



## Ohio Revised Code

### Section 5815.22 Spendthrift provisions.

Effective: January 1, 2007

Legislation: House Bill 416 - 126th General Assembly

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(A)(1) Except as provided in divisions (A)(2), (3), and (4) of this section, a spendthrift provision in an instrument that creates an inter vivos or testamentary trust shall not cause any forfeiture or postponement of any interest in property that satisfies both of the following:

(a) It is granted to a surviving spouse of the testator or other settlor.

(b) It qualifies for the federal estate tax marital deduction allowed by Subtitle B, Chapter 11, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2056, as amended, the estate tax marital deduction allowed by division (A) of section 5731.15 of the Revised Code, or the qualified terminable interest property deduction allowed by division (B) of section 5731.15 of the Revised Code.

(2) Division (A)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that obtaining a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section is less important than enforcing the forfeiture or postponement of the interest in property in accordance with the spendthrift provision in the instrument.

(3) Division (A)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(4) Division (A)(1) of this section does not apply to any beneficiary of an inter vivos or testamentary trust other than the surviving spouse of the testator or other settlor or to any inter vivos or testamentary trust of which the surviving spouse of the testator or other settlor is a beneficiary if an interest in property does not qualify for a marital deduction or a qualified terminable interest property deduction as described in division (A)(1)(b) of this section.



(B)(1) Except as provided in divisions (B)(2) and (3) of this section, if an instrument creating an inter vivos or testamentary trust includes a spendthrift provision and the trust holds shares in an S corporation, the spendthrift provision shall not cause any forfeiture or postponement of any beneficial interest, income, principal, or other interest in the shares of the S corporation held by the trust. For purposes of division (B)(1) of this section, "S corporation" has the same meaning as in section 1361 of the "Internal Revenue Code of 1986," 26 U.S.C. 1361.

(2) Division (B)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that maintenance of the corporation's status as an S corporation is less important than enforcing the forfeiture or postponement of any beneficial interest, income, principal, or other interest in the S corporation shares in accordance with the spendthrift provision in the instrument.

(3) Division (B)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(C)(1) Except as provided in divisions (C)(2) and (3) of this section, a spendthrift provision in an instrument that creates an inter vivos or testamentary trust shall not cause any forfeiture or postponement of any interest in property that satisfies both of the following:

(a) It is granted to a person who is a skip person under the federal generation-skipping transfer tax imposed by Subtitle B, Chapter 13, of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2601-2663, as amended.

(b) It qualifies as a nontaxable gift under section 2642(c) of the "Internal Revenue Code of 1986," 26 U.S.C.A. 2642(c).

(2) Division (C)(1) of this section does not apply if an instrument that creates an inter vivos or testamentary trust expressly states the intention of the testator or other settlor that qualifying as a nontaxable trust gift as described in division (C)(1)(b) of this section is less important than enforcing the forfeiture or postponement of the interest in property in accordance with the spendthrift provision



in the instrument.

(3) Division (C)(1) of this section applies only to the forfeiture or postponement portions of a spendthrift provision and does not apply to any portion of a spendthrift provision that prohibits a beneficiary from assigning, alienating, or otherwise disposing of any beneficial interest in a trust or prohibits a creditor of a beneficiary from attaching or otherwise encumbering the trust estate.

(D) Divisions (A), (B), and (C) of this section are intended to codify certain fiduciary and trust law principles relating to the interpretation of a testator's or other settlor's intent with respect to the provisions of a trust. Divisions (A), (B), and (C) of this section apply to trust instruments executed prior to and existing on August 29, 2000, and to trust instruments executed on or after August 29, 2000.