

Spendthrift Trust Rules: Should Minnesota Make Exceptions?

By William S. Forsberg

Under Minnesota law creditors cannot attach a trust beneficiary's interest in a spendthrift trust. Spendthrift provisions in trusts are recognized in all states and are standard in almost every trust created today. They are a very powerful tool in the trustee's arsenal to protect trust assets from a beneficiary's wayward spending habits while allowing the preservation of trust assets to better carry out the grantor's intent. In almost all cases a trustee's ability to shield assets from a beneficiary's creditors is viewed with favor by the settlor, the trustee, and the trust beneficiaries. However, not all categories of creditors are created equally. Most states have by statute or case law carved out one or more exceptions to the spendthrift trust rules.¹ The two most common exceptions are claims for child support and alimony.² Minnesota makes no exception. This article will examine exceptions to spendthrift trusts and offer reasons for and against a change to Minnesota law.

History of Spendthrift Trusts

A spendthrift trust is a trust in which the power of alienation³ has been suspended. The spendthrift trust is drafted to prevent trust beneficiaries from voluntarily or involuntarily alienating their interests by immunizing the trust against attachment by creditors. Spendthrift trusts are a uniquely American invention and have been recognized by U.S. courts since 1875, but to this day are not recognized in England. In the U.S. the two court decisions that first recognized spendthrift trusts were *Nichols v. Eaton*, 91 U.S. 716 (1875) and *Broadway National Bank v. Adams*, 133 Mass. 170 (1882). These two cases upheld a grantor's right to protect trust assets from a beneficiary's own "improvidence, or incapacity for self-protection."

The Minnesota courts have long recognized spendthrift trusts.⁴ The Minnesota Supreme Court in *In re Moulton's Estate*, 46 N.W.2d 667 (Minn.1951), upheld the validity of a spendthrift trust "on the theory that the

owner of property, in the free exercise of his will in disposing of it, may secure such benefits to the objects of his bounty as he sees fit and may, if he so desires, limit its benefits to persons of his choice, who part with nothing in return, to the exclusion of creditors and others”. To create a spendthrift trust, the trust agreement must simply include a spendthrift clause.⁵ An example of a spendthrift clause in a trust is as follows:

- “Neither principal nor income of any trust nor any beneficiary’s interest therein, while undistributed in fact, shall be subject to alienation, assignment, encumbrance, appointment or anticipation by the beneficiary, nor to garnishment, attachment, execution or bankruptcy proceedings, nor to claims for alimony or support or any other claims of any creditor or other person against the beneficiary, nor to any other transfer, voluntary or involuntary, from the beneficiary.”⁶

Even without an express spendthrift clause the courts have shielded trust assets from a beneficiary’s creditors.⁷ If a trust does not contain a spendthrift clause, the courts look to the settlor’s intent as evidenced by the language used in the trust agreement. This generally requires the court to look at the trust instrument as a whole, taking into account the surrounding circumstances.⁸

Even if the beneficiary/debtor is the trustee, his or her interest will not be subject to attachment by creditors if the trust contains a spendthrift provision. The Restatement (Second) Of Trusts § 99 Cmt (2) (1959) discusses the ramifications of having a primary beneficiary also act as the trustee of a trust. It states:

- “There can be a trust in which one of several beneficiaries is the sole trustee. The trustee holds the legal title to the trust property, and the beneficiaries, including the beneficiary who is also the trustee, have equitable interests the extent of which is determined by the terms of the trust. There is no partial merger of the legal interest and the equitable interest. The beneficiary who is also trustee does not hold any part of the property free of trust. A creditor of this beneficiary can reach his interest only by a proceeding appropriate for reaching an equitable interest, and, if it is a spendthrift trust, a creditor cannot reach his interest.”

Thus, the courts attach no special importance to the fact that a trust beneficiary is both trustee and primary beneficiary.⁹

The Minnesota courts have long upheld spendthrift trust provisions even when alimony and child support were involved.¹⁰ In *Lamberton v Lamberton* the Minnesota Supreme Court held that trust principal and interest of a valid

spendthrift trust are free from the claims for alimony and child support until actually paid over to the trust beneficiary.¹¹ In *Matter of Campbell's Trust* the Court held that child support and alimony are not exceptions to the protection offered by a spendthrift trust where the clear intent of the settlor was to bar claims by all non-beneficiaries.¹² The intent of the settlor controls where claims are made upon a spendthrift trust by non-beneficiaries such as spouse and dependent children.¹³ The Minnesota Court of Appeals in an unpublished opinion upheld the validity of a spendthrift provision when it ruled that trust assets could not be used to pay alimony absent express language in the trust so authorizing.¹⁴ The court ruled:

