title 18-B of the Maine Revised Statutes, none of which relate to claims for alimony.
Maryland	Md. Code Ann. Est. & Trusts §14-402(a) (3); <i>Safe Deposit & Trust Co. of Baltimore v. Robertson</i> , 65 A.2d 292 (Md. 1949)		By statute, the beneficiary may not have any interest in trust property that can be assigned or attached. However, caselaw has held that as a matter of public policy funds in a spendthrift trust can be reached to satisfy an enforceable claim against a beneficiary by an ex-spouse for alimony.
Massachusetts	<i>Lauricella v. Lauricella</i> , 565 N.E.2d 436 (Mass. 1991)		Caselaw has determined that a spouse’s present, enforceable, equitable right to use trust property for his or her benefit is a marital asset subject to property distribution as a part of the divorce proceedings.
Michigan	<i>Converston v. Kellogg</i> , 357 N.W.2d 705 (Mich. Ct. of App. 1984)		The income of a spendthrift trust of which a former husband is the current income beneficiary may be reached to satisfy his former wife’s claim for alimony or separate maintenance.
Minnesota	<i>Erickson v. Erickson</i> , 266 N.W. 161 (Minn. 1936)		Minnesota makes no exception to spendthrift trust protections for claims for alimony.

STATE	STATUTE RELEVANT CASELAW	AND/OR	GENERAL RULE
Mississippi	Miss. Code Ann. §91-9-503		Except when the settlor is a beneficiary of a trust created by the settlor, if the trust instrument provides that a beneficiary's interest in trust income or principal or both is not subject to voluntary or involuntary transfer, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary. There is no stated statutory exception for alimony creditors.
Missouri	Mo. Rev. Stat. §456.5-503(2)		Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former spouse who has a judgment against the beneficiary for support or maintenance may obtain a court order attaching present or future trust income. If there is more than one permissible distributee, the court may grant relief as is equitable under the circumstances.
Montana	MCA §§72-33-301, 302		If the trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer, the beneficiary's interest under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary. There is no stated statutory exception for alimony creditors.
Nebraska	Neb. Rev. Stat. Ann. §§30-3848(b), (c)		A spendthrift provision is unenforceable against a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance. The claimant may obtain a court order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.
Nevada	Nev. Rev. Stat. §§166.080, 120		A spendthrift trust restrains and prohibits generally the assignment, alienation, acceleration, and anticipation of any interest of the beneficiary under the trust by the voluntary or involuntary act of the beneficiary, or by operation of law or any process or at all. Payments by the trustee to the beneficiary shall be made only to and into the proper hands of the beneficiary and not by way of acceleration or anticipation, nor to any assignee of the beneficiary, nor to or upon any order, written or oral, given by the beneficiary, whether such assignment or order be the voluntary contractual act of the beneficiary or be made pursuant to or by virtue of any legal process in judgment, execution, attachment, garnishment, bankruptcy, or otherwise, or whether it be in connection with any contract, tort, or duty. The beneficiary shall have no power or capacity to make any disposition whatever of any of the income by the beneficiary's order, voluntary or involuntary, and whether made upon the order or direction of any court or courts, whether of bankruptcy or otherwise; nor shall the interest of the beneficiary be subject to any process of attachment issued against the beneficiary, or to be taken in execution under any form of legal process directed against the beneficiary or against the trustee, or the trust estate, or any part of the income thereof, but the whole of the trust estate and the income of the trust estate shall go to and be applied by the trustee solely for the benefit of the beneficiary, free, clear, and discharged of and from any and all obligations of the beneficiary whatsoever and of all responsibility therefor. The beneficiary or beneficiaries of a spendthrift trust shall be named or clearly referred to in the writing. No spouse, former spouse, child, or dependent shall be a beneficiary unless named or clearly referred to as a beneficiary in the writing.

