Spendthrift Trusts in Louisiana

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COMMENTS

SPENDTHRIFT TRUSTS IN LOUISIANA

“A trust in which by the terms of the trust or by statute a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed is a spendthrift trust.”

The restriction of alienation of the income beneficiary’s interest in a trust has been recognized in Louisiana since the Trust Estates Act was adopted in 1938. Although the original statute did not allow restriction of alienation of the interest in principal, it was amended in 1944 to allow such a restriction. In 1964 the Trust Estates Act was replaced by the Louisiana Trust Code, which continues to recognize spendthrift trusts. There

1. RESTATEMENT (SECOND) OF TRUSTS § 152(2) (1959). Although spendthrift trusts have long been forbidden in England except on the interest of a married woman, courts in the United States have generally allowed restriction of the income beneficiary’s interest in the trust. The principal case in the United States concerning the validity of spendthrift trusts is Nichols v. Eaton, 91 U.S. 716 (1875). In Nichols, although the facts did not necessitate a discussion of spendthrift trusts, Justice Miller used the opinion as a platform from which to espouse the view that spendthrift trusts are valid. Although this was simply dictum, the Nichols case has been cited numerous times in decisions upholding the validity of spendthrift trusts. Professor Gray vehemently protested the validity of spendthrift trusts in his Restraint on the Alienation of Property (2d ed. 1895), but the use of the device has grown in the United States and today is accepted by most states, either by statute or case law.


Although Miss. Code Ann. § 849 (1942) provides that estates held in trust are subject to the rights, debts and charges of the beneficiaries as though they owned a like interest out of trust, the decisions seem to indicate that spendthrift trusts are valid. See Stansel v. Hahn, 96 Miss. 616, 624, 50 So. 696 (1909); Comment, 34 Miss. L.J. 333 (1963); Note, 13 Miss. L.J. 624 (1941). Formerly Alabama and Kentucky forbade spendthrift trusts, but recent legislation in those states allows a restriction on alienation of interests in trusts. See Ala. Code tit. 58, § 1 (1958); Ky. Rev. Stat. § 381.180 (1971). In the three states which do not allow spendthrift trusts, the trust is valid, but the attempted restriction of alienation is invalid.

2. La. Acts 1938, No. 81. This statute followed the model proposed by Professor Griswold in his treatise, SPENDTHRIFT TRUSTS § 565 (2d ed. 1947) [hereinafter cited as Griswold].


4. La. R.S. 9:1721-2252 (Supp. 1964) [hereinafter cited in the text by section numbers which refer to the Louisiana Trust Code].

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are no cases in Louisiana concerning the constitutionality of spendthrift trusts or the interpretation of spendthrift provisions in the Trust Estates Act or the Trust Code. Although the statute is clear in most regards, some unanswered questions remain. It is hoped that this article, by referring to the statute and to common law authority from which Louisiana adopted the trust device, will answer some of these questions.

The general rule in Louisiana is that a beneficiary may transfer or encumber the whole or any part of his interest unless the trust instrument provides to the contrary. However, the Trust Code provides that the interest of the beneficiary, whether in income or principal, may be subject to a restraint on the voluntary or involuntary alienation by the beneficiary. Restraining voluntary alienation means that the beneficiary cannot transfer, assign, or encumber his interest in the trust, whereas restraining involuntary alienation means that the creditors of the beneficiary cannot reach the beneficiary's interest in the trust.

Words Sufficient to Create Spendthrift Trust

The Trust Code provides that "[a] declaration in a trust instrument that transfers or encumbers the whole or any part of the interest of the beneficiary unless the instrument provides to the contrary."

5. Professor Pascal has argued that spendthrift trusts violate the Louisiana Constitution (See art. IV, § 16): "By now the answer to the question just put must be obvious: a trust contains a prohibited substitution or judicial comissum only if the settlor's will directly or indirectly operates to control the transfer of the interest of the beneficiary to another; if the beneficial interest is completely under the control of the beneficiary there is no substitution or judicial comissum..."

"If this be true, as the writer believes, then extreme doubt is cast on the constitutional validity of spendthrift trusts, or terms imposed by the settlor prohibiting the beneficiary from alienating his beneficial interest in the trust by voluntary act." Pascal, The Trust Concept and Substitution, 19 LA. L. REV. 273, 282 (1959).

