



## Ohio Revised Code

### Section 5805.06 Rights of settlor's creditors - power of withdrawal.

Effective: March 27, 2013

Legislation: House Bill 479 - 129th General Assembly

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(A) Whether or not the terms of a trust contain a spendthrift provision, all of the following apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) Except to the extent that a trust is established pursuant to, or otherwise is wholly or partially governed by or subject to Chapter 5816. of the Revised Code, with respect to an irrevocable 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 an irrevocable trust has more than one settlor, the amount distributable to or for a settlor's benefit that the creditor or assignee of a particular settlor may reach may not exceed that settlor's interest in the portion of the trust attributable to that settlor's contribution. The right of a creditor or assignee to reach a settlor's interest in an irrevocable trust shall be subject to Chapter 5816. of the Revised Code to the extent that that chapter applies to that trust.

(3) With respect to a trust described in 42 U.S.C. section 1396p(d)(4)(A) or (C), the court may limit the award of a settlor's creditor under division (A)(1) or (2) of this section to the relief that is appropriate under the circumstances, considering among any other factors determined appropriate by the court, the supplemental needs of the beneficiary.

(B) For purposes of this section, all of the following apply:

(1) 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 during the period the power may be exercised.

(2) Upon the lapse, release, or waiver of the power of withdrawal, 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 greatest of the following amounts:



- (a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code;
- (b) If the donor of the property subject to the holder's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in section 2503(b) of the Internal Revenue Code;
- (c) If the donor of the property subject to the holder's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in section 2503(b) of the Internal Revenue Code.
- (3) None of the following shall be considered an amount that can be distributed to or for the benefit of the settlor:
- (a) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor only as a result of the exercise of a power of appointment held in a nonfiduciary capacity by any person other than the settlor;
- (b) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor of a trust pursuant to the power of the trustee to make distributions or pursuant to the power of another in a fiduciary capacity to direct distributions, if and to the extent that the distributions could be made from trust property the value of which was included in the gross estate of the settlor's spouse for federal estate tax purposes under section 2041 or 2044 of the Internal Revenue Code or that was treated as a transfer by the settlor's spouse under section 2514 or 2519 of the Internal Revenue Code;
- (c) Trust property that, pursuant to the exercise of a discretionary power by a person other than the settlor, could be paid to a taxing authority or to reimburse the settlor for any income tax on trust income or principal that is payable by the settlor under the law imposing the tax.