

# WEST VIRGINIA CODE: §44D-5-503A

## **§44D-5-503a..Self-settled spendthrift trusts.**

(a) A grantor may transfer assets to a qualified self-settled spendthrift trust and retain in that trust a qualified interest, and, except as otherwise provided in this article, the provisions of section five hundred five of this article do not apply to such qualified interest.

(b) The provisions of section five hundred five of this article shall continue to apply with respect to any interest held by a grantor in a qualified self-settled spendthrift trust, other than a qualified interest.

(c) A grantor's transfer to a qualified self-settled spendthrift trust shall not, to the extent of the grantor's qualified interest, be deemed to have been made with intent to delay, hinder or defraud creditors, for purposes of article one-a, chapter forty of this code, merely because it is made to a trust with respect to which the grantor retains a qualified interest and merely because it is made without consideration. A grantor's transfer to a qualified self-settled spendthrift trust may, however, be set aside under article one-a, chapter forty of this code or if the qualified affidavit contains a material misstatement of fact: Provided, That any transfer made to a qualified self-settled spendthrift trust which may be set aside under article one-a, chapter forty of this code shall be chargeable first with the entire costs and expenses, including attorney's fees, properly incurred by the trustee in the defense of the action or proceeding to set aside the transfer.

(d) A grantor's creditor may bring an action under article one-a, chapter forty of this code to avoid a transfer to a qualified self-settled spendthrift trust or otherwise to enforce a claim that existed on the date of the grantor's transfer to such trust within four years after the date of the grantor's transfer to such trust to which such claim relates.

(e) A creditor shall have only such rights with respect to a grantor's transfer to a qualified self-settled spendthrift trust as are provided in this section. No creditor and no other person has any claim or cause of action against any trustee, trust adviser, trust director or any person involved in the counseling, drafting, preparation or execution of, or transfers to, a qualified self-settled spendthrift trust.

(f) If a grantor makes more than one transfer to the same qualified self-settled spendthrift trust, the following rules apply:

(1) The grantor's making of a subsequent transfer shall be disregarded in determining a creditor's claim with respect to whether a prior transfer is valid under this section;

(2) With respect to each subsequent transfer by the grantor, the four-year limitations period provided in subsection (d) of this section, with respect to actions brought under article one-a

of chapter forty of this code with respect to the subsequent transfer, commences on the date of such subsequent transfer; and

(3) Any distribution to a beneficiary is deemed to have been made from the latest such transfer.

(g) The movement to this state of the administration of an existing trust, which, after such movement to the state, meets for the first time all of the requirements of a qualified self-settled spendthrift trust, shall be treated, for purposes of this section, as a transfer to this trust by the grantor on the date of such movement of all of the assets previously transferred to the trust by the grantor.