No Louisiana case has dealt directly with the issue of the constitutionality of spendthrift trusts. However, in Succession of Singlst, 169 So. 2d 10 (La. App. 2d Cir. 1964), the court upheld a spendthrift trust over legitime, thus intimating that spendthrift trusts in themselves are constitutional. See also Succession of Heymann, 240 So. 2d 905 (La. App. 4th Cir. 1970), where the court dealt with a spendthrift trust but did not consider its constitutionality.


7. Id. § 2002.
strument that the interest of a beneficiary shall be held subject to a ‘spendthrift trust’ is sufficient to restrain alienation by a beneficiary of the interest to the maximum extent permitted by this Sub-part.” Furthermore, “spendthrift trust,” when used without other qualifying words, is defined as a “trust under which alienation by a beneficiary of an interest in income or principal is restricted to the full extent permitted by this Code.” It is probable that most spendthrift trusts written by attorneys in the state today follow the language in one of the forms found in the Louisiana Trust Handbook. Therefore, if the settlor in the trust instrument provides either that “[e]ach trust shall be held subject to the maximum restraint on voluntary or involuntary alienation by the beneficiary permitted by the provisions of the Louisiana Trust Code,” or “[t]he interest of the Beneficiary shall not be subject to voluntary or involuntary alienation,” it is apparent that the settlor has created a spendthrift trust, and the extent to which restriction of alienation was intended can be easily determined. There may be times, however, when it is difficult to ascertain whether or not the settlor intended to create a spendthrift trust and to what extent he intended to restrict alienation.

Courts in other jurisdictions have found that although no particular formula is required to create a spendthrift trust, the intention to establish a spendthrift trust must clearly appear in the trust instrument. Although some of the early courts allowed the introduction of extrinsic evidence to prove the set-

8. Id. § 2007.
9. Id. § 1725(7).
11. Id. at 6.
12. Id. at 63.
lror's intention, most courts today do not allow evidence other than the trust instrument itself. Section 2001 of the Louisiana Trust Code provides that the interest of the beneficiary is alienable "unless the trust instrument provides to the contrary." This language indicates that the trust instrument must expressly provide for spendthrift provisions although it appears no particular language is required. It is therefore evident that extrinsic evidence of the settlor's intention will not be allowed.

**Voluntary and Involuntary Alienation**

The problem may arise whether the settlor of a spendthrift trust intended to restrict voluntary alienation, involuntary alienation, or both. In some trusts it has appeared that the settlor intended the beneficiary's interest to be nonassignable, without providing whether creditors could reach the interest. Courts have generally interpreted these trusts to mean that the beneficiary's interest could neither be assigned by him nor reached by his creditors. The more frequent occurrence is that the trust instrument forbids creditors from reaching the beneficiary's interest, while not mentioning whether the beneficiary will have the power to alienate. Again, the courts have generally held that the trust is restricted as to both voluntary and involuntary alienation.

The most difficult problem arises when the settlor clearly intends a restriction of only voluntary or involuntary alienation,


17. "In the absence of express provision in the instrument, the beneficiary is free to encumber his interest." (Emphasis added.) J. Rubin & A. Rubin, Louisiana Trust Handbook 276 (1968).

18. See Bogert § 222; Griswold § 265; Scott § 152.3.

19. See Steib v. Whitehead, 111 Ill. 247 (1884); Jackson Square Loan & Savings Ass'n v. Bartlett, 95 Md. 661, 53 A. 426 (1902); Partridge v. Caven- der, 96 Mo. 452, 9 S.W. 785 (1888); Winthrop Co. v. Clinton, 196 Pa. 472, 46 A. 433 (1899); White v. O'Bryan, 149 Tenn. 13, 251 S.W. 765 (1923); Restatement § 152, comment e.

but not both. The first example of the problem is a situation in which the settlor provides that the creditors will have the right to seize the interest of the beneficiary, but that the beneficiary will have no right to assign his interest. It is submitted that this type restriction is infrequently used because the settlor generally believes more protection is afforded by restraining the creditors. The second example is that the beneficiary will have the right to assign his interest, but creditors are expressly prevented from seizing that interest. Although it has been argued that this type restriction should be invalid as against "public policy," a few courts have sanctioned it.21

Section 2002 of the Trust Code states that "the trust instrument may provide that the interest of a beneficiary shall not be subject to voluntary or involuntary alienation by a beneficiary." (Emphasis added.) The way in which the word "or" is used indicates that it is to be read conjunctively rather than disjunctively. That is, in order to have a spendthrift trust, both voluntary and involuntary alienation must be restricted. This conclusion is strengthened by the fact that section 1725(7) clearly states that in order for a spendthrift trust to exist, the beneficiary's interest must be subject to the maximum restriction on alienation permitted by the Code, i.e., restrictions on both voluntary and involuntary alienation. Therefore, it appears that only those trusts in which both restrictions upon alienation are present should be sanctioned as spendthrift trusts.

