CHAPTER 59-13
CREDITOR'S CLAIMS - SPENDTHRIFT AND DISCRETIONARY TRUSTS

59-13-01. (501) Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

59-13-02. (502) Spendthrift provision.

1. A spendthrift provision is valid if it restrains either the voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's interest.
2. 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 transfer of the beneficiary's interest.
3. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this chapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

59-13-03. (503) Exceptions to spendthrift provision.

1. In this section, "child" includes any person for whom an order or judgment for child support has been entered by a court of competent jurisdiction.
2. A spendthrift provision is unenforceable against:
   a. A beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;
   b. A judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and
   c. A claim of this state or the United States to the extent a statute of this state or federal law so provides.
3. The exceptions contained in subsection 2 do not apply to a self-settled special needs trust or a third-party special needs trust under chapter 59-08 nor to any trust that meets the qualifications of 42 U.S.C. 1396p(d).
4. 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. 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.

59-13-04. (504) Discretionary trusts - Effect of standard.

1. In this section, "child" includes any person for whom an order or judgment for child support has been entered by a court of competent jurisdiction.
2. Except as otherwise provided in subsection 3, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if the discretion is expressed in the form of a standard of distribution, or the trustee has abused the discretion.
3. To the extent a trustee has not complied with a standard of distribution or has abused a discretion, 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 the court shall direct the trustee to pay 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.

4. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.
5. If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim if the beneficiary was not acting as trustee or cotrustee.

59-13-05. (505) Creditor's claim against settlor.

1. The following rules apply whether or not the terms of a trust contain a spendthrift provision. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors to the extent that the property would be subject to creditors' claims if the property had not been placed in the trust. With respect to an irrevocable trust, other than a special needs trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable immediately before the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. For purposes of this section, "statutory allowances" includes any homestead exception under chapter 47-18 and the allowances included in title 30.1.
2. For purposes of this section during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power and, upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, or corresponding future provisions of federal tax law.

59-13-06. (506) Overdue distribution.

1. In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:
   a. The discretion is expressed in the form of a standard of distribution; or
   b. The terms of the trust authorizing a distribution couple language of discretion with language of direction.
2. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

59-13-07. (507) Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.