- “It is the intent of the donor [settlor], not the character of the donee’s [beneficiary’s] obligation, which controls the availability and disposition of the trust. The donee’s obligation to pay maintenance does not transcend the right of the donor to do as she pleases with her own property. When a donor leaves the interest of the beneficiary assignable or transferable, creditors generally may reach it. If, however, the right to transfer is completely restrained by appropriate language, then creditors may not reach the interest. *If maintenance [alimony] is to be an exception to the protection offered by spendthrift provisions, there must be some interpretation of the donor’s language by which an implied exception may be construed into the instrument of the trust.* [Emphasis added]

Exceptions to the Rules

There already exist in the law exceptions to the rule that creditors may not attach a trust beneficiary’s interest in the spendthrift trust. Exceptions vary from state to state, and from jurisdiction to jurisdiction. Below is a list of some of those exceptions:

- *Explicit terms of trust.* If a trust does not contain a spendthrift provision then a beneficiary’s interest can, in most jurisdictions, be assigned or transferred without restriction, thus making such interest vulnerable to creditor attack.¹⁵ Further, if the spendthrift trust explicitly makes an exception for certain types of creditor claims, such as child support or alimony, then most courts will recognize the exception because it carries out the settlor’s intent. This is true in Minnesota and most other states.¹⁶
- *Self-settled trusts.* In most states a spendthrift trust cannot be established by a settlor to avoid his or her creditors - so called “self-settled” trusts - where the settlor is also a beneficiary. This is true for both revocable and irrevocable trusts, but was not always the case.¹⁷ Historically, under common law, trust assets - even assets held in a revocable trust - could not be reached by a settlor’s creditors if it contained a spendthrift provision.¹⁸ In 1997, however, these rules

changed forever when Alaska enacted legislation that allowed the enforcement of spendthrift provisions in self-settled trusts, including discretionary self-settled trusts. Other states followed Alaska's lead. Delaware, Nevada, Rhode Island, Colorado and Missouri now all have self-settled trust provisions in one form or another that provide some level of creditor protection to a trust settlor/beneficiary. It should be noted, however, that self-settled trusts are not recognized in a majority of states.

- *State fraudulent conveyance statutes and laws.* A corollary to the self-settled trust rules is the fraudulent conveyance statutes and laws in most states. In general, any transfer, in trust or otherwise, made by a debtor with the intent to hinder, defraud, or delay payment of creditors is a fraudulent conveyance and will be set aside.¹⁹ The burden and standard of proof varies from jurisdiction to jurisdiction. Simply "dumping" assets into a spendthrift trust, self-settled or otherwise, will not allow a settlor/debtor to avoid his creditors.
- *Offshore asset protection trusts.* Foreign offshore asset protection trusts have been utilized for a number of years. Many jurisdictions such as the Cook Islands (in the South Pacific) have enacted protective legislation that encourages the use of trusts to protect a settlor's assets from creditors.²⁰ Fraudulent conveyances will be not tolerated but there appear to be few if any restrictions when transferring assets to avoid future unknown creditors - including claims for child support and alimony. As soon as a creditor confronts a debtor that has transferred most if not all of his assets to an offshore asset protection trust, settlement is usually not far away. In most cases the foreign jurisdiction will not recognize a U.S. judgment and, when coupled with a high level of secrecy and other roadblocks, the offshore trust fosters settlement. Setup costs and administrative hassles are big drawbacks, so they are clearly not for everyone.
- *Discretionary trusts.* Today, in most states, a debtor/beneficiary's creditors cannot attach a beneficiary's interest in a wholly discretionary non-self-settled trust, nor can creditors compel the trustee to make a distribution. However, discretionary trusts and spendthrift trusts are free from creditors' claims for different reasons. A spendthrift trust is free from creditors' claims because the settlor explicitly incorporated a spendthrift provision in the trust instrument that exempts such claims. In this way the spendthrift trust carries out the settlor's stated intent. In contrast, a discretionary trust is exempt from creditor attack, not because of any explicit language in the trust instrument, but because a beneficiary's interest in a discretionary trust is by law not considered a property interest, and therefore, cannot be attached by creditors. In summary, both types of trusts - a discretionary trust and spendthrift trust - are equally powerful bulwarks against creditor attack but for different reasons. In Minnesota, the leading case on discretionary trusts is *United States v.*