STATE	STATUTE RELEVANT CASELAW	GENERAL RULE
New Hampshire	N.H. Rev. Stat. Ann. §§564-B:5-503(b)(2), (c)	A spendthrift provision is unenforceable against a beneficiary's spouse or former spouse who has a judgment or court order against the beneficiary for alimony, but only for and to the extent that the judgment or court order expressly specifies the alimony amount attributable to the most basic food, shelter, and medical needs of the spouse or former spouse. The claimant may obtain a court order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.
New Jersey	<i>Marsh v. Scott</i> , 63 A.2d 275 (N.J. Super. Ct. Ch. Div. 1949)	Caselaw has stated that the obligation of a parent for the support of a child does not arise from a creditor-debtor relationship and is not a debt within the interpretation of the spendthrift clause. No statute or caselaw indicates whether a similar exception might exist for alimony claims, or whether an explicit statement of intent would alter the stated result.
New Mexico	N.M. Stat. Ann. §46A-5-503(B)(1), (C)	A spendthrift provision is unenforceable against a beneficiary's spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance. The claimant may obtain a court order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. The order attaching present or future distributions to or for the benefit of the beneficiary shall be the exclusive remedy available to a claimant against whom a spendthrift provision cannot be enforced.
New York	N.Y. C.P.L.R. §5205(c)	All property while held in trust for a judgment debtor, when the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor, is exempt from application to the satisfaction of a money judgment except as regards a qualified domestic relations order or an order of support, alimony, or maintenance of any court of competent jurisdiction to enforce arrears/past due support, whether or not the arrears/past due support has been reduced to a money judgment.
North Carolina	N.C. Gen. Stat. §36C-5-502(c)	A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under N.C. Gen. Stat. § 36C-5-503(b) for a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance.
North Dakota	N.D. Cent. Code §§59-13-03(2)(a), (4)	A spendthrift provision is unenforceable against a beneficiary's spouse or former spouse who has a judgment or court order against the beneficiary for support or maintenance. A claimant may obtain a court order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances. If there is more than one permissible distributee, the court may grant such relief as is equitable.

STATE	STATUTE RELEVANT CASELAW	AND/OR	GENERAL RULE
Ohio	Ohio Rev. Code Ann. §§5805.02(B)(1), (C), (D)		A spendthrift provision is unenforceable against the beneficiary's spouse who has a judgment or court order against the beneficiary for support, but only if distributions can be made for the beneficiary's support or the beneficiary is entitled to receive mandatory distributions under the terms of the trust. A claimant may obtain from the court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to the relief that is appropriate under the circumstances, considering among other factors determined appropriate by the court the support needs of the beneficiary, the beneficiary's spouse, and the beneficiary's dependent children or, with respect to a beneficiary who is the recipient of public benefits, the supplemental needs of the beneficiary if the trust was not intended to provide for the beneficiary's basic support. A spendthrift provision is, however, enforceable against the beneficiary's former spouse.
Oklahoma	Okla. Stat. Ann tit. 60, §175.25(B)(1)(a)		Notwithstanding a provision in the terms of a trust restraining the alienation of the beneficiary's interest, the interest shall be entitled to be reached in the satisfaction of claims for support of a spouse to the extent of all income due or to accrue in the future to the beneficiary.
Oregon	Or. Rev. Stat. §130.310(2)		Even if a trust contains a spendthrift provision, the holder of a judgment, court order, or administrative order against a beneficiary for support or maintenance of the beneficiary's spouse or former spouse may obtain an order from a court of this state authorizing garnishment or other execution against present or future distributions to or for the benefit of the beneficiary. The court may issue an order authorizing execution against such amount as the court determines to be 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. Distributions subject to execution include distributions required by the express terms of the trust, such as mandatory payments of income, and distributions the trustee has otherwise decided to make, such as through the exercise of discretion.
Pennsylvania	20 Pa.C.S. §§7742, 7743		A trust instrument providing that a beneficiary's interest 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, and a beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision. Furthermore, except as otherwise provided in the subchapter, a creditor or assignee of the beneficiary of a spendthrift trust may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. There is an exception to the enforceability of a spendthrift trust under 20 Pa.C.S. §7743(b)(2)(c), however, for any person who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary's interest in the trust's income, and that person may obtain a court order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.
Rhode Island	R.I. Gen. Laws §18-9.1-1		Any person creating an express trust for the benefit of any other person or persons may, by terms of the trust, establish valid restraints on the voluntary and/or involuntary transfer of interests in the express trust by its beneficiaries, whether by way of anticipation or acceleration, assignment, hypothecation, or by virtue of legal process in judgment, execution, attachment, garnishment, bankruptcy, or otherwise. There is no statutory exception for alimony creditors.
South Carolina	S.C. Code Ann. §62-7-502		A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under S.C. Code Ann. §62-7-503 for a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance.

