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H.23

Introduced by Representative LaLonde of South Burlington

Referred to Committee on

Date:

Subject: Trusts; transfer of property to trust; creditor's claims

Statement of purpose of bill as introduced: This bill proposes to provide that when property owned by spouses as tenants by the entirety is transferred into a trust, each spouse retains the same immunity from creditor claims against the property that the spouses had before they transferred the property into the trust.

An act relating to the transfer of property to a trust

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 14A V.S.A. § 505 is amended to read:

§ 505. CREDITOR'S CLAIM AGAINST SETTLOR

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

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

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or

1 assignee of a particular settlor may reach shall not exceed the settlor's interest
2 in the portion of the trust attributable to that settlor's contribution. This
3 subdivision shall not apply to an irrevocable "special needs trust" established
4 for a disabled person as described in 42 U.S.C. § 1396p(d)(4) or similar federal
5 law governing the transfer to such a trust.

6 (3) After the death of a settlor, and subject to the settlor's right to direct
7 the source from which liabilities will be paid, the property of a trust that was
8 revocable at the settlor's death is subject to claims of the settlor's creditors,
9 costs of administration of the settlor's estate, the expenses of the settlor's
10 funeral and disposal of remains, and statutory allowances to a surviving spouse
11 and children to the extent the settlor's probate estate is inadequate to satisfy
12 those claims, costs, expenses, and allowances.

13 * * *

14 (c)(1) Property held by spouses as tenants by the entirety that is conveyed
15 to the spouses' jointly or separately held revocable or irrevocable trusts, and
16 any proceeds of the sale or disposition of the property, shall be immune from
17 the claims of the spouses' separate creditors to the same extent as the property
18 would have been if it had remained held by the spouses as tenants by the
19 entirety if the following apply:

20 (A) the spouses are married to each other;

1 (B) the property is held in the trust or trusts, or has been deeded out
2 of the trust to the spouses as tenants by the entirety;

3 (C) if the trust is a joint trust, the trust may be revoked by either
4 spouse acting alone but may be amended only by action of both spouses; and

5 (D) the property is the spouses' property, including if:

6 (i) both spouses are current beneficiaries of one joint trust that
7 holds the entire property; or

8 (ii) each spouse is a current beneficiary of a separate trust and the
9 two separate trusts, together, hold the entire property, whether or not other
10 persons are also current or future beneficiaries of the trust or trusts.

11 (2)(A) Property at any time held in a tenants by the entirety trust shall
12 have the same immunity from the claims of a separate creditor of either settlor
13 as the property would have if it were held outside the trust by the settlors as
14 tenants by the entirety unless otherwise provided in writing by the settlor or
15 settlors who transferred the property to the trust. The property shall be treated
16 in all respects as tenants by the entirety property, including for purposes of
17 federal and state bankruptcy laws.

18 (B) Property held in a tenants by the entirety trust shall cease to
19 receive immunity from the claims of creditors upon the dissolution of the
20 settlors' marriage by a court.

1 (3) Except as otherwise provided in this title, on the effective date of this
2 subsection:

3 (A) this subsection (c) applies to all trusts created before, on, or after
4 the effective date of this subsection;

5 (B) this subsection (c) applies to all judicial proceedings concerning
6 trusts commenced on or after the effective date of this subsection.

7 Sec. 2. EFFECTIVE DATE

8 This act shall take effect on passage.