

Memorandum 85-87

Subject: Study L-640 - Probate Code (Spendthrift Trusts)

Attached to this memorandum is a draft of the part of the trust recommendation relating to spendthrift trusts. This draft consists of an explanatory text which the Commission has not reviewed and a draft statute which has been revised to implement Commission decisions made at the August 1985 meeting. If it is approved, this material will be inserted into the appropriate places in the comprehensive trust law recommendation with any necessary revisions. The staff has the following remarks:

§ 15301. Restraint on transfer of principal

At the August meeting, the Commission decided that the restraint on transfer of principal should be limited to the time during which the income trust continues. The staff was not certain how this decision should be implemented. What if there is no income trust? What if the trust provides for distribution of income to one beneficiary and periodic distributions of principal to another beneficiary? Our suggested resolution of this problem is reflected in Section 15301 which continues the protection of principal distributions until the last distribution. The restraint on transfer is thus valid during the life of the trust, whether it is currently distributing income or not, and ceases at the point when there is no longer any interest to be protected.

§ 15307. Income in excess of amount for education and support subject to creditor's claims

At the August meeting, the Commission directed that the phrase "and to which the beneficiary is entitled" be inserted in this provision. The intention of this phrase is to make clear that the creditor may not reach the interest of a person other than the

judgment debtor. Read literally, the section could be thought to say that all income, including that due other beneficiaries, over the amount necessary for the education and support of the debtor can be reached by the creditor. The staff is concerned that this phrase will cause confusion. Perhaps it would be better to deal with the problem of literal reading in the comment by saying that nothing in the section permits a creditor to reach the interest of a person who is not the debtor. On the other hand, the Commission should consider whether this question needs to be dealt with at all since it does not appear to have been a problem under the existing section which uses "surplus" instead of "excess."

Respectfully submitted,

Stan G. Ulrich  
Staff Counsel

Staff Draft

## SPENDTHRIFT AND OTHER PROTECTIVE TRUSTS

Background

Existing California statutory law contains an incomplete and confusing statement of the California law relating to spendthrift and other protective trusts.

Civil Code Section 867. Civil Code Section 867 permits a settlor to impose a disabling restraint on the voluntary transfer of the beneficiary's interest in a trust for the receipt of the rents and profits of real property or for the payment of an annuity out of such rents and profits.<sup>1</sup> However, the section is an incomplete statement of the California law. Both before and after the enactment of Section 867, the California courts have upheld the validity of a disabling restraint on voluntary and involuntary transfer of income from any trust, not just one to receive rents and profits of real property.<sup>2</sup>

Civil Code Section 859. Civil Code Section 859 permits a creditor to reach the "surplus" of the rents and profits of trust property beyond the amount that may be necessary for the education and support of the beneficiary where the trust has no valid direction for

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1. Civil Code Section 867 provides:

867. The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust.

2. See Seymour v. McAvoy, 121 Cal. 438, 442, 53 P. 946 (1898) (concerning validity of spendthrift trust created in 1869 and thus not subject to the Civil Code provisions enacted in 1872); Canfield v. Security First Nat'l Bank of Los Angeles, 8 Cal. App.2d 277, 283-88, 48 P.2d 133 (1935) (Civil Code § 859 interpreted to apply to both real and personal property); Canfield v. Security-First Nat'l Bank of Los Angeles, 13 Cal.2d 1, 13-17, 87 P.2d 830 (Civil Code §§ 859 and 867 read together to apply to trusts of personal property). Section 859 was amended in 1935 to refer also to personal property trusts. See 1935 Cal. Stat. ch. 408, § 1. See also Note, 40 Calif. L. Rev. 441, 444 n. 18 (1952) (noting that trusts of personal property have been successfully restrained and recommending amendment of Civil Code § 867 to conform to § 859).

accumulation.<sup>3</sup> Section 859 also is an incomplete statement of California law.<sup>4</sup>

Code of Civil Procedure Section 709.010. Code of Civil Procedure Section 709.010<sup>5</sup> permits a judgment creditor to reach a portion of

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3. Civil Code Section 859 provides:

859. Where a trust is created to receive the rents and profits of real or personal property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, may be applied to the satisfaction of a money judgment against the person as provided in Section 709.010 of the Code of Civil Procedure.

4. See the discussion in note 2 supra. See also Evans, Observations on the State, Etc., of the California Laws of Uses and Trusts, 28 S. Cal. L. Rev. 111, 112-14 (1955).

5. Code of Civil Procedure Section 709.010 provides:

709.010. (a) As used in this section, "trust" has the meaning provided in Section 1138 of the Probate Code but includes a trust subject to court supervision under Article 1 (commencing with Section 1120) of Chapter 19 of Division 3 of the Probate Code.

(b) The judgment debtor's interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by a judgment creditor to a court prescribed in Chapter 19 (commencing with Section 1120) of Division 3 of the Probate Code (administration of trusts). The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust assets by the trustee.