STATE	STATUTE RELEVANT CASELAW	AND/OR	GENERAL RULE
South Dakota	S.D. Codified Laws §§55-1-25, 35, 41		A declaration in a trust that the interest of a beneficiary shall be held subject to a spendthrift trust is sufficient to restrain voluntary or involuntary alienation of a beneficial interest by a beneficiary to the maximum extent provided by law, and if the trust contains a spendthrift provision, no creditor may attach present or future mandatory distributions from the trust at the trust level. Moreover, no court may order a trustee to distribute past due mandatory distributions directly to a creditor. There is no stated statutory exception for alimony creditors. In fact, the statute provides that “[i]n the area of creditor rights, the Restatement of Trusts (Third) and the Uniform Trust Code creates many new positions of law as well as adopts many minority positions of law. Sections 55-1-24 to 55-1-43, inclusive, affirmatively reject many of these positions. Therefore, the Legislature does not intend the courts to consult the Restatement (Third) of the Law of Trusts Articles § 50, § 56, § 58, § 59, or § 60 as approved by the American Law Institute of Uniform Trust Code Article 5 . . . with respect to subject matters addressed by §§55-1-24 to 55-1-43, inclusive.”
Tennessee	Tenn. Code Ann. §35-15-502		A beneficiary cannot transfer an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under Tenn. Code Ann. §35-15-503 for claims of the state of Tennessee to the extent a statute of Tennessee so provides.
Texas	Tex. Prop. Code Ann. §112.035		A settlor may provide in the terms of the trust that a beneficiary’s interest in the income, the principal, or both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under Tex. Fam. Code Ann. §154.005 for the support of a child to the extent the trustees are required to make payments to a beneficiary who is required to make child support payments, or if disbursement of the assets of the trust is discretionary, for the support of a child from trust income but not principal.
Utah	Utah Code Ann. §§75-7-502(1), (3)		A spendthrift provision for a beneficiary other than the settlor is valid if it restrains both voluntary and involuntary transfer of a beneficiary’s interest. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under Utah Code Ann. §75-7-503(2) for a beneficiary’s child who has a judgment or court order against the beneficiary for support or maintenance, and a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, and there is a stated statutory exception under Utah Code Ann. §75-7-503(3) for claims of Utah or the United States to the extent a statute of Utah or federal law so provides.
Vermont	<i>In re Estate of Manley</i> , 24 A.2d 357 (Vt. 1942)		As a matter of caselaw, spendthrift trusts are valid. There is no caselaw that indicates an exception to spendthrift trust protections for spousal support claims.

STATE	STATUTE RELEVANT CASELAW	AND/OR	GENERAL RULE
Virginia	Va. Code Ann. §55-545.02		A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under Va. Code Ann. §55-545.03 for a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or for a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust.
Washington	Wash. Rev. Code §6.32.250(2)		Any money, thing in action, or other property held in trust for a judgment debtor is exempt from seizure when the trust has been created by, or the fund so held in trust has proceeded from, a person other than the judgment debtor. There is no stated statutory exception for alimony creditors.
West Virginia	W. Va. Code §36-1-18(a)		Estates held in trust are subject to the debts of the beneficiary of the trust, except when the creator has expressly provided in the trust instrument words substantially to the effect that the trust is not subject to the liability of or alienation by the beneficiary or beneficiaries. There is no stated statutory exception for alimony creditors.
Wisconsin	Wis. Stat. Ann. §701.06		A settlor may expressly provide in the creating instrument that the interest of a beneficiary is not subject to voluntary or <i>Schwager</i> v. <i>Schwager</i> , 109 F.2d 754 (7th Cir. Wis. 1940), involuntary alienation. The interest of such a beneficiary cannot be assigned and is exempt from claims against the beneficiary until paid over to the beneficiary pursuant to the terms of the trust. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under Wis. Stat. Ann. §701.06(4) that permits a person having a valid order directing a beneficiary to make payment for support of the beneficiary's child to apply to the court for an order directing the trustee to satisfy part or all of the claim out of part or all of payments of income or principal as they are due, to the beneficiary presently or in the future, or if the trust is a discretionary trust, to direct the trustee to satisfy part or all of the claim out of part or all of future payments of income or principal that are to be made pursuant to the exercise of the trustee's discretion in favor of such beneficiary. Pursuant to caselaw, when unrestrained by statute, it is the donor's intent, not the character of the donee's obligation, that controls the availability and disposition of the gift.
Wyoming	Wyo. Stat. Ann. §4-10-502		A term of a trust providing that a beneficiary's interest is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfers of the beneficiary's interest. A beneficiary may not transfer an interest in a trust in violation of a spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or attach a distribution by the trustee unless and until it is received by the beneficiary. There is no stated statutory exception for alimony creditors, although notably there is a stated statutory exception under Wyo. Stat. Ann. §4-10-503(b) for persons who have a judgment or court order against the beneficiary for child support or maintenance, who may obtain a court order attaching present or future distributions to, or for the benefit of, the beneficiary.