



Ohio Revised Code

Section 5805.04 Creditor may not compel discretionary distribution - exceptions.

Effective: January 1, 2007

Legislation: House Bill 416 - 126th General Assembly

(A) As used in this section, "child" includes any person for whom an order or judgment for child support has been entered in this or any other state.

(B) Except as otherwise provided in divisions (C) and (D) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if the discretion is expressed in the form of a standard of distribution or the trustee has abused the discretion.

(C) Division (B) of this section does not apply to this state for any claim for support of a beneficiary in a state institution if the terms of the trust do not include a spendthrift provision and do include a standard for distributions to or for the beneficiary under which the trustee may make distributions for the beneficiary's support.

(D) Unless the settlor has explicitly provided in the trust that the beneficiary's child or spouse or both are excluded from benefiting from the trust, to the extent a trustee of a trust that is not a wholly discretionary trust has not complied with a standard of distribution or has abused a discretion, both of the following apply:

(1) The court may order a distribution to satisfy a judgment or court order against the beneficiary for support of the beneficiary's child or spouse, provided that the court may order the distributions only if distributions can be made for the beneficiary's support under the terms of the trust and that the court may not order any distributions under this division to satisfy a judgment or court order against the beneficiary for support of the beneficiary's former spouse.

(2) The court shall direct the trustee to pay to the child or spouse the amount that is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the



discretion.

(E) Even if a trust does not contain a spendthrift provision, to the extent a beneficiary's interest in a trust is subject to the exercise of the trustee's discretion, whether or not such discretion is subject to one or more standards of distribution, the interest may not be ordered sold to satisfy or partially satisfy a claim of the beneficiary's creditor or assignee.

(F) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim if the beneficiary were not acting as trustee or cotrustee.