(c) Upon petition of the judgment creditor under this section, the court may make an order that the trustee withhold and pay to the judgment creditor all or a portion of the amount that otherwise would be paid periodically to the judgment debtor from the trust. Unless the order otherwise provides, the order shall continue in effect until the judgment of the judgment creditor is satisfied or the order is modified or terminated. In the case of periodic payments from a spendthrift or support trust, the order may not require that the trustee pay to the judgment creditor any exempt portion of the amount that otherwise would be paid periodically to the judgment debtor from the trust; and, for this purpose, the exempt portion is the amount that the court determines is substantially equivalent to the amount that would be exempt on a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law), including, but not limited to, amounts determined under Sections 706.050, 706.051, and 706.052. Nothing in this subdivision limits the right of the state or other public entity to recover for support provided to a

the periodic payments to a trust beneficiary, whether or not the trust is a spendthrift trust. After a court hearing, the court is authorized to order the trustee to withhold an amount from each periodic payment and to pay that amount to the judgment creditor to be applied to the satisfaction of the judgment. The court's authority is limited; the court may not order that more be withheld by the trustee than could be withheld on a like amount of earnings pursuant to a wage garnishment.

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trust beneficiary or to recover for payments made for the support of a trust beneficiary.

(d) Except to the extent that the court order otherwise specifically provides, the provisions of any order entered under subdivision (c) shall not become effective until 30 days after the order has been served upon the trustee, except that the trustee may waive all or any portion of the 30-day period. The trustee may file with the court that made the order a petition requesting modification or clarification of any of the provisions of the order. Notwithstanding any contrary provision of law, the trustee is not required to pay any fee to the clerk of the court as a condition to filing a petition under this subdivision or any subsequent document in connection with a petition. If any provision of the order is modified or set aside, the court, on motion of the judgment creditor or judgment debtor, may set aside or modify other provisions of the order. The trustee, the judgment creditor, and the judgment debtor may present evidence or further evidence that is relevant to the issues to be decided by the court at any hearing on the trustee's petition. The court shall take this evidence into account in determining those issues. Nothing in this subdivision limits any right of a trustee to petition a court under Chapter 19 (commencing with Section 1120) of Division 3 of the Probate Code.

(e) Where the trust gives the trustee discretion over the payment of either principal or income of a trust, or both, nothing in this section affects or limits that discretion or requires the exercise of that discretion in any particular manner. The trustee has no duty to oppose a petition under this section or to make any claim for exemption on behalf of the trust beneficiary. The trustee is not liable for any action taken, or omitted to be taken, in compliance with any court order made under this section.

(f) Except as provided in subdivisions (c), (d), and (e), nothing in this section affects the law relating to enforcement of a money judgment against the judgment debtor's interest in a spendthrift trust, but surplus amounts from a spendthrift trust liable pursuant to Section 859 of the Civil Code are subject to enforcement of a money judgment under this section.

In the case of the ordinary creditor, Section 709.010 permits the creditor to reach the portion of the payment that is in excess of the amount that the beneficiary proves is necessary for support of the beneficiary and the beneficiary's family supported in whole or in part by the beneficiary, but in no event may more than 25 percent of the payment be withheld and paid to the creditor.

If the judgment is for delinquent child or spousal support, Section 709.010 permits the creditor to reach the portion of the payment which the court determines is equitable, taking into account the needs of all persons the beneficiary is required to support, but in making the division between the support creditor and the beneficiary the court is subject to the restriction that not more than one-half of the payment can be withheld for the support creditor.<sup>6</sup>

#### Recommendations

The Commission recommends enactment of a new statute governing the validity of restrictions on voluntary and involuntary transfers of the beneficiary's interest in a trust. The proposed law is drawn from the Restatement (Second) of Trusts<sup>7</sup> and from a 1969 Wisconsin statute.<sup>8</sup>

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6. Under special circumstances set out in a federal statute, the court can award up to 65 percent of the payment to the support creditor. Section 709.010 provides that the amount to be paid to the beneficiary is not less than the amount the court determines to be substantially equivalent to the amount that would be exempt on a like amount of earnings under the wage garnishment law. This amount is not less than the amount that is protected under federal law. Federal law permits garnishment of 50 percent of the employee's earnings if the employee is supporting a spouse or dependent other than the person who caused the garnishment and 60 percent if the employee is not supporting such additional persons; these percentages are increased to 55 percent and 65 percent, respectively, if the support payments are more than 12 weeks delinquent. See 15 U.S.C. § 1673(b)(2) (19\_\_).

7. See Restatement (Second) of Trusts §§ 152-157 (1957).

8. See Wis. Stat. Ann. § 701.06 (West 19\_\_).

The Commission believes that the existing California law provides inadequate protection to beneficiaries of spendthrift and other protective trusts from the claims of creditors and unnecessarily interferes with the discretion commonly afforded trustees. In order to remedy these defects, the proposed law contains the following provisions:

(1) Restraints on voluntary and involuntary transfer. Subject to several exceptions discussed infra, if the trust instrument provides that the beneficiary's right to income or principal is not subject to voluntary or involuntary transfer, the interest may not be transferred by the beneficiary or subjected to the claims of creditors. The provision protecting principal from voluntary or involuntary transfer clarifies a doubtful aspect of California law.<sup>9</sup>

(2) Trusts for support. The proposed law makes clear that a trust providing for the payment of income or principal for the education or support of the beneficiary is also entitled to protection to the extent that the income or principal is necessary for the designated purpose.

