House Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

# HOUSE BILL 2333

AN ACT

AMENDING SECTIONS 14-1201, 14-2903, 14-2907 AND 14-3715, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 3, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-3916; AMENDING SECTIONS 14-7403, 14-10103, 14-10105, 14-10108, 14-10111, 14-10407 AND 14-10410, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10418; AMENDING SECTIONS 14-10504, 14-10505 AND 14-10818, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10819; AMENDING SECTION 14-11003, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-11015; AMENDING SECTION 25-213, ARIZONA REVISED STATUTES; RELATING TO TRUSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 14-1201, Arizona Revised Statutes, is amended to read:

14-1201. Definitions

In this title, unless the context otherwise requires:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, a person who is authorized to make decisions concerning another person's health care and a person who is authorized to make decisions for another person under a natural death act.

2. "Application" means a written request to the registrar for an order of informal probate or appointment under chapter 3, article 3 of this title.

3. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer. As it relates to a charitable trust, beneficiary includes any person entitled to enforce the trust. As it relates to a beneficiary of a beneficiary designation, beneficiary refers to a beneficiary of an insurance or annuity policy, an account with pay on death designation, a security registered in beneficiary form or a pension, profit sharing, retirement or similar benefit plan, or any other nonprobate transfer at death. As it relates to a beneficiary designated in a governing instrument, beneficiary includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee or taker in default of a power of appointment and a person in whose favor a power of attorney or a power held in any person, fiduciary or representative capacity is exercised.

4. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with pay on death designation, of a security registered in beneficiary form or of a pension, profit sharing, retirement or similar benefit plan, or any other nonprobate transfer at death.

5. "Child" includes a person who is entitled to take as a child under this title by intestate succession from the parent whose relationship is involved. Child excludes a person who is only a stepchild, a foster child, a grandchild or a more remote descendant.

6. "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or the protected person, whether arising in contract, in tort or otherwise, and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. Claims do not include estate or inheritance taxes or demands or disputes regarding title of a decedent or a protected person to specific assets alleged to be included in the estate.

7. "Community property" means that property of a husband and wife that is acquired during the marriage and that is community property as prescribed in section 25-211.

8. "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

9. "Court" means the superior court.

10. "Dependent child" means a minor child who the decedent was obligated to support or an adult child who was in fact being supported by the decedent at the time of the decedent's death.

11. "Descendant" means all of the decedent's descendants of all generations, with the relationship of parent and child at each generation.

12. "Devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

13. "Devisee" means a person designated in a will to receive a devise. For the purposes of chapter 3 of this title, in the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

14. "Disability" means cause for a protective order as described in section 14-5401.

15. "Distributee" means any person who has received property of a decedent from that person's personal representative other than as a creditor or purchaser. Distributee includes a testamentary trustee only to the extent of distributed assets or increment that remains in that person's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

16. "Estate" includes the property of the decedent, trust or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration. As it relates to a spouse, the estate includes only the separate property and the share of the community property belonging to the decedent or person whose affairs are subject to this title.

17. "Exempt property" means that property of a decedent's estate that is described in section 14-2403.

18. "Fiduciary" includes a personal representative, guardian, conservator and trustee.

19. "Foreign personal representative" means a personal representative appointed by another jurisdiction.

20. "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

21. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with pay on death designation, security registered in beneficiary form, pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of

attorney or a dispositive, appointive or nominative instrument of any similar type.

22. "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes a person who is merely a guardian ad litem.

23. "Heirs", except as controlled by section 14-2711, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

24. "Incapacitated person" has the same meaning prescribed in section 14-5101.

25. "Informal proceedings" means those proceedings conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

26. "Interested person" includes any trustee, heir, devisee, child, spouse, creditor, beneficiary, PERSON HOLDING A POWER OF APPOINTMENT and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. Interested person also includes a person who has priority for appointment as personal representative and other fiduciaries representing interested persons. Interested person, as the term relates to particular persons, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

27. "Issue" of a person means descendant as defined in this section.

28. "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

29. "Lease" includes any oil, gas or other mineral lease.

30. "Letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship.

31. "Minor" means a person who is under eighteen years of age.

32. "Mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security. Mortgage does not include leases or easements.

33. "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of the decedent's death.

34. "Organization" means a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or commercial entity.

35. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title by intestate succession from the child whose relationship is in

question and excludes any person who is only a stepparent, foster parent or grandparent.

36. "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person who is authorized or obligated by law or a governing instrument to make payments.

37. "Person" means ~~a person~~ AN INDIVIDUAL or an organization.

38. "Personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. A general personal representative excludes a special administrator.

39. "Petition" means a written request to the court for an order after notice.

40. "Proceeding" includes action at law and suit in equity.

41. "Property" has the same meaning prescribed in section 14-10103.

42. "Protected person" has the same meaning prescribed in section 14-5101.

43. "Protective proceeding" has the same meaning prescribed in section 14-5101.

44. "Registrar" means the official of the court designated to perform the functions of registrar as provided in section 14-1307.

45. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease, collateral trust certificate, transferable share or voting trust certificate and, in general, includes any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of these securities.

46. "Separate property" means that property of a husband or wife that is the spouse's separate property as defined in section 25-213.

47. "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing.

48. "Special administrator" means a personal representative as described by sections 14-3614 through 14-3618.

49. "State" has the same meaning prescribed in section 14-10103.

50. "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

51. "Successors" means persons, other than creditors, who are entitled to property of a decedent under a will or this title.

52. "Supervised administration" refers to the proceedings described in chapter 3, article 5 of this title.

53. "Survive" means that a person has neither predeceased an event, including the death of another person, nor is deemed to have predeceased an event under section 14-2104 or 14-2702.

54. "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

55. "Testator" includes a person of either sex.

56. "Trust" includes an express trust, private or charitable, with any additions, wherever and however created. Trust also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts and excludes resulting trusts, conservatorship, personal representatives, trust accounts, custodial arrangements pursuant to chapter 7, article 7 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind, trusts created by a city or town for the payment of medical insurance, health care benefits or expenses, long-term or short-term disability, self insurance reserves and similar programs administered by a city or town, LEGAL DEFENSE TRUSTS and any arrangement under which a person is nominee or escrowee for another.

57. "Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court.

58. "Ward" has the same meaning prescribed in section 14-5101.

59. "Will" includes a codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Sec. 2. Section 14-2903, Arizona Revised Statutes, is amended to read:

14-2903. Reformation of a disposition plan; conditions

On the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the ~~ninety~~ FIVE HUNDRED years allowed under section 14-2901 if:

1. A nonvested property interest or a power of appointment becomes invalid under section 14-2901.

2. A class gift is not but might become invalid under section 14-2901 and the time has arrived when the share of any class member is to take effect in possession or enjoyment.

3. A nonvested property interest that is not validated by section 14-2901, subsection A, paragraph 1 can vest but not within ninety years after its creation.

Sec. 3. Section 14-2907, Arizona Revised Statutes, is amended to read:

14-2907. Honorary trusts; trusts for pets; conditions

A. If a trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee and there is no definite or definitely ascertainable beneficiary designated, the trust may be performed by the trustee for not longer than ~~twenty-one~~ NINETY years whether or not the terms of the trust contemplate a longer duration.

B. A trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

C. In addition to the provisions of subsection A or B, a trust created under this section is subject to the following:

1. Except as expressly provided otherwise in the trust instrument, no portion of the principal or income may be converted to the use of the trustee or to any use other than for the trust's purposes or for the benefit of a covered animal.

2. On termination, the trustee shall transfer the unexpended trust property in the following order:

(a) As directed in the trust instrument.

(b) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will.

(c) If no taker is produced by the application of subdivision (a) or (b) of this paragraph, to the transferor's heirs under section 14-2711.

3. For the purposes of section 14-2707, the residuary clause is treated as creating a future interest under the terms of a trust.

4. The intended use of the principal or income can be enforced by a person who is designated for that purpose in the trust instrument or, if none, by a person appointed by a court on application to it by any person.

5. Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment or fee is required by reason of the existence of the fiduciary relationship of the trustee.

6. A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under paragraph 2 of this subsection.

7. If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if this is necessary to assure that the intended use is carried out and if no successor trustee is designated in the

trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make other orders and determinations that it determines advisable to carry out the intent of the transferor and this section.

