WEST VIRGINIA CODE: §44D-5-505

§44D-5-505. Creditor's claim against grantor.

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

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

(2) During the lifetime of the grantor, with respect to an irrevocable trust, except to the extent otherwise provided in sections five hundred three-a, five hundred three-b and five hundred three-c of this article, a creditor or assignee of the grantor may reach the maximum amount that can be distributed to or for the grantor's benefit. If a trust has more than one grantor, the amount the creditor or assignee of a particular grantor may reach may not exceed the grantor's interest in the portion of the trust attributable to that grantor's contribution.

(3) After the death of a grantor, and subject to the grantor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the grantor's death is subject to claims of the creditors of the deceased grantor, to the extent the grantor's probate estate is inadequate to satisfy them, and with such claims payable in order of priority of the following classes:

(A) The costs and expenses of administration of the grantor's estate;

(B) Reasonable funeral expenses;

(C) Debts and taxes with preference under federal law;

(D) Unpaid child support which is due and owing at the time of the decedent's death;

(E) Debts and taxes with preference under other laws of the State of West Virginia;

(F) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and

(G) All other claims.

(b) For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the grantor of a revocable trust to the extent of the property subject to the power; and

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(2) Upon the lapse, release or waiver of the power, the holder is treated as the grantor 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), Section 2503(b) or Section 2514(e) of the Internal Revenue Code.

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