(3) Trust subject to discretion of trustee. The proposed law protects the exercise of the trustee's discretion from control by creditors. Thus, a creditor is precluded from seeking a court order requiring the trustee to exercise discretion to pay income or principal to or for the benefit of the beneficiary. However, once the trustee has notice of a proceeding by a creditor under Code of Civil Procedure Section 709.010, the trustee is liable for not paying to the

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9. This rule is consistent with the result in several California cases. See *Seymour v. McAvoy*, 121 Cal. 438, 444, 53 P. 946 (1898) (creditor could not reach contingent remainder); *San Diego Trust & Sav. Bank v. Heustis*, 121 Cal.App. 675, 683-84, 694-97, 10 P.2d 158 (1932) (where husband was income and remainder beneficiary, estranged wife could not reach trust funds for support); *Coughran v. First Nat'l Bank*, 19 Cal. App.2d 152, 64 P.2d 1013 (1937) (in an action to quiet title, attachment levied against beneficiary's contingent fractional interest in trust property was held invalid). However, there is no clear holding in the California cases as to the validity of disabling restraints on the transfer of trust principal by a vested remainder beneficiary.

creditor any amount that the trustee has determined to pay that is also not protected by a valid restraint on transfer.<sup>10</sup> This limitation on the ability of creditors to compel the exercise of a trustee's discretion does not limit the right of a beneficiary to compel exercise of discretion.<sup>11</sup>

(4) Invalidity of restraint where settlor is beneficiary. The proposed law codifies the rule that a restraint on transfer of the settlor's interest as beneficiary is not valid.<sup>12</sup> The invalidity of the restraint in this case does not affect the validity of the trust. If the settlor creates a trust for the payment of education or support, the proposed law makes clear that a transferee or creditor can reach the maximum amount that the trustee can pay to the settlor under the terms of the trust.<sup>13</sup>

(5) Claims for child or spousal support. The proposed law continues the favored status of support creditors with certain important modifications. A claimant for delinquent child or spousal support can reach the beneficiary's interest in the trust to the extent that the court determines is equitable and reasonable under the circumstances out of income or principal that the beneficiary can compel the trustee to pay or that the trustee determines to pay in the

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10. This provision of the proposed law is drawn from Section 155 of the Restatement (Second) of Trusts (1957), but under the proposed law, the rule applies whether or not the trustee's discretion is subject to a standard, whereas the discretion must be uncontrolled under the Restatement rule.

11. See See Estate of Ferrall, 41 Cal.2d 166, 258 P.2d 1009 (1953) (whether fraud, bad faith, or an abuse of discretion has been committed by trustees in refusing to make payments for the support of the beneficiary of a discretionary trust is subject to review by the court); Estate of Miller, 230 Cal. App.2d 888, 41 Cal. Rptr. 410 (1964) (court required trustee to make payments to beneficiary).

12. See, e.g., Nelson v. California Trust Co., 33 Cal.2d 501, 202 P.2d 1021 (1949).

13. This amount may not exceed the amount of the settlor's proportionate contribution to the trust. In a case involving community property, this rule protects the interest of the spouse.



exercise of discretion. The court may also make an order for the payment of amounts as they become due in the future. This rule favoring support creditors applies notwithstanding any restraint on transfer in the trust instrument, but the proposed law permits the trust instrument to preclude enforcement of a judgment for the support of a spouse or former spouse by an express provision.

(6) Liability of trust for public support. The proposed law codifies the principle that the beneficiary's interest in a trust may be reached by a public entity to satisfy a statutory right of reimbursement for public support provided to the beneficiary<sup>14</sup> or the spouse or minor child of the beneficiary.<sup>15</sup> Claims for reimbursement may arise when a person is supported in a public institution<sup>16</sup> or is the recipient of welfare outside an institution.<sup>17</sup> With one important exception, as a matter of public policy, claims for reimbursement by the public are given the same status as claims for child support and can be enforced notwithstanding a restraint on transfer or other provision in the trust instrument. Similarly, where the beneficiary is the settlor or the spouse or minor child of the settlor, the right of reimbursement extends to discretionary payments even if the beneficiary does not have the right to compel payment. However, in any of these situations the court has

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14. See Estate of Lackmann, 156 Cal. App.2d 674, 678-83, 320 P.2d 186 (1958); see also Restatement (Second) of Trusts § 157(d) (1957).

15. The rule concerning reimbursement for support of beneficiary's spouse or minor child is generally consistent with California cases. See Estate of Hinckley, 195 Cal. App.2d 164, 15 Cal. Rptr. 570 (1961) (discretionary trust created by sister of beneficiary to pay for emergencies not required to pay full amount of cost of state care); Estate of Johnson, 198 Cal. App.2d 503, 17 Cal. Rptr. 909 (1961) (discretionary trust created by sister of beneficiary not required to pay amount over basic standard set in trust). Note, however, that the proposed law permits reimbursement in the amount the trustee can pay to or for the benefit of the beneficiary that the court determines is equitable and reasonable.

16. See, e.g., Welf. & Inst. Code § 903 (liability of parents for support of minor under order of juvenile court).

17. See, e.g., Welf. & Inst. Code § 17403 (liability for support of indigent from public funds).

discretion to determine the amount that is equitable and reasonable under the circumstances; the proposed law does not automatically make the entire interest liable to claims of reimbursement.

In order to encourage settlors to provide for the care of disabled persons, the proposed law does not permit reimbursement of a public agency from the interest of a beneficiary who has a disability that substantially impairs the person's ability to provide for his or her own care or custody where the disability is a substantial handicap.<sup>18</sup> Without some statutory authority, the status of such trusts is not clear and parents of a disabled child are faced with the wrenching problem of trying to make sure that their child is provided for after they die.<sup>19</sup> Without this protection, there is a danger that the entire trust may be consumed by a public entity seeking reimbursement with no improvement in the condition of the beneficiary. In this atmosphere, fewer and fewer parents would establish such trusts for their disabled children.<sup>20</sup>

(7) Liability of income in excess of amount for education and support. The proposed law continues in more modern language the principle of Civil Code Section 859 that permits creditors to reach the amount of income in excess of the amount necessary for the education and support of the beneficiary to which the beneficiary is entitled, notwithstanding a contrary provision in the trust instrument. As under existing law, this rule does not apply if there is a valid provision in the trust for accumulation of income.