O'Shaughnessy where the Minnesota Supreme Court held that a debtor/beneficiary's interest in a wholly discretionary non-self-settled trust was not an "interest in property" under state law and, therefore, could not be attached to satisfy the debtor's federal tax obligation.²¹

- *Trust restrictions based on eligibility for public assistance.* In Minnesota, by statute, with certain exceptions - most notably a supplemental needs trust²² - any provision in a trust that provides for the "suspension, termination, limitation, or diversion of the principal, income, or beneficial interest of a beneficiary, if the beneficiary applies for, is determined eligible for, or receives public assistance or benefits under a public health care program is unenforceable as against public policy... , without regard to the irrevocability of the trust or the purpose for which the trust was created."²³
- *Child support and alimony.* As stated previously, all states enforce spendthrift provisions in trusts. However, many carve out exceptions. Child support and alimony are the most common. Some states except both child support *and* spousal maintenance. Others allow one, but not the other. Some states have legislated their exceptions. Others arose by case law.²⁴ Finally, some states, like Minnesota, make no exceptions.
- *Uniform Trust Code.* The *2001 Uniform Trust Code*,²⁵ while recognizing spendthrift trusts, carves out exceptions for certain governmental claims, child support, and alimony. The preamble to Article 5 reads as follows:

Article 5 - Creditor's Claims; Spendthrift and Discretionary Trusts - This article addresses the validity of a spendthrift provision and other issues relating to the rights of creditors to reach the trust to collect a debt. To the extent a trust is protected by a spendthrift provision, a beneficiary's creditor may not reach the beneficiary's interest until distribution is made by the trustee. To the extent not protected by a spendthrift provision, a creditor can reach the beneficiary's interest, subject to the court's power to limit the award. *Certain categories of claims are exempt from a spendthrift restriction, including certain governmental claims and claims for child support or alimony.* [Emphasis added] Other issues addressed in this article include creditor claims against discretionary trusts; creditor claims against a settlor, whether the trust is revocable or irrevocable; and the rights of creditors when a trustee fails to make a required distribution within a reasonable time.

As can be seen from the above discussion, the law in this area is not settled. There does appear to be a trend by states to allow exceptions to the spendthrift trust rules for child support and alimony. Minnesota has long held fast to its strict "no exceptions to the spendthrift trust" rules. Below are some of the arguments for and against making child support and spousal maintenance exceptions to spendthrift trusts in Minnesota. Each has merit

and will be discussed.

Arguments for Exceptions

1. Public Policy. By far the most compelling argument for an exception to the spendthrift trust rules for child support and spousal maintenance is the public policy argument. The public policy argument for excepting child support from the spendthrift trust rules was artfully made by the Oregon Supreme Court in *Shelley v. Shelley*, 223 Or. 328, 354 P. 2d 282 (1960) as follows:

- “We have no hesitation in declaring that public policy requires that the interest of the beneficiary of a trust should be subject to the claims of support of his children...Certainly, the defendant will accept the societal postulate that parents have the obligation to support their children. If we give effect to the spendthrift provision to bar the claims for support, we have the spectacle of a man enjoying the benefits of a trust immune from claims which are justly due, while the community pays for the support of his children... . We do not believe it is sound policy to use welfare funds of this state in support of the beneficiary’s children, while he stands behind the shield of immunity created by a spendthrift trust provision. To endorse such a policy and to permit the spectacle which we have described above would be to invite disrespect for the administration of justice.”

The *Restatement (Second) Of Trusts* § 157 (1959) also cites public policy as a reason to restrict enforcement of spendthrift trust provisions for child support and alimony claims. It provides that a trust beneficiary’s interest can be reached to satisfy claims for: 1) alimony; 2) child support; 3) the provider of necessary services or supplies furnished to a trust beneficiary; 4) the United States or a state for [tax] claims against the beneficiary.

In summary, the thrust of the public policy argument to except child support and alimony from the spendthrift trust rules appears to be that a trust beneficiary should not be able to reap the benefits of the trust while at the same time neglecting his or her social and legal obligation or responsibility to his child or former spouse.

