

**SIMPLE TRUSTS IN BANKRUPTCY:**

**WHEN IS THE DEBTOR’S INTEREST  
PROPERTY OF THE ESTATE?**

Under current 9<sup>th</sup> Circuit case law  
(November 2010)

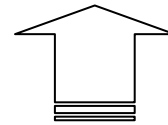
**On Petition Date:**  
**TRUST**  
**DEBTOR is  
BENEFICIARY**  
Assume 3<sup>rd</sup> party Grantor  
(not a Self-Settled Trust)

TESTAMENTARY?

INTER VIVOS?

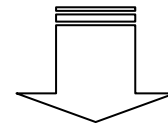
**SPENDTHRIFT** limitations under applicable nonbankruptcy law protect Debtor’s interest per Sec. 541(c)(2)

Debtor’s interest is **Property of Estate** if Grantor dies pre-petition or within 180 days after.

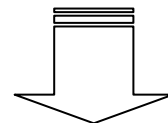


**TESTAMENTARY TRUSTS:**  
Treated like **WILLS**.  
Transfer by Grantor occurs on Death of Grantor.

**INTER VIVOS TRUSTS:**  
**REVOCABLE TRUST** created while Settlor/Grantor is alive—so called “Living Trust”.



Debtor’s interest **MAY NOT BE Property of Estate** if **FULLY REVOCABLE** and contains **SPENDTHRIFT** limitations recognized by applicable state law.



This result unchanged if Settlor/Grantor dies within 180 days of Petition Date, since the Trust transfer to Debtor **IS NOT a BEQUEST** under Sec. 541(a)(5)(A)

Debtor’s interest **IS Property of Estate** if Trust has vested in part, even if contingencies remain.

**SPENDTHRIFT** limitations under applicable nonbankruptcy law protect Debtor’s interest per Sec. 541(c)(2)

**IRREVOCABLE  
(In Whole or Part)**