(8) Repeal of wage garnishment exemption as applied to trusts. The Commission recommends the repeal of the part of Code of Civil Procedure Section 709.010 that permits a creditor to reach

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18. This provision is drawn from Wisconsin law. See Wis. Stat. Ann. § 701.06(5)-(5m) (West 19\_\_).

19. See Wall St. J., Aug. 16, 1985, at 19, col. 3.

20. See Frolik, Discretionary Trusts for a Disabled Beneficiary: A Solution or a Trap for the Unwary, 46 U. Pitt. L. Rev. 335, 342-44,, 366-70 (1985).

approximately the same amount of a periodic payment from a trust as could be reached on a like amount of earnings under the wage garnishment law. Although the wage garnishment provisions are widely used with little difficulty in collecting judgments, the Commission has been informed that the provision permitting a creditor to reach approximately the same amount of a periodic payment from a trust has caused difficulty and confusion in the probate courts.<sup>21</sup> There is also uncertainty concerning the meaning of "periodic payments" upon which turns the wage garnishment exemption of Section 709.010.<sup>22</sup> The Commission also is informed that creditors not infrequently file a petition in the probate court to reach a portion of the periodic payments from the trust and, because the trust beneficiary seldom appears to oppose the proceeding, the creditor obtains an order that takes so much of the periodic payments that the beneficiary is left without sufficient resources to obtain the necessaries of life.<sup>23</sup>

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21. Remarks of Ann E. Stodden, Law Revision Commissioner and Probate Court Commissioner, Los Angeles. Probate courts and the lawyers that practice in those courts apparently are not familiar with the wage garnishment procedures.

22. See Letter from Charles A. Collier, Jr., on behalf of Executive Committee, Estate Planning, Trust and Probate Law Section, State Bar of California, to John H. DeMouilly (June 18, 1985); Letter from Valerie J. Merritt to Stan Ulrich (May 22, 1985).

23. Remarks of Ann E. Stodden, Law Revision Commissioner and Probate Court Commissioner, Los Angeles.

Staff Draft

## CHAPTER 2. RESTRICTIONS ON VOLUNTARY AND INVOLUNTARY TRANSFERS

§ 15300. Restraint on transfer of income

15300. Except as provided in Sections 15304 to 15307, inclusive, if the trust instrument provides that the beneficiary's interest in income is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

Comment. Section 15300 continues the power of a settlor to restrain transfer of the beneficiary's interest in income that was provided in former Civil Code Section 867. The reference in former Civil Code Section 867 to restraints during the life of the beneficiary or for a term of years is not continued because it is unnecessary. The settlor is free to impose a restraint for a term of years under Section 15300.

For qualifications of the protection provided by Section 15300, see Sections 15304 (settlor as beneficiary), 15305 (claim for child or spousal support), 15306 (claim for reimbursement of public support), 15307 (amount of income in excess of amount needed for education and support subject to creditors' claims). Once the income is paid to the beneficiary, it is subject to claims of creditors. *Kelly v. Kelly*, 11 Cal.2d 356, 362-65, 79 P.2d 1059 (1938).

§ 15301. Restraint on transfer of principal

15301. (a) Except as provided in subdivision (b) and in Sections 15304 to 15307, inclusive, if the trust instrument provides that the beneficiary's interest in principal is not subject to voluntary or involuntary transfer, the beneficiary's interest in principal under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(b) At the termination of the beneficiary's interest in the trust, after the last of the beneficiary's interest in principal has become due or payable to the beneficiary, a judgment creditor may file a petition under Section 709.010 of the Code of Civil Procedure for an order directing the trustee to satisfy the money judgment out of the the beneficiary's interest in principal. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of the beneficiary's interest in principal.

Comment. Subdivision (a) of Section 15301 makes clear that a

restraint on voluntary or involuntary transfer of principal is valid. This rule is consistent with the result in several California cases. See Seymour v. McAvoy, 121 Cal. 438, 444, 53 P. 946 (1898) (creditor could not reach contingent remainder); San Diego Trust & Sav. Bank v. Heustis, 121 Cal.App. 675, 683-84, 694-97, 10 P.2d 158 (1932) (where husband was income and remainder beneficiary, estranged wife could not reach trust funds for support); Coughran v. First Nat'l Bank, 19 Cal. App.2d 152, 64 P.2d 1013 (1937) (in an action to quiet title, attachment levied against beneficiary's contingent fractional interest in trust property was held invalid). There was no clear holding under former California law as to the validity of disabling restraints on transfer of trust principal by a vested remainder beneficiary.

Subdivision (b) permits a creditor to reach principal that is due or payable to the beneficiary at the conclusion of the beneficiary's interest in the trust, notwithstanding a spendthrift provision in the trust. Under former California law, there was no decision determining whether a judgment creditor could reach principal held by the trustee that was due or payable where the beneficiary's interest was subject to a restraint on transfer.