2. Uniformity among state laws. The second argument made for an exception to the spendthrift rules for child support and alimony is uniformity. As stated above, many states make exceptions to the spendthrift rules for child support and alimony, either by legislative act or by case law. Others, like Minnesota have not. Conflicts of law between states are bound to arise. The *Restatement (2d) Conflicts 1969*, section 273(b) and comment c, provides that personal property in a trust is governed by the state law designated by the settlor in the trust. Therefore, if a settlor selects Minnesota

law as the governing law in a trust, then a claim for child support by a resident of Georgia - a state that excepts child support from its spendthrift laws - may not be honored. This apparent anomaly only invites conflict and confusion and suggests the need for more uniformity among the various states. This lack of uniformity has resulted in a few state courts allowing trust invasion under local law, notwithstanding the explicit terms of the trust instrument to the contrary.²⁶

3. Inconsistency in other laws. Other bodies of laws are in conflict on this issue. For example, a beneficial interest in a spendthrift trust cannot be reached by creditors in bankruptcy.²⁷ However, under the federal Employee Retirement Income Security Act (ERISA), child support, alimony, or marital property claims can be satisfied from qualified plan retirement assets notwithstanding the general erisa prohibition against the assignment and alienation of retirement benefits.²⁸ In contrast, state and local pension plan assets that are not governed by erisa may be exempt from creditor claims.

4. Legal precedent exists for priority of claims. There is precedent under federal and Minnesota law for preferences for certain types of creditor claims. For example, under the federal and Minnesota bankruptcy laws, certain creditors have priority for payment from the bankruptcy estate over other creditors. In general, secured claims and wages claims have priority for payment over unsecured claims. Minnesota law allows child support to be deducted on a priority basis from a debtor's tax refund.²⁹ Child support obligations can be deducted from Minnesota unemployment benefits.³⁰ The percentage limitations for earnings levies are waived for child support.³¹ Finally, under Minnesota law failure to support a spouse or child is a crime.³²

5. Existing system creates roadblocks to collection. Under the existing collection system in Minnesota, alimony and child support arrearages cannot be paid directly by a trustee from trust assets. Principal and income of a valid spendthrift trust are free from the claims of creditors - including claims for alimony and child support - and are protected in transmission until actually paid over to the trust beneficiary.³³ Such a system of collection makes it easier for a debtor to secret funds while making it harder for a creditor to satisfy his or her or its claim. An argument can be made that these collection roadblocks, especially when child support and alimony are involved, should be eliminated to avoid any possible manipulation of the system. A more efficient system would be to allow child support and alimony to be attached and collected at the source of payment, that is, directly from the trustee before disbursement is made to the debtor/beneficiary. Such a system would be efficient and more compatible with the public policy of speedy collection of child support and alimony arrearages.

6. Child support but not alimony. The argument for making child support an exception to the spendthrift rules is generally considered stronger than for

alimony. This is evidenced by the fact that some states except child support but not alimony. The reason for this is unknown, but one could surmise that the public policy for the child support exception is stronger than for alimony. Further, by making both child support and alimony exceptions one could give rise to competing claims for limited available dollars by parties who, by the nature of the proceeding, have differing interests (i.e. the custodial parent and the minor child). To avoid this potential conflict, and because of the stronger policy argument for making child support an exception, an argument could be made to except the former but not the latter. In the alternative, a priority system could be implemented: child support arrearages would be paid first before arrearages for alimony.

Arguments Against Exceptions

1. Contrary to settlor's wishes. The main argument against an exception to the spendthrift trust rules is that it would be contrary to the settlor's wishes. This is a strong and compelling argument and not one that should be taken lightly. If the settlor knew that trust assets could be attached by a beneficiary's creditors, whether for child support, alimony, or otherwise, the settlor may choose to exclude the beneficiary from the trust in the first instance or simply not establish the trust. Many trusts benefit remote issue - persons the settlor may never know or meet. If exceptions to the spendthrift trust rules were made, the settlor's wishes would be usurped by the state over issues that were never contemplated by the settlor, and for beneficiaries that the settlor never knew. In addition, exceptions to the spendthrift rules may inadvertently harm other trust beneficiaries. For example, if the settlor established a trust for the "support" of a class of beneficiaries, an exception to the spendthrift trust rules for alimony could shift trust assets in favor of the debtor/beneficiary to the detriment of the other beneficiaries. The case law is replete with references to carrying out the settlor's intent when enforcing trust provisions. Carving out exceptions defeats the settlor's intent head on while weakening the utility of trusts in general.

