

## **EXAMINERS' ANALYSIS OF QUESTION NO. 9**

**Claims against Melissa and Grant's Trust Interest:** The valid trust established by Denny Dolan contains a "spendthrift provision." Spendthrift provisions are valid and enforceable in Michigan. MCL 700.7502(1). This type of trust provision "restrains either the voluntary or involuntary transfer of a trust beneficiary's interest." MCL 700.7103(j); MCL 700.7502(2). Spendthrift provisions generally preclude the beneficiary's creditors from satisfying the beneficiary's debt with the beneficiary's trust interest.

However, there are several exceptions to this rule. MCL 700.7504(1)(a)-(c) states that a trust beneficiary's interest may be reached to satisfy an enforceable claim against the beneficiary where the claims involve:

(a) A trust beneficiary's child or former spouse who has a judgment or court order against the trust beneficiary for support or maintenance.

(b) A judgment creditor who has provided services that enhance, preserve, or protect a trust beneficiary's interest in the trust.

(c) This state or the United States.

**Claim against Melissa's interest:** Because Melissa owes the State of Michigan \$36,000 in back taxes, and the claims of the state fall under subsection (c), the State of Michigan may reach Melissa's trust interest despite the spendthrift provision in order to satisfy her outstanding tax obligation.

However, the State of Michigan will not be able to claim the entire \$36,000 all at once. MCL 700.7504(2) states that the court shall order all or part of a judgment satisfied "only out of all or part of distributions of income or principal as they become due." Because Melissa's annual trust distribution is only \$30,000 per year, the most the State could recover at once is \$30,000 when Melissa's distribution is paid on June 30th. The remainder of the arrearage (\$6,000) can be recovered the following year.

**Claim against Grant's interest:**

The Estate of Johnny Jackson will not be able to force a transfer of Grant's interest. The claim of the estate does not fall within the three listed exceptions listed above. This judgment creditor cannot reach Grant's annual disbursement until the money is actually transferred to Grant.

**Claim against Denny:** MCL 700.7602(1) provides "that unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust." In other words, unless the terms of the trust explicitly state that the trust is irrevocable, the trust is deemed revocable. This provision applies to the trust created by Denny Dolan because the trust was created on or after April 1, 2010. See MCL 700.7602(1)(a). A revocable trust differs from an irrevocable trust in that the settlor reserves the right to terminate the trust and recover the trust property without the consent of the trustee or a person holding an adverse interest. MCL 700.7103(h).

During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. MCL 700.7506(1)(a). And this is true regardless of whether the terms of the trust contain a spendthrift provision. MCL 700.7506(1).

In this case, the terms of the Dolan Family trust do not contain an express provision that the trust is irrevocable. Therefore, the trust created by Denny Dolan is revocable. And because it is revocable, the trust property is subject to the claims of Denny Dolan's creditors until Dolan dies. Because the trust is revocable, Denny's judgment creditors (his former business partners) will be able to satisfy the \$100,000 judgment from the trust property.