

## SPENDTHRIFT TRUSTS IN BANKRUPTCY

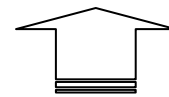
### WHEN IS A DEBTOR'S BENEFICIAL INTEREST PROPERTY OF THE ESTATE?

March 2011

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**SPENDTHRIFT** limitations under applicable nonbankruptcy law protect at least 75% of Debtor's interest per Sec. 541(c)(2)

Debtor's interest is **PROPERTY OF ESTATE** if Grantor dies pre-petition or within 180 days after.

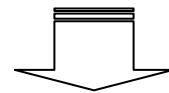


#### TESTAMENTARY TRUSTS:

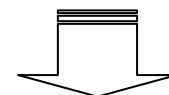
Treated like **WILLS**.  
Transfer by Grantor occurs on Death of Grantor.

#### INTER VIVOS TRUSTS:

Created while **Settlor is alive**—so called "Living Trust." Often **REVOCABLE** with conditions (such as death of Settlor) that will make interest **IRREVOCABLE**.



What **CONTINGENCIES** stand between debtor and right to distributions? **FULLY OR PARTIALLY REVOCABLE?**



If **FULLY REVOCABLE**, Debtor's interest **NOT PROPERTY OF ESTATE**. Remains true even if Settlor dies within 180 days of Petition Date (since a trust transfer **IS NOT a BEQUEST** under Sec. 541(a)(5)(A))



TESTAMENTARY?

INTER VIVOS?

Debtor's interest most likely **PROPERTY OF ESTATE**, even if contingencies (i.e., life of primary beneficiary) remain.

**SPENDTHRIFT** provisions in applicable nonbankruptcy law protect at least 75% of the Debtor's interest per Sec. 541(c)(2)

**SPENDTHRIFT PROTECTION LIMITED** by Calif. Prob. Code. §15306.5(a). **ESTATE** has **PROPERTY** interest in **25%** of payments, subject to debtor exemption for reasonable support per Calif. Prob. Code. §15306.5(c).

**IRREVOCABLE**  
(In Whole or Part)