2. Added administrative burden on trustees. Another argument against making exceptions to the spendthrift trust rules is that it would be an administrative nightmare for trustees. Many trusts by design are discretionary: the trustee is given the discretion to decide if a distribution should be made. Further, the trustee's discretion may be absolute - without limitation - or, it may be limited by a standard that is intentionally less than precise, such as "health, maintenance, support, education and general welfare." In either case, a trustee would be in a very difficult situation if a court order required the trustee to satisfy, in whole or in part, an alimony claim from a discretionary trust.³⁴ Other unanswered questions are:

- Will the trustee be made a party to the child support or alimony collection proceeding? Will the debtor/beneficiary or all trust

- beneficiaries be made a party to the proceedings?
- What court will have jurisdiction, probate, family or district court? State or federal court?
 - Will an exception apply equally to individual and corporate trustees?
 - Will an exception require the trustee to make a trust distribution directly to the creditor (i.e. custodial parent for child support or former spouse for alimony) or simply notify them when a trust distribution will occur? If the latter, what kind of notice will be required and to whom should it be given - the creditor, the debtor/beneficiary, or all beneficiaries? How much notice is required? What if there is a dispute over proper notice?
 - Can a creditor attach all or only a portion of a trust distribution? What if the trust is the debtor/beneficiary's primary source of support? Should it matter, or should child support and alimony arrearages always take precedent?
 - If an exception to the spendthrift rules were allowed, the trustee would be required to review child support and alimony court orders, ascertain their authenticity, give and receive collection notices, retain counsel, and provide additional accountings. Who will pay for these added costs - the creditor, the debtor/beneficiary, or all beneficiaries?
 - Will the trustee be held liable for not properly carrying out a child support or alimony collection order? To whom will she be liable, the creditor or the debtor/beneficiary, or all beneficiaries?

3. Manipulation of divorce and child support laws. A beneficiary's interest in a discretionary trust is generally non-marital property and, in general, will not be subject to equitable division in a divorce. Nor will the income earned by the trust be taken into account in calculating a trust beneficiary's child support obligation under Minnesota law. If, however, child support and alimony become exceptions to the spendthrift rules, trust assets will play a more prominent role in the divorce and child support proceedings. If this is the case, the calculation of trust "income" becomes critical. If income is high it may increase the beneficiary's alimony and child support obligation. If income is low it may decrease the beneficiary's alimony and child support obligation. However, trust income is not a static concept and is dependent on many factors, including asset allocation, investment decisions, as well as market conditions. Further, in some cases, trust income can be manipulated. As such, it makes the trustee's role critical. By excepting child support and alimony from the spendthrift provisions trustees will be exposed to heightened scrutiny as competing parties vie for alternative and competing outcomes. Should a trustee invest trust assets to decrease trust income to reduce a trust beneficiary's child support or alimony obligation, thereby preserving trust assets for future distributions? Will such actions by a trustee violate the terms of a divorce decree or child support order? What if the trustee's actions are inadvertent and not purposeful? All these questions

must be answered.

4. *A change would have little applicability.* One argument against making exceptions for alimony and child support from the spendthrift trust rules is that it will have very little applicability. This author is unaware of any definitive studies that would shed light on this assertion but would venture to say that the number of cases would most likely be small. Very few members of the general public have significant assets held in trust. *Ergo*, why make an exception to a rule if it would apply to only a few wealthy debtors? Would such a change materially reduce child support and alimony arrearages?

5. *Slippery slope.* Finally, the argument has been made that if there is an exception for one type of creditor - child support and/or alimony claims - that this will simply open the door for additional classes of creditors to lobby their case, resulting in additional administrative headache for trustees and a decline in trusts as a tool to protect assets from spendthrift beneficiaries. Further, if an exception is made for spendthrift trusts will this carry over to and result in an erosion of a trustee's discretionary investment and distribution powers?

Conclusion

Spendthrift trust provisions have been, and will continue to be, very valuable tools for the estate and trust professional to protect trust beneficiaries from their own financial avarice while better carrying out the trust settlor's intent. Currently, there are no exceptions under Minnesota law to the spendthrift trust rules. A creditor simply cannot attach assets of a Minnesota spendthrift trust for any reason. Other states have made limited exceptions for child support and alimony. There are strong arguments for and against a change to Minnesota's spendthrift trust rules. This article was written to highlight those arguments for and against. That said, most estate and trust professionals would most likely argue against any change to our current system because it has worked exceedingly well over the years. The debate over exceptions to the spendthrift rules is currently before the legislative committee of the Probate and Trust Law section of the Minnesota State Bar Association as it reviews the proposed Uniform Trust Code.