For qualifications of the protection provided by Section 15301, see Sections 15304 (settlor as beneficiary), 15305 (claim for child or spousal support), 15306 (claim for reimbursement of public support), 15307 (amount of income in excess of amount needed for education and support subject to creditors' claims). Where trust principal that was subject to a restraint on transfer has been paid to the beneficiary, it is subject to the claims against the beneficiary. See Kelly v. Kelly, 11 Cal.2d 356, 362-65, 79 P.2d 1059 (1938).

#### § 15302. Trust for support

15302. Except as provided in Sections 15304 to 15307, inclusive, if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary, the beneficiary's interest in income or principal or both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

Comment. Section 15302 is the same in substance as Section 154 of the Restatement (Second) of Trusts (1957), but is drafted to make clear that the protection applies to the extent that a trust provides for the education or support of the beneficiary and not only where the trust provides solely for the payment of an amount for education or support. Section 15302 is consistent with prior California law. See former Civil Code § 859; Seymour v. McAvoy, 121 Cal. 438, 442-44, 53 P. 946 (1898).

For qualifications of the protection provided by Section 15302, see Sections 15304 (settlor as beneficiary), 15305 (claim for child or spousal support), 15306 (claim for reimbursement of public support), 15307 (amount of income in excess of amount needed for education and support subject to creditors' claims).

§ 15303. Transferee or creditor cannot compel trustee to exercise discretion; liability of trustee for payment to or for beneficiary

15303. (a) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(b) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process in a proceeding under Section 709.010 of the Code of Civil Procedure by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subdivision does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under Section 15300 or 15301.

(c) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(d) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

Comment. Subdivisions (a) and (b) of Section 15303 are drawn from Section 155 of the Restatement (Second) of Trusts (1957), and provide that a judgment creditor cannot compel the trustee of a discretionary trust to pay any part of the discretionary trust income or principal, although a judgment creditor may be able to reach any payment the trustee does decide to make. Subdivisions (a) and (b) are consistent with prior California law. See *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 30-31, 87 P.2d 830 (1939) (citing Restatement of Trusts § 155); *Alvis v. Bank of America*, 95 Cal. App.2d 118, 124, 212 P.2d 608 (1949).

Unlike Section 155 of the Restatement, Section 15303 applies whether or not the trustee's discretion is subject to a standard. See Section 15303(c). The Restatement provision applies only where the trustee has "uncontrolled discretion." Accordingly, under Section 15303, even though the beneficiary of the trust could compel the trustee to make payment pursuant to the standard set out in the trust

instrument, the transferee or creditor has no similar right to compel the payment.

Subdivision (d) of Section 15303 makes clear that the section does not affect or limit any right the beneficiary (as distinguished from a transferee or creditor of the beneficiary) may have to compel payment. See Estate of Ferrall, 41 Cal.2d 166, 258 P.2d 1009 (1953) (whether fraud, bad faith, or an abuse of discretion has been committed by trustees in refusing to make payments for the support of the beneficiary of a discretionary trust is subject to review by the court). See also Estate of Miller, 230 Cal. App.2d 888, 41 Cal. Rptr. 410 (1964) (court required trustee to make payments to beneficiary).

#### § 15304. Where settlor is a beneficiary

15304. (a) If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(b) If the settlor is the beneficiary of a trust created by the settlor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal or both to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

Comment. The first sentence of subdivision (a) of Section 15304 is the same in substance as Section 156(1) of the Restatement (Second) of Trusts (1957). See the comments to Restatement § 156. Subdivision (a) codifies the case-law rule applicable under former law. See, e.g., Nelson v. California Trust Co., 33 Cal.2d 501, 202 P.2d 1021 (1949). This section does not affect the protection of certain pension trusts by Code of Civil Procedure Section 704.115. See Section 82 ("trusts" defined to exclude trusts for the primary purpose of paying pensions).

Subdivision (b) is drawn from Section 156(2) of the Restatement (Second) of Trusts (1957). The limitation on the amount that may be reached by transferees and creditors to the proportionate amount of the settlor's contribution is drawn from Wisconsin law. See Wis. Stat. Ann. § 701.06(6) (West 19\_\_); see also the comments to Restatement § 156.

A person who furnishes the consideration for the creation of a trust is the settlor. McColgan v. Walter Magee, Inc., 172 Cal. 182,

155 P. 995 (1916) (beneficiary transferred assets into trust although certain other persons could have prevented transfer by refusal to consent); Parscal v. Parscal, 148 Cal. App.3d 1089, 1104, 196 Cal. Rptr. 462 (1957) (child support enforceable against beneficiary's interest in trust created by beneficiary's employers under a collective bargaining agreement with benefit credits according to the amount contributed by employers to employee's account).

15305. Claims for child or spousal support

15305. (a) As used in this section, "support judgment" means a money judgment for support of the trust beneficiary's spouse or former spouse or minor child.

(b) Subject to subdivision (d), if 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 the support judgment out of all or part of such payments as they become due, presently or in the future.

(c) Subject to subdivision (d), 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 the support judgment 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.

(d) In the case of a judgment for the support of a minor child, this section applies notwithstanding any provision in the trust instrument. In the case of a judgment for support of a spouse or former spouse, this section applies unless the trust instrument expressly provides otherwise.

Comment. Section 15305 is drawn in part from a provision of Wisconsin law relating to enforcement of child support. See Wis. Stat. Ann. § 701.06(4) (West 19\_\_). Section 15305 reflects the same public policy as Section 157(a) of the Restatement (Second) of Trusts (1957), except that subdivision (d) permits the trust instrument to exempt the trust from enforcement of spousal support. To obtain relief under Section 15305, the judgment creditor under the support



judgment must file a petition with the probate court under Section 709.010 of the Code of Civil Procedure. See Code Civ. Proc. § 709.010 (b).

Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of a money judgment against the beneficiary for child or spousal support. In some cases a spendthrift clause may be construed as not intended to exclude the beneficiary's dependents. Even if the clause is construed as applicable to claims of the dependents for support, it is against public policy to give full effect to the provision. This policy is subject to exception only in the case of spousal support if the trust instrument expressly provides that the spendthrift provision applies to spousal support; a provision in the trust is not effective to exempt the trust from enforcement of a judgment for support of a minor child. See subdivision (b). As a general rule, the beneficiary should not be permitted to have the enjoyment of the interest under the trust while neglecting to support his or her dependents. It is a matter for the exercise of discretion by the court as to how much of the amount payable to the beneficiary under the trust should be applied for such support and how much the beneficiary should receive. Even though the beneficiary's spouse has obtained an order directing the beneficiary to pay a specified amount for support, the spouse cannot compel the trustee to pay the full amount ordered unless the court determines that it is equitable and reasonable under the circumstances of the particular case to compel the trustee to make the payment. The result is much the same as though the trust were created not solely for the benefit of the beneficiary, but also for the benefit of the beneficiary's dependents. Cf. Estate of Johnston, 252 Cal. App.2d 923, 927-30, 60 Cal. Rptr. 852 (1967) (discussion of public policy in light of former Civil Code § 859).

Section 15305 changes prior California law. Code of Civil Procedure Section 709.010 formerly included a provision giving the court discretion to divide periodic payments to a beneficiary from a trust (including a spendthrift trust) between the beneficiary and the person or persons entitled to child or spousal support from the beneficiary, and the amount that could be applied to child or spousal support was limited to the amount that could have been applied to child or spousal support on a like amount of earnings. This provision was removed by amendment from Section 709.010, leaving Section 15305 to govern this situation. Apart from the provision in Code of Civil Procedure Section 709.010, child or spousal support was not a preferred claim under former law against the interest of a trust beneficiary, and the support claimant was treated the same as any other creditor. See, e.g., Estate of Lawrence, 267 Cal. App.2d 77, 82-83, 72 Cal. Rptr. 851 (1968) (former wife); Canfield v. Security First Nat'l Bank, 8 Cal. App.2d. 277, 288-89, 48 P.2d 133 (1935) (former wife); San Diego Trust & Sav. Bank v. Heustis, 121 Cal. App.2d 675, 683-94, 10 P.2d 158 (1932) (estranged wife); Estate of Johnston, 252 Cal. App.2d 923, 928-29, 60 Cal. Rptr. 852 (1967) (minor child); but see Parscal v. Parscal, 148 Cal. App.3d 1098, 1104-05, 196 Cal. Rptr. 462 (1983) (child support enforceable against beneficiary's interest in trust created by beneficiary's employers under a collective bargaining agreement where employer's contributions based

on employee's hours of work). Cf. Estate of Lackmann, 156 Cal. App.2d 674, 678-83, 320 P.2d 186 (1958) (state institution in which beneficiary of a spendthrift trust was an inmate permitted to reach the beneficiary's interest).

§ 15306. Liability for public support

15306. (a) Notwithstanding any provision in the trust instrument, if a statute of this state makes the beneficiary liable for reimbursement of this state or a local public entity in this state for public support furnished to the beneficiary or to the beneficiary's spouse or minor child, upon petition to the court under Section 709.010 of the Code of Civil Procedure by the appropriate state or local public entity or public official, to the extent the court determines it is equitable and reasonable under the circumstances of the particular case:

(1) If 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 order the trustee to satisfy all or part of the liability out of all or part of such payments as they become due, presently or in the future.

(2) 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 order the trustee to satisfy all or part of the liability out of all or part of the 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.

(3) If the beneficiary is a settlor or the spouse or minor child of the settlor and the beneficiary does not have the right under the trust to compel the trustee to pay income or principal or both to or for the benefit of the beneficiary, to the extent that the trustee has the right to make payments of income or principal or both to or for the beneficiary pursuant to the exercise of the trustee's discretion, the court may order the trustee to satisfy all or part of the liability without regard to whether the trustee has then exercised or may thereafter exercise the discretion in favor of the beneficiary.

(b) Subdivision (a) does not apply to any trust that is established for the benefit of an individual who has a disability that substantially impairs the individual's ability to provide for his or her own care or custody and constitutes a substantial handicap.

Comment. Section 15306 is drawn from Wisconsin law. See Wis. Stat. Ann. § 701.06(5)-(5m) (West 19\_\_). Subdivision (a) of Section 15306 is generally consistent with prior California law which permitted a state institution in which the beneficiary of a spendthrift trust was an inmate to reach the beneficiary's interest. See Estate of Lackmann, 156 Cal. App.2d 674, 678-83, 320 P.2d 186 (1958) (citing Restatement of Trusts § 157). This section applies to reimbursement for public support provided in the form of welfare furnished to an individual who is not in an institution as well as aid furnished while the individual is a resident of a state institution. See, e.g., Welf. & Inst. Code §§ 903 (liability for support of minor under order of juvenile court), 17403 (liability for support of indigent from public funds). However, subdivision (a) of Section 15306 makes clear that the state or local agency has the right to reach the beneficiary's interest for reimbursement of support provided to the spouse or minor child of the beneficiary and subdivision (b) limits the right of the state or a local agency to reach the beneficiary's interest in welfare cases where the trust was established to provide for the care of a disabled beneficiary who is unable to provide for his or her own care or custody. This limitation is intended to encourage potential settlors to provide in a trust for the care or support of a disabled person without the risk that the benefits of the trust will be taken to reimburse a public agency for a minimal level of support provided by the public agency.