Sec. 4. Section 14-3715, Arizona Revised Statutes, is amended to read:

14-3715. Transactions authorized for personal representatives; exceptions

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 14-3902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

1. Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment.

2. Receive assets from fiduciaries or other sources.

3. Perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may either:

(a) Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land.

(b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

4. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.

5. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including monies received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally.

6. Acquire or dispose of an asset, including land in this or another state, for cash or on credit and at public or private sale and manage, develop, improve, exchange, partition, change the character of or abandon an estate asset.

7. Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings.

8. Subdivide, develop or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations or dedicate easements to public use without consideration.

9. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration.

10. Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

11. Abandon property when, in the opinion of the personal representative, it is valueless, is so encumbered, or is in condition that it is of no benefit to the estate.

12. Vote stocks or other securities in person or by general or limited proxy.

13. Pay calls, assessments~~,~~ and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims.

14. Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held.

15. Insure the assets of the estate against damage, loss and liability and himself against liability as to third persons.

16. Borrow money with or without security to be repaid from the estate assets or otherwise, and advance money for the protection of the estate.

17. Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

18. Pay taxes, assessments, compensation of the personal representative and other expenses incident to the administration of the estate.

19. Sell or exercise stock subscription or conversion rights, and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.

20. Allocate items of income or expense to either estate income or principal, as permitted or provided by law.

21. Employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties, act without independent investigation upon their recommendations and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary.

22. Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties.

23. Sell, mortgage or lease any real or personal property of the estate or any interest therein for cash~~,~~ OR credit or for part cash and part credit, and with or without security for unpaid balances.

24. Continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) In the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including goodwill.

(b) In the same business form for any additional period of time that may be approved by order of the court in a formal proceeding with notice to interested persons.

(c) Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate.

25. Incorporate, OR CREATE A LIMITED LIABILITY COMPANY TO HOLD, any business or venture in which the decedent was engaged at the time of his death.

26. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

27. Satisfy and settle claims and distribute the estate as provided in this title.

Sec. 5. Title 14, chapter 3, article 9, Arizona Revised Statutes, is amended by adding section 14-3916, to read:

14-3916. Community property

IN MAKING A DIVISION OR DISTRIBUTION OF COMMUNITY PROPERTY HELD IN THE DECEDENT'S ESTATE, THE PERSONAL REPRESENTATIVE MAY CONSIDER COMMUNITY PROPERTY HELD OUTSIDE THE ESTATE SO THAT THE DIVISION OF COMMUNITY PROPERTY HELD IN THE ESTATE AND OUTSIDE THE ESTATE IS BASED ON EQUAL VALUE BUT IS NOT NECESSARILY PROPORTIONATE.

Sec. 6. Section 14-7403, Arizona Revised Statutes, is amended to read:

14-7403. Trustee's power to adjust

A. A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income and the trustee determines, after applying the provisions of section 14-7402, subsection A, that the trustee is unable to comply with section 14-7402, subsection B.

B. In deciding whether and to what extent to exercise the power conferred by subsection A of this section, a trustee shall consider all

factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

1. The nature, purpose and expected duration of the trust.

2. The intent of the settlor.

3. The identity and circumstances of the beneficiaries.

4. The need for liquidity, regularity of income and preservation and appreciation of capital.

5. The assets held in the trust and:

(a) The extent to which:

(i) They consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property.

(ii) An asset is used by a beneficiary.

(b) Whether an asset was purchased by the trustee or received from the settlor.

6. The net amount allocated to income under this article and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available.

7. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

8. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

9. The anticipated tax consequences of an adjustment.

10. WHETHER THE TRUST HAS BEEN CONVERTED TO A UNITRUST PURSUANT TO SECTION 14-11014.

C. A trustee may not make an adjustment:

1. That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment.

2. That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion.

3. That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

4. From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside.

5. If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment.

6. If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment.

7. If the trustee is a beneficiary of the trust.

8. If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

D. If subsection C, paragraph 5, 6, 7 or 8 of this section applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

E. A trustee may release the entire power conferred by subsection A of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection C, paragraph 1, 2, 3, 4, 5, 6 or 8 of this section, or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection C of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

F. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection A of this section.

Sec. 7. Section 14-10103, Arizona Revised Statutes, is amended to read:

14-10103. Definitions

In this chapter, unless the