Notes

1 For example, Arizona, California, Kentucky, Louisiana, Missouri, Oklahoma, and Pennsylvania make exceptions to the spendthrift trust rules for both alimony and child support by statute; Georgia, Texas and Wisconsin make exceptions by statute for child support only; Arkansas, Indiana, Michigan, Ohio and Washington make exceptions for both alimony and child support by case law; North Carolina, Oregon, and South Carolina make exceptions by case law for child support only. Minnesota, Iowa, Nevada and New York provide that spendthrift trusts cannot be invaded for child support

or alimony.

2 See Minn. Stat. § 518, et al. For consistency, all references to alimony or spousal maintenance shall be called “alimony”.

3 The power of alienation is the “power to sell, transfer, assign or otherwise dispose of property.” Black’s Law Dictionary 1171 (6th ed. 1990).

4 Historically there have been two main bulwarks against creditor attachment of trust assets. One is the spendthrift trust. The other is the wholly discretionary trust - a trust that provides that distributions are made in the trustee’s absolute and sole discretion. See *United States v. O’Shaughnessy*, 517 N.W.2d 574 (Minn. 1994). In practice, most discretionary trusts contain spendthrift provisions so the distinction becomes less important.

5 See *In re Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43 (Minn. 1985).

6 See *Morrison v. Doyle*, 582 N.W.2d 237 (Minn. 1998).

7 See *In re Moulton’s Estate*, 46 N.W.2d 675, (Minn.1951); see also *First Nat’l Bank of Canby v. Olufson*, 232 N.W. 337 (Minn. 1930).

8 See *In re Watland*, 300 N.W. 195 (Minn. 1941).

9 See *Morrison v. Doyle*, 582 N.W.2d 237 (Minn. 1998).

10 See *Smith v. Smith*, 253 N.W.2d 143 (Minn. 1977); *In re Moulton’s Estate*, 46 N.W.2d 667 (Minn. 1951); *Lamberton v. Lamberton*, 38 N.W. 2d 72, (Minn.1949); *Erickson v. Erickson*, 266 N.W. 161 (Minn. 1936).

11 See *Lamberton v. Lamberton*, supra n. 10.

12 See *In Matter of Campbell’s Trust*, 258 N.W. 2d 856, (Minn. 1977).

13 Id

14 See *In Re the Marriage of Vallie B. Kritz vs. James J. Kritz, Jr.*, Minnesota Court of Appeals, C6-95-1853, (1996), citing *Erickson v. Erickson*, supra n. 10.

15 See *Capital Trust & Savings Bank v. Knauft*, 214 N.W. 771 (Minn. 1927).

16 See *Kritz*, supra, n. 14.

17 See *Restatement (Third) of Trusts* § 25 cmt.e (Tentative Draft No. 1,

approved 1996).

18 See Restatement (Second) of Trusts § 330 cmt. o (1959)

19 In general, see Minn. Stat. § 577.

20 Other foreign jurisdictions that have enacted similar legislation are: the Bahamas, Barbados, Belize, Bermuda, Cayman Islands, Cyprus, Gibraltar, Mauritius, Turks and Caicos, Nevis, and Nauru.

21 See *United States v. O'Shaughnessy*, supra n. 4.

22 See Minn. Stat. § 501B.89 subd. 2.

23 See Minn. Stat. § 509B.89, subd. 1.

24 See supra, n. 1.

25 See Uniform Trust Code, last revised and amended in 2001, drafted by the National Conference of Commissioners on Uniform Laws.

26 See *Boston Safe Deposit and Trust Co. v. Paris*, 447 N.E.2d. 1268 (Mass. App. 1983).

27 See 11 U.S.C.A. § 541(c)(2) (1993).

28 See ERISA, 29 U.S.C.A. § 1056(d)(3) (1985 & Supp. 1993).

29 See Minn. Stat. § 270A.10

30 See Minn. Stat. § 268.155

31 See Minn. Stat. § 550.136

32 See Minn. Stat. § 609.375.

33 See *Lamberton v. Lamberton*, supra n. 10.

34 See *Shelley v. Shelley*, 223 Or. 328, 354 P. 2d 282 (1960).

William Forsberg is a partner with Parsinen, Kaplan, Rosberg & Gotlieb, concentrating his practice in the areas of estate planning and tax law. He is an adjunct professor of law at William Mitchell College of Law and he is

licensed to practice law in MN and FL.

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