

Just Because You Live in California Doesn't Mean Your Trust(s) have to!

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Family law attorney, Jack Smith, has a job to do, and it's not an easy one. Breaking bad news never is. Over lunch, Smith takes a deep breath, readying himself for the next half-hour of rage that is sure to come from his client, Bill. The rage will be justified because the outcome certainly won't be.

Bill caught his soon-to-be ex-wife Laura having an affair. Instead of remorse and apologies, Laura announced she was leaving Bill and planning on taking him for everything he's got.

Because Laura enjoys a lifestyle that would make any wealthy divorcee envious, including a full-time, live-in nanny and private school for their child, Smith was initially concerned that she could make a case for unusually high levels of spousal and child support. But when Bill explained that his parents had established a well-funded spendthrift trust that would protect them against any future creditors — including vindictive ex-spouses — Smith felt that he could limit financial damage to Bill's personal assets.

But now, a recent and disturbing new California appellate case will make it easier than ever for Laura to get into the trust Bill's parents created for him.

Smith explains that the law is an elastic thing, and the erosion of California's spendthrift trust protections stems from the State's public policy of ensuring child

support payments at all costs. Probate Code Section 15305 provides that a trial court has discretion in ordering a Trustee to make payments for the benefit of a beneficiary of a spendthrift trust, clarifying this applies to support judgments “notwithstanding any provision in the trust instrument.”

And a *Ventura County Dept. of Child Support Services v. Brown (2004)* held that a trial court can order a trustee to satisfy child support judgments. The case also held that a spendthrift clause could not be used by a trustee to avoid child support judgment.

In 2016, yet another case expanded the court's discretion. In *Pratt v. Ferguson (2016)*, an appeals court determined that even a spendthrift trust could be invaded because the clause does not trump the CA statute, and thus will not protect all distributions by the Trust.

For California residents who want to protect children or grandchildren from a divorcing spouse laying claim to assets placed in trust by others, a common trust design by parents for their children, this recent case is very disturbing.

With Probate Code Section 15305, the California legislature overturned centuries of common law precedent stating that now spendthrift trusts do not protect against child support obligations. The assets belong to the trust creator, not the creator's

beneficiary, and thus, the creator should be able to decide who gets and more importantly, “who doesn't get” access to the trust creator's assets. *Therefore, this case now makes California just about the worst place to establish a non-self-settled spendthrift trust because it opens up the trust's assets for invasion.*

Bill angrily asks what California residents are supposed to do in such an impossible situation. Unfortunately, Bill's trust is long-established by his parents who are deceased, so the trust's state of residence cannot be changed, but that doesn't mean all California residents must suffer the same fate.

Just because you reside in California doesn't mean your trust has to. It's called “choice or law” or “forum shopping.”

Selecting a jurisdiction like Nevada or Alaska, which have no “exception creditors”, will give the creator of a trust far more peace of mind knowing that their legacy can remain intact and remain protected when it comes to certain types of future unknown creditors, like child support creditors. Choosing the best law to establish your trust is extremely important to its long-term protection, and an experienced trust attorney can help guide such decisions.

If you want to be certain your beneficiaries avoid Bill's predicament and that you are doing your best to protect your trust's assets against unforeseen creditors — including judgements for child support — please give our office a call. We'd be pleased to assist you.



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Jeffrey M. Verdon, Esq. is the Managing Partner of the Jeffrey M. Verdon Law Group, LLP, a Trusts & Estates boutique law firm located in Newport Beach, Calif. With more than 30 years of experience in designing and implementing comprehensive estate planning and asset protection structures, the law firm serves affluent families and successful business owners in solving their most complex and vexing estate tax, income tax, and asset protection goals and objectives. Please call us for a complimentary consultation.

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