

## **SPENDTHRIFT**

§ 3536. Rights of creditors and assignees of beneficiary of trust; spendthrift trusts.

(a) The creditors of a beneficiary of a trust shall have only such rights against such beneficiary's interest in the trust property or the income therefrom as shall not be denied to them by the terms of the instrument creating or defining the trust or by the laws of this State. If such beneficiary has transferred property to the trust in defraud of the beneficiary's creditors the foregoing shall in no way limit the rights of such creditors with respect to the property so transferred. Every interest in trust property or the income therefrom which shall not be subject to the rights of the creditors of the beneficiary, as aforesaid, shall be exempt from execution, attachment, distress for rent and all other legal or equitable process instituted by or on behalf of such creditors. Every assignment by a beneficiary of a trust of the beneficiary's interest in the trust property or the income therefrom which is by the terms of the instrument creating or defining the trust unassignable is void. For purposes of this subsection, the creditors of a beneficiary shall include, but not be limited to, any person having a claim against the beneficiary, the beneficiary's estate or the beneficiary's property by reason of any forced heirship, legitime, marital elective share or similar rights. Notwithstanding the foregoing, a creditor shall have no right against the interest of a beneficiary in a trust solely because such beneficiary has the right to appoint all or part of the trust property to a person or persons (other than the beneficiary, the beneficiary's estate, or creditors of the beneficiary or the beneficiary's estate) by will or by other instrument under which the beneficiary's exercise of the power of appointment would take effect only upon the death of the beneficiary whether or not such power is exercised and a creditor shall have no right against the interest of a beneficiary in a trust solely because the beneficiary has the right to appoint all or part of the trust property to the beneficiary, the beneficiary's estate or creditors of the beneficiary or the beneficiary's estate by will or other instrument under which the beneficiary's exercise of the power of appointment would take effect only upon the death of the beneficiary unless the beneficiary actually exercises such power in favor of the beneficiary, the beneficiary's estate or creditors of the beneficiary or the beneficiary's estate and then only to the extent of such exercise. The provisions of this subsection shall apply to the interest of a trust beneficiary until the actual distribution of trust property to the beneficiary.

(b) Notwithstanding subsection (a) of this section, a beneficiary entitled to receive all or a part of the income of a trust shall have the right to assign gratuitously in writing, at any time or from time to time, a stated fraction or percentage of the beneficiary's entire remaining income interest in such trust to the State or to any corporation, church, community chest, fund or foundation authorized as a deduction pursuant to §§ 1107, 1108 and 1109 of Title 30 and such assignment shall be valid and binding on all parties irrespective of any restrictions on assignment contained in the instrument creating or defining the trust; provided, however, that this subsection shall not authorize a beneficiary of such a trust to reduce any part of the beneficiary's income interest which is subject to such restrictions on assignment below 50% of what such interest would be if no assignments were made under this subsection. Any interest assigned under this subsection, together with a corresponding portion of the corpus of the trust, shall be treated as a separate share and thereafter no provision of the trust permitting invasion of corpus for the benefit of the assignor shall be exercisable with respect to such share.

(c) Except as provided in subchapter VI of this chapter of this title, if the trustor is also a beneficiary of a trust, a provision restraining the voluntary or involuntary transfer of the trustor's

beneficial interest does not prevent the trustor's creditors from satisfying claims from the trustor's interest in the trust to the extent that such interest is attributable to the trustor's contributions thereto.

(d) A beneficiary of a trust shall not be considered a trustor merely because of a lapse, waiver or release of the beneficiary's right to withdraw a part of the trust property if the value of the property that could have been withdrawn by exercising the right of withdrawal in any calendar year does not exceed at the time of the lapse, waiver or release the greater of the amount specified in:

(1) Section 2041(b)(2) or § 2514(e) [26 U.S.C. § 2041(b)(2) or § 2514(e)] of the Internal Revenue Code (26 U.S.C. § 1 et seq.) and any successor provision thereto; or

(2) Section 2503(b) of the Internal Revenue Code [26 U.S.C. § 2503(b)] and any successor provision thereto.

(e) Notwithstanding subsection (a) of this section, a beneficiary of a charitable remainder unitrust or charitable remainder annuity trust as such terms are defined in § 664 of the Internal Revenue Code of 1986 (26 U.S.C. § 664) and any successor provision thereto shall have the right, at any time and from time to time by written instrument delivered to trustee, to release such beneficiary's retained interest in such a trust, in whole or in part, to a charitable organization that has or charitable organizations that have a succeeding beneficial interest in such trust. (Code 1915, § 3907(b); 38 Del. Laws, c. 186, § 1; Code 1935, § 4415; 12 Del. C. 1953, § 3536; 52 Del. Laws, c. 199, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 71, § 1; 74 Del. Laws, c. 81, § 4; 75 Del. Laws, c. 97, § 6; 75 Del. Laws, c. 301, § 7.)