§ 15307. Income in excess of amount for education and support subject to creditors' claims

15307. If a trust instrument does not contain a valid direction for accumulation of income, any income in excess of the amount that is or will be necessary for the education and support of the beneficiary, and to which the beneficiary is entitled, may be applied to the satisfaction of a money judgment against the beneficiary.

Comment. Section 15307 restates Civil Code Section 859 without substantive change. While Sections 15305 and 15306 permit only certain preferred creditors to reach the beneficiary's interest in the trust, Section 15307 permits an ordinary creditor to reach income under limited circumstances. To obtain relief under Section 15307, the judgment creditor must file a petition under Section 709.010 of the Code of Civil Procedure. See Code Civ. Proc. § 709.010(b).

A station-in-life test is used to determine the amount necessary for education and support under this section. See Canfield v. Security-First Nat'l Bank, 13 Cal.2d 1, 21-24, 87 P.2d 830 (1939); Magner v. Crooks, 139 Cal. 640, 642, 73 P. 585 (1903); Smith v. Smith,

51 Cal. App.2d 29, 35-38, 124 P.2d 117 (1942); cf. *Alvis v. Bank of America*, 95 Cal. App.2d 118, 122-24, 212 P.2d 608 (1949) (beneficiary who had disappeared).

The California Supreme Court has rejected the more extreme New York cases, but has continued to embrace the station-in-life test which considers factors such as the social background of the beneficiary. See, e.g., *Canfield v. Security-First Nat'l Bank*, 13 Cal.2d 1, 24-28, 87 P.2d 830 (1939). If the trustee has discretion to determine the disposition of the trust income, the trustee may be able to defeat the creditor's attempt to reach the excess income under this section by reducing the amount to be paid to the beneficiary to the amount determined by the court to be necessary for the support and education of the beneficiary. See *Estate of Canfield*, 80 Cal. App.2d 443, 450-52, 181 P.2d 732 (1947); *E. Griswold, Spendthrift Trusts* § 428 (2d ed. 1947).

Other provisions may permit a creditor of the beneficiary to satisfy all or part of the creditor's claim out of all or part of the payments of the income or principal as they fall due, presently or in the future. See Sections 15305 (child or spousal support), 15306 (public support); see also Section 15304 (settlor as beneficiary).

#### § 15308. Subsequent modification of court's order

15308. Any order entered by a court under Section 15305, 15306, or 15307 is subject to modification upon petition of an interested person filed in the court where the order was made.

Comment. Section 15308 is drawn from Wisconsin law. See Wis. Stat. Ann. § 701.06(7) (West 19\_\_). See also Section 48 ("interested person" defined).

#### § 15309. Disclaimer not a transfer

15309. A disclaimer or renunciation by a beneficiary of all or part of his or her interest under a trust shall not be considered a transfer under Section 15300 or 15301.

Comment. Section 15309 is drawn from Wisconsin law. See Wis. Stat. Ann. § 701.06(3) (West 19\_\_).

CONFORMING REVISIONS AND REPEALS

Civil Code § 859 (repealed). Surplus of rents and profits subject to satisfaction of money judgment

SEC. \_\_\_\_ . Section 859 of the Civil Code is repealed.

*859 // Where a trust is created to receive the rents and profits of real or personal property and is valid in effect for accumulation as given, the surplus of such rents and profits beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, may be applied to the satisfaction of a money judgment against the person as provided in Section 709.010 of the Code of Civil Procedure.*

Comment. The substance of former Section 859 is restated in Probate Code Section 15307.

Civil Code § 867 (repealed). Restraint on disposal of interest in trust

SEC. \_\_\_\_ . Section 867 of the Civil Code is repealed.

*867 // The beneficiary of a trust for the receipt of the rents and profits of real property or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust, during his life or for a term of years, by the instrument creating the trust.*

Comment. The substance of former Section 867 is restated in Probate Code Section 15300. See Prob. Code § 15300 and the Comment thereto.

Code Civ. Proc. § 695.030 (technical amendment). Property subject to enforcement of money judgment

SEC. \_\_\_\_ . Section 695.030 of the Code of Civil Procedure is amended to read:

695.030. (a) Except as otherwise provided by statute, property of the judgment debtor that is not assignable or transferable is not subject to enforcement of a money judgment.

(b) The following property is subject to enforcement of a money judgment:

(1) An interest in a ~~spendthrift~~ trust, to the extent provided by law.

(2) A cause of action for money or property that is the subject of a pending action or special proceeding.

Comment. Section 695.030 is amended to delete "spendthrift" from subdivision (b)(1) in recognition that trusts other than "spendthrift" trusts may be not assignable or transferable. See e.g., Prob. Code § 15303 (trust for support).