The comments to section 2002 state, however, that a trust instrument may restrict alienation to a lesser degree than that permitted by the Code, although the trust will not be considered

21. "It would seem that it is against public policy to prevent the beneficiary's creditors from reaching property which he can dispose of voluntarily." SCOTT § 152.3 at 1153. Professor Bogert, however, takes the opposite view: "If a trustor [settlor] expressly states that his beneficiary is to be subject to a restraint as to voluntary alienation, but makes no mention of a restraint as to creditors; or if he excludes the rights of creditors but does not express any intent with regard to assignments by the beneficiary, it would seem that the single restraint should be valid. There is no requirement that the restraint must affect both alienees and creditors. The power to create two types of restraints includes ability to place a single class of restraint on the beneficiary." BOGERT § 222, at 645-46.

a spendthrift trust. There are no provisions of the Trust Code which forbid the creation of this “quasi-spendthrift trust” by placing restraints on voluntary alienation without placing restraints on involuntary alienation.23  The converse is not true, however, because section 2004(1) provides that a creditor may seize an interest in income or principal that is subject to voluntary alienation by a beneficiary. This provision apparently means that voluntary alienation must be restricted to the same extent as involuntary alienation in order for spendthrift or quasi-spendthrift provisions to be effective. It is submitted that this is a wise policy decision, preventing the beneficiary from having the best of two worlds. Otherwise, the beneficiary would have full use of his interest in the trust, while creditors would be prevented from reaching that interest to receive payment for the debts owed by the beneficiary.

Income and Principal Interest

Louisiana, along with the majority of other states,24 allows restriction of both income and principal interests.25 Can either of these interests in the trust be restricted without restriction of the other? The Trust Code defines a spendthrift trust as one in which voluntary and involuntary alienation of the income or principal beneficiary’s interest in the trust is restricted.26 Using the disjunctive-conjunctive analysis here, the word “or” between the words “income” and “principal” appears to be disjunctive; it therefore follows that the settlor may restrict either

23. “The trust instrument may restrict alienation to a lesser degree than permitted by this Code, but a trust existing under such an instrument is not a ‘spendthrift trust.’” LA. R.S. 9:2002 (Supp. 1964). The writer uses the term “quasi-spendthrift” trust in discussing these lesser restrictions because the term implies something less than a spendthrift trust.


25. “This Code makes no distinction between the enforceability of a restraint upon alienation of an interest in income and the enforceability of a restraint upon alienation of an interest in principal. It considers a ‘spendthrift trust’ to be one under which voluntary alienation and involuntary alienation by a beneficiary of an interest in income or principal are restricted to the full extent permitted.” LA. R.S. 9:2001, comment b (Supp. 1964).

26. Id. § 1725(7).
the interest of the income beneficiary, the principal beneficiary, or both.\textsuperscript{27}

However, even assuming that a valid spendthrift trust must restrict the alienation of the interest of both the income and principal beneficiary, a trust which restricts the alienation of either will be valid, although not as a spendthrift trust.\textsuperscript{28} This is true because the Trust Code sanctions lesser restrictions. Therefore, if the clear intention of the settlor in the trust instrument is to restrain the interest of either the income or the principal beneficiary, but not both, the non-restricted interest could be both assigned by the beneficiary and reached by his creditors.\textsuperscript{29} Furthermore, where there are several beneficiaries, either to income or principal or both, it appears that the settlor may validly restrict the alienation of the interests of certain beneficiaries without restricting the alienation of the interests of others.\textsuperscript{30}

When there is no restriction upon alienation of the principal beneficiary's interest, the assignee or the creditor may gain an interest in the trust principal, but he may not reach the trust property itself until the trust terminates. Similarly, if there is no restraint upon the income beneficiary's interest, the assignee or creditor obtains only that interest, with the right to receive the income when it is paid out by the trustee.\textsuperscript{31} Where there are various income and principal beneficiaries, the seizure or assign-
ment of the interest of one beneficiary should not affect the interest of the other beneficiaries. In like manner, where one individual is the beneficiary of both income and principal, although both interests will probably be seized or assigned at the same time, the seizure or assignment of one interest should not affect the other.