Code of Civil Procedure § 709.010 (technical amendment). Enforcement of money judgment against beneficiary's interest in trust

SEC. \_\_\_\_ . Section 709.010 of the Code of Civil Procedure is amended to read:

709.010. (a) As used in this section, "trust" has the meaning provided in Section ~~1138~~ 82 of the Probate Code ~~but includes a trust subject to court supervision under Article 1/commencing with Section 1120 of Chapter 19 of Division 3 of the Probate Code.~~

(b) The judgment debtor's interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition under this section by a judgment creditor to a court having jurisdiction over administration of the trust as prescribed in Chapter 19 Part 5 (commencing with Section ~~1120~~ 16500) of Division 3 9 of the Probate Code (~~administration of trusts~~). The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust assets by the trustee.

~~(c) Upon petition of the judgment creditor under this section, the court may make an order that the trustee withhold and pay to the judgment creditor all or a portion of the amount that otherwise would be paid periodically to the judgment debtor from the trust unless the order otherwise provides, the order shall continue in effect until the judgment of the judgment creditor is satisfied or the order is modified or terminated. In the case of periodic payments from a spendthrift or support trust, the order may not require that the trustee pay to the judgment creditor any exempt portion of the amount that otherwise would be paid periodically to the judgment debtor from the trust; and, but this purpose, the~~

except // portion // as // the // amount // that // the // court // determines // is  
substantially // equivalent // to // the // amount // that // would // be // exempt // or // a  
like // amount // of // earnings // under // Chapter // 15 // (commencing // with // Section  
706.010) // Wage // Garnishment // Law //, // including // but // not // limited // to,  
amounts // determined // under // Sections // 706.030, // 706.031, // and // 706.032  
Nothing // in // this // subdivision // limits // the // right // of // the // state // or // other  
public // entity // to // recover // for // support // provided // to // a // trust // beneficiary  
or // to // receive // for // payments // made // for // the // support // of // a // trust  
beneficiary //

(d) // Except // to // the // extent // that // the // court // order // otherwise  
specifically // provides //, // the // provisions // of // any // order // entered // under  
subdivision // (c) // shall // not // become // effective // until // 30 // days // after // the  
order // has // been // set // upon // the // trustee //, // except // that // the // trustee // may  
waive // all // or // any // portion // of // the // 30-day // period // The // trustee // may // file  
with // the // court // that // made // the // order // a // petition // requesting  
modification // or // clarification // of // any // of // the // provisions // of // the  
order // Notwithstanding // any // contrary // provision // of // law //, // the // trustee  
is // not // required // to // pay // any // fee // to // the // clerk // of // the // court // as // a  
condition // to // filing // a // petition // under // this // subdivision // or // any  
subsequent // document // to // connect // with // a // petition // or // any // provision  
of // the // order // is // modified // or // set // aside //, // the // court // or // motion // of // the  
judgment // creditor // or // judgment // debtor //, // may // set // aside // or // modify // other  
provisions // of // the // order // The // trustee //, // the // judgment // creditor //, // and  
the // judgment // debtor // may // present // evidence // or // further // evidence // that // is  
relevant // to // the // issues // to // be // decided // by // the // court // at // any // hearing // on  
the // trustee //s // petition // The // court // shall // take // this // evidence // into  
account // in // determining // those // issues //, // Nothing // in // this // subdivision  
limits // any // right // of // a // trustee // to // petition // a // court // under // Chapter // 19  
(commencing // with // Section // 1120) // of // Division // 3 // of // the // Probate // Code //

(e) // Where // the // trust // gives // the // trustee // discretion // over // the  
payment // of // either // principal // or // income // of // a // trust //, // or // not //, // nothing  
in // this // section // applies // to // limits // that // are // established // or // requires // the  
exercise // of // that // discretion // in // any // particular // manner // The // trustee  
has // no // duty // to // oppose // a // petition // under // this // section // or // to // make // any  
claim // for // exemption // on // behalf // of // the // trust // beneficiary // The // trustee  
is // not // liable // for // any // action // taken //, // or // not // taken //, // in  
compliance // with // any // court // order // made // under // this // section //

~~(f) Except as provided in subdivision (d), (d), and (e), nothing~~

(c) Nothing in this section affects the ~~law relating to~~ enforcement limitations on the enforcement of a money judgment against the judgment debtor's interest in a ~~spendthrift~~ trust under Chapter 2 (commencing with Section 15300) of Part 1 of Division 9 of the Probate Code, and the provisions of this section are subject to the limitations of that chapter, ~~but supports amounts from a spendthrift trust liable pursuant to Section 889 of the Probate Code are subject to enforcement of a money judgment under this section.~~

Comment. Subdivision (a) of Section 709.010 is amended to replace the reference to Section 1138 of the Probate Code with a reference to Section 82 of the Probate Code (defining "trust" for the purposes of the Probate Code).

Subdivision (b) of Section 709.010 is amended to replace the reference to Chapter 19 of Division 3 of the Probate Code with a reference to Part 5 of Division 9 of the Probate Code. The change is nonsubstantive.

Former subdivisions (c), (d), (e), and (f) are deleted. The deleted subdivisions permitted the court to order that amounts be withheld by the trustee from periodic payments from a trust, whether or not a spendthrift or support trust, using the same standard that applies when earnings of a judgment debtor are subject to an earnings withholding order (wage garnishment). The deleted subdivisions are superseded by the new provisions of the Probate Code governing the rights of transferees and creditors of the beneficiary of a trust to reach the beneficiary's interest in the trust. See Prob. Code §§ 15300-15309 and the Comments thereto.

New subdivision (c) is phrased to make it consistent with the new provisions added to the Probate Code. See Prob. Code §§ 15300-15309.