Effect of Death of Income or Principal Beneficiary on Spendthrift Provisions

It is clear that since the income beneficiary's interest in the trust necessarily ends at his death, no trust interest passes to his heirs or legatees. However, any accumulated or undistributed income is paid to the heirs, legatees, assignees, or legal representative of the beneficiary. In this case creditors may attach the income to pay the debts of the beneficiary.

The effect of the spendthrift provisions upon the rights of the heirs or legatees in whom the principal beneficiary's interest vests at his death, and creditors of the estate, is unclear. The Trust Code provides that upon a principal beneficiary's death, "his interest vests in his heirs or legatees, subject to the trust . . . ." This wording indicates that the spendthrift provisions apply also to heirs and legatees; and it can be argued that this is true because the heirs and legatees should take no greater right than that held by their ancestor. An opposite view, however, is that the spendthrift provisions end upon the death of the principal beneficiary absent a contrary intention of the settlor, because the purpose of the spendthrift provisions is to protect

32. LA. R.S. 9:1964 (Supp. 1964): "An interest in income terminates upon the death of the designated beneficiary, or at the expiration of the period of his enjoyment if the interest is for a period less than life. At the termination of an income interest, accumulated or undistributed income shall be paid to the beneficiary or his heirs, legatees, assignees, or legal representatives, except as otherwise provided in this Code."
33. Id.
34. See RESTATEMENT § 152, comment j; SCOTT § 158.1.
36. J. RUBIN & A. RUBIN, LOUISIANA TRUST HANDBOOK 15 (1968): "The Louisiana Trust Code states that the heir of a beneficiary takes 'subject to the trust' (Art. 1972). Query: Are heirs who inherit from the beneficiary of a spendthrift trust before the termination of the trust restricted to the same extent as was the original beneficiary? In the phrasings suggested for the relevant trusts in this volume, the 'trust' or the 'beneficiary' is subject to 'maximum restraints,' and the restraints could be urged to extend for the term of the trust itself regardless of the individual who benefits."
only the named beneficiary during his lifetime. This result is reinforced by the argument that, since the beneficiary is given the authority by section 1972 to transfer his principal interest in the trust to his "legatees," then his interest is necessarily alienable because he can divest himself of it through his will. If this is so, then the interest should pass to heirs or legatees free from spendthrift restraints.

If spendthrift restraints upon the principal interest do not continue after the death of the principal beneficiary, although the trust is still in effect, is this interest in the trust subject to the rights of the creditors above the rights of heirs or legatees? Courts elsewhere have uniformly held that the creditors of the beneficiary prevail over his legatees or his heirs. They have argued that after the beneficiary's death, all his property should be subject to the claims of his creditors. His heirs or legatees should not be allowed to take that interest free of their claims. Louisiana would evidently reach the same result under its succession law.

If the statute is interpreted so that the heirs and legatees of the principal beneficiary take subject to the spendthrift provisions, it appears that creditors will have no opportunity to reach the deceased's interest in the trust. If this is the proper interpretation of the statute, the result is unfortunate and could be avoided. The statute could be amended to provide that spendthrift provisions end at the death of the principal beneficiary absent a contrary intention by the settlor, and if spendthrift provisions continue, the principal interest in the trust is liable

37. Griswold § 93; Scott § 158.1, at 1234: "There would seem to be no reason, therefore, why on his death his creditors should not be able to reach his interest under the trust if his interest has not ceased on his death. If the principal of the trust fund is payable to the estate of the beneficiary on his death, his creditors can reach it. The policy underlying the decisions upholding spendthrift trusts does not require that a beneficiary should be permitted to dispose of his interest on his death without discharging his debts. If his assets other than his interest under the trust are insufficient to pay his creditors, he should not be permitted to bequeath his interest free from the claims of his creditors, and if he dies intestate it should not pass to his next of kin unless his debts are paid...."
38. "If devisees and legatees are to take at all the interest must be alienable; and if the interest is alienable it should be treated just as other alienable property and held liable for the debts of its owner." Griswold § 93, at 89.
39. Id.
for debts of the beneficiary before it passes to the heirs or legatees.\textsuperscript{41}

\textit{Contracts to Pay Over Income When Received}

It is possible that the income beneficiary, rather than assigning his interest, may contract at any time during the trust to pay over the income to someone else when it is received by the beneficiary.\textsuperscript{42} This type of alienation should be valid in spite of spendthrift provisions because it is not an assignment of an interest in the trust but is merely a contract giving the promisee a personal right against the beneficiary.\textsuperscript{43} Although this result is supported by several decisions from other jurisdictions,\textsuperscript{44} the Trust Code contains no provisions directly on point. In keeping with the theory of freedom of contract, Louisiana should allow the income beneficiary to contract with an individual to pay to him income when it is received.

If the beneficiary does assign his interest, even though this is a violation of the spendthrift provisions, cases in other jurisdictions have held that it is not a breach of the trust for the trustee to pay the income to the assignee as the income “falls due.”\textsuperscript{45} The trustee, of course, is under no duty to make such payments. If the beneficiary revokes the assignment, the assignee may be able to sue the beneficiary for breach of contract.\textsuperscript{46}

\textsuperscript{41} In this regard it should be noted that creditors will be protected where the interest passes to an heir, universal legatee, or legatee under universal title who unconditionally accepts the succession because he will be personally liable for the debts of the decedent. See La. Civ. Code arts. 1013, 1424, 1426, 1430.

\textsuperscript{42} See Griswold §§ 372-75; Scott § 152.6.

\textsuperscript{43} “The contract in such a case is not an assignment. It gives to the promisee of the beneficiary simply a personal right. The creator of a trust cannot deprive his beneficiary of capacity to contract, and if a contract is made by the beneficiary, it should be enforced. The intent of the creator of the trust is sufficiently recognized by the holding that the promise may not reach the future income of the beneficiary.” Griswold § 372, at 456.

\textsuperscript{44} Kelly v. Kelly, 11 Cal. 2d 356, 79 P.2d 1059 (1938); Bursch v. Bursch, 60 N.Y.S.2d 633 (1930); Bostrom v. Bostrom, 60 N.D. 792, 236 N.W. 732 (1931). But see Bixby v. St. Louis Union Trust Co., 323 Mo. 1014, 22 S.W.2d 813 (1929). See generally Griswold § 373; Scott § 152.6.

\textsuperscript{45} See, e.g., In re Marble, 136 Me. 52, 1 A.2d 355 (1938); Ames v. Clarke, 106 Mass. 573 (1871); In re Goldman, 142 Misc. 790, 255 N.Y. Supp. 533 (1932); In re Keeler's Estate, 344 Pa. 225, 3 A.2d 413 (1939); Griswold § 309; Restatement § 152. There are no Louisiana cases.

\textsuperscript{46} Scott § 152.6.
Creditors’ Rights

The idea of spendthrift trusts has long been criticized because the device enables a beneficiary to escape his creditors.47 Although there appear to be few instances in which Louisiana creditors have tried to reach the interest of the beneficiary in spendthrift trusts,48 the Louisiana statute has attempted to quiet critics by allowing the beneficiary’s interest to be reached in certain situations.

Of course, the creditor can seize any trust interest which is subject to voluntary alienation.49 Also, section 2004(2) provides that “[t]he portion of the net annual income in excess of the amount that will give a beneficiary an aggregate net annual income of $10,000 from all spendthrift trusts and from all other trusts under which alienation by a beneficiary is restricted” may be seized by creditors. If “net annual income” means only income paid to the beneficiary, it appears that if the trustee is given discretion to accumulate or distribute income under section 1963, then he may avoid seizure by creditors by distributing only $10,000 per year to the beneficiary, and accumulating the remainder. On the other hand if the statute is referring to accrued income, then whether the trustee can accumulate may make no difference as far as protection from seizure is concerned.50 Similarly, if the trustee can allocate income to principal,51 it appears that income could be limited to $10,000 per year, again allowing escape from seizure.

Where the settlor is himself a beneficiary, section 2004(3) follows both the majority rule52 and the Restatement (Second) of Trusts53 in providing that the creditor of the beneficiary may

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47. J. Gray, RESTRAINTS ON THE ALIENATION OF PROPERTY (2d ed. 1895).
48. There are no cases. From discussions with trust officers of Louisiana banks it appears that creditors rarely try to reach the beneficiary's interest in the trust. It may be, however, that creditors do not attempt to seize interests in trusts because of the realization that the spendthrift provisions, which are placed upon the majority of trusts in Louisiana, prevent seizure by the creditors except in certain situations. It may also be that most beneficiaries generally have other assets which creditors can reach more readily.
50. But see note 31 supra.
51. LA. R.S. 9:1961 (Supp. 1964). The trustee can do this only under an objective standard set forth in the trust instrument, and then only when the interests of other beneficiaries are not thereby impaired.
52. See 6 AMERICAN LAW OF PROPERTY §§ 26.121-25 (1952); Griswold §§ 471-98; Scott § 156.
53. RESTATEMENT § 156.
seize the interest of any beneficiary who is also a settlor of the trust. This, of course, is to prevent a man from escaping his own creditors by placing his assets in spendthrift trusts.

Louisiana also allows seizure by certain classes of creditors.54 Section 2005 provides that regardless of the trust provisions, the proper court at its discretion, may permit the seizure of any just portion of the beneficiary's interest in trust income and principal if the claim is based upon (1) a judgment for alimony or maintenance of a person whom the beneficiary is obligated to support,55 (2) necessary services rendered or necessary supplies furnished to the beneficiary or to a person whom the beneficiary is obligated to support,56 or (3) an offense or quasi-offense committed by the beneficiary or by a person for whose acts the beneficiary is individually responsible.57

Although our law contains no such provision, other states allow seizure by the creditor who has performed a service which results in increasing or preserving the value of the beneficiary's interest in the trust estate.58 The usual rationale has been that the purpose of the settlor in imposing restraints was to prevent

54. For a discussion of this area in other jurisdictions see Bogert § 224; Griswold §§ 333-61; Restatement § 157; Scott §§ 157-57.5.

55. A person is obligated to support his spouse, his children, and those of his ascendants and descendants who are in need. La. Civ. Code arts. 119, 227, 229. For a discussion of this exception in other jurisdictions see 6 American Law Property § 26.130 (1932); Bogert § 224; Griswold §§ 333-41; Restatement § 157; Scott § 157.1.

56. See La. Civ. Code arts. 119, 227, 229, 1785. See also Bogert § 224; Griswold §§ 347, 364; Restatement § 157; Scott § 157.2.

57. The Restatement did not adopt this view because of the lack of authority in the area. It appears, however, that Louisiana made a wise policy decision when it allowed those who have been injured by another to reach his interest in the trust. Part of the reasoning behind restricting involuntary alienation is that creditors should investigate those persons to whom they grant credit. Certainly the injured party is not in the position to investigate and, as a policy matter, should be allowed to recover for his injuries from the beneficiary's interest in the trust. See La. Civ. Code arts. 2315, 2318; Griswold § 365; Scott § 157.5.

58. See In re Williams, 157 N.Y. 286, 79 N.E. 1019 (1907) (attorney was allowed a lien upon the interest of the beneficiaries who hired him to compel the trustee to pay); Fetting v. Flanigan, 185 Md. 499, 45 A.2d 355 (1946) (trustee who paid taxes on the trust estate was entitled to indemnification from the estate); Keaton v. Stephenson, 206 Okla. 32, 240 P.2d 1088 (1952) (dictum that attorney could reach the beneficiary's interest in a spendthrift trust). But see McKeown v. Pridmore, 310 Ill. App. 834, 25 N.E.2d 376 (1941) (when trustee of a spendthrift trust refused to pay beneficiary under the trust, court held attorney hired on contingent fee basis by beneficiary had no lien on spendthrift trust but had to stand as any other creditor); In re Lee's Estate, 214 Minn. 448, 9 N.W.2d 245 (1943); See generally Griswold §§ 345, 366; Restatement § 157; Scott § 157.3.
the beneficiary from losing his interest through his own poor management. Therefore, a person who has conferred a benefit upon the interest of the beneficiary should be allowed to receive compensation from the beneficiary through his interest in the trust.

The Restatement provides that "[a]lthough a trust is a spendthrift trust... the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary... by the United States or a State to satisfy a claim against the beneficiary." Accordingly, seizure of interests in spendthrift trusts has been allowed for tax claims and for support of the beneficiary in a public institution, but not for payment of a fine owed to the government, nor for money due the government under a contract. Although the Trust Code contains no provisions allowing the federal government to seize the interest of a beneficiary of a spendthrift trust in satisfaction of the obligations owed to it, the Internal Revenue Code provides that if any person neglects or refuses to pay any tax for which he is liable, the amount shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. In light of federal cases in this area, it is submitted that the lien extends to the interest of the beneficiary of a Louisiana spendthrift trust, regardless of the absence of an applicable Louisiana statute.

59. Restatement § 157(d).
63. State v. Caldwell, 181 Tenn. 74, 179 S.W.2d 624 (1944).
65. United States v. Dallas Nat'l Bank, 152 F.2d 582, 585 (5th Cir. 1945): "Although the testatrix intended to create an estate which would not be subject to seizure, sale, or execution for debts of any kind or character by placing such restraint upon the corpus and income, and such provisions in a will are valid under Texas law and are respected by the courts, this would not prevail against the fastening of a lien by the Federal Government for unpaid taxes on any property owned by the delinquent taxpayer." (Footnote omitted.) United States v. Mercantile Trust Co., 62 F. Supp. 837 (D. Md. 1945) (income payable to the beneficiary under Maryland spendthrift trust was subject to claims of federal government for income taxes due from the beneficiary while income was still in the hands of the trustee).

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Term of a Spendthrift Trust

The question remains whether Louisiana will allow spendthrift provisions for a period less than the life of the interest. An example of this situation is making B the income and principal beneficiary of a trust for his life with spendthrift provisions to be effective until he reaches age 21. The Trust Code provides that in order for a spendthrift trust to be valid, the trust must be subject to the maximum restraints permitted by the Code. Although the Code does not specify the term for which spendthrift provisions is allowed, it seems that only spendthrift provisions that apply for the duration of a beneficiary's interest would constitute maximum restraints.

However, since our Code recognizes lesser restrictions, it appears that the settlor can create a trust with provision for the restriction on alienation to last for a period of time less than the term of the beneficiary's interest. This is a desirable result both from the standpoint of the settlor who wishes to place restrictions only until he feels the beneficiary is able to deal with his own interests wisely, and from that of the beneficiary who would like eventually to have full control of his interest. However, since it is not certain that the beneficiary will be competent to handle his affairs at the age when spendthrift provisions are to terminate, perhaps the settlor should use a more flexible form of lesser restriction.

Spendthrift Trusts Over Legitime

The Trust Estates Act of 1938 allowed the legitime to be placed in trust, but contained no provisions concerning restrictions placed on the right to alienate that legitime. The Trust Code not only allows the legitime to be placed in trust, but

67. Id. § 2002.
68. La. Acts 1938, No. 81.
69. La. R.S. 9:1841 (Supp. 1964): “The legitime or any portion thereof may be placed in trust provided:
   “(1) The net income accruing to the forced heir therefrom is payable to him not less than once each year; and
   “(2) The forced heir's interest is subject to no charges or conditions except as provided in R.S. 9:1843 and 9:1844; and
   “(3) The term of the trust, as it affects the legitime, does not exceed the life of the forced heir; and
   “(4) The principal shall be delivered to the forced heir or his heirs, legatees, or assigns free of trust, upon the termination of the portion of the trust that affects the legitime.”
Id. § 1843: “A trust instrument may place restraints upon the alienation of the legitime in trust.”
also allows that trust to be subject to spendthrift provisions.\textsuperscript{70} This means that if the trust is for the life of the beneficiary and the spendthrift provisions are the maximum permitted by the Code, the forced heir will have no control whatsoever over his legitime for his lifetime.

The constitutionality of this provision was upheld by the Second Circuit Court of Appeals in *Succession of Singlust*.\textsuperscript{71} In that case the testatrix had created a testamentary spendthrift trust over the legitime of her only son for his lifetime. The court, relying upon the earlier case of *Succession of Earhart*,\textsuperscript{72} found that the Louisiana constitution\textsuperscript{73} prohibits only the passing of a law abolishing forced heirship and does not prevent the rights of forced heirs from being regulated or restricted.

It can be argued that because a forced heir is entitled to his legitime of right, the legislature should not allow such a restriction.\textsuperscript{74} However, as Professor Oppenheim has stated:

"The settlor may choose not to use the spendthrift provisions; but if the forced heir needs their protection, the settlor has the means of providing that protection. The trustee can be given the discretion to advance the capital in a proper case. This is an area in which no general rule should be specified by the legislature. The settlor himself should have the choice to use the provisions or not, as family circumstances require."

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\textsuperscript{70} Id. \$ 1843.
\textsuperscript{71} 169 So.2d 10 (La. App. 2d Cir. 1964).
\textsuperscript{72} 220 La. 817, 57 So.2d 695 (1952).
\textsuperscript{73} La. Const. art. IV, \$ 16.
\textsuperscript{74} Professor Pascal's argument, although applied only to a trust over legitime and not to a spendthrift trust, appears pertinent: "If an indestructible trust is morally wrong because it denies the beneficiary however he be his natural right as a person to administer his own affairs, then it is even more wrong morally to permit an indestructible trust over the legitime, or forced share of an inheritance, to be indestructible. The legitime has its origin in the recognition of every man's right to share in the world's goods which he can use as he judges best. It is especially reprehensible to permit this share to be unalterably under the control of another . . . . The new Trust Estates Law need not forbid the placing of the legitime in trust; but under no circumstances should it permit the trust over the legitime to be indestructible or unmodifiable by the forced heir." Pascal, Of Trusts, Human Dignity, Legal Science, and Taxes, 23 La L. Rev. 639, 649 (1963).
In the light of this argument, and since the net income from the legitime in trust must be distributed to the beneficiary at least annually,\textsuperscript{76} it is submitted that allowing restrictions on legitime in trust is reasonable. However, the settlor should not indiscriminately place maximum spendthrift provisions on the legitime in trust but should use such lesser restrictions as the situation may require.

\textit{Limiting Spendthrift Provisions}

Besides the use of "quasi-spendthrift trusts" or other lesser restrictions already mentioned, there are other ways in which spendthrift provisions may be limited. These limitations are desirable in order that the competent beneficiary may reach his interest for some worthwhile purpose.\textsuperscript{77} Thus, with proper provisions in the trust, the trustee could end the trust at his discretion or in accordance with instructions set forth in the trust instrument, and turn the trust property over to the beneficiary for his own use.\textsuperscript{78} Therefore, the property while in trust would be safely protected from creditors and accessible for use by the beneficiary. Also, the settlor of an inter vivos trust has the right to personally modify the trust, and thus terminate spendthrift provisions, if he has expressly reserved that right.\textsuperscript{79} Further, it appears that the trustee may be given the power to end spendthrift provisions, either at his discretion or by a standard set forth in the trust instrument. This is so because the settlor may delegate to another person the right to modify the administrative provisions of a trust.\textsuperscript{80} It may be argued that because terminating spendthrift provisions changes the nature of the trust, this power is not administrative and cannot be delegated. However, since the

\textsuperscript{76} LA. R.S. 9:1841 (Supp. 1964).
\textsuperscript{77} Suppose, for example, that \textit{B} has the opportunity to participate in a business venture which is reasonably certain to be successful. \textit{B} has no available capital, but he is the beneficiary of a large interest in a spendthrift trust. Although his participation in the venture appears to be a reasonable business decision, he cannot reach his interest in the spendthrift trust to obtain necessary funds if the maximum restraints are placed on the trust.
\textsuperscript{78} LA. R.S. 9:2025 (Supp. 1964).
\textsuperscript{79} Id. § 2021.
\textsuperscript{80} Id. § 2025.
trustee can be given the greater power to terminate the trust, then the lesser power of modification by ending spendthrift provisions should also be included.

Another possibility in limiting the restriction of alienation is to grant the trustee power either to lend trust money or to give trust property to the beneficiary. Although such property would no longer be protected by spendthrift provisions, this result would obviously not violate the restrictions placed upon alienation if the settlor intended that the trustee would have such discretion. Finally, a beneficiary who is restricted by spendthrift provisions and who wishes to reach his interest in the trust may petition the proper court to have the trust terminated or modified "if, owing to circumstances not known to a settlor and not anticipated by him, the continuance of the trust unchanged would defeat or substantially impair the purposes of the trust."81

Conclusion

Although this article has discussed several questions which arise concerning spendthrift trusts, the problems of trusts for support,82 discretionary trusts,83 and forfeiture for alienation,84 among others, remain untreated. It is suggested that the practicing bar consider the consequences and available alternatives before suggesting that maximum restrictions be placed indiscriminately on the beneficiary’s interest in the trust. The use of lesser restrictions or limitations may provide the balance necessary, both to fulfill the desire of the settlor to protect the beneficiary, and to allow the competent beneficiary to have some control over his interest in the trust.

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81. Id. § 2026.
82. See generally Bogert §§ 221, 229; Griswold §§ 271, 430-34.2; Restatement § 154; Scott § 154.
83. See generally Bogert § 228; Griswold §§ 271, 422-29; Restatement § 155; Scott §§ 128.3, 155.
84. See generally Bogert § 222; Restatement § 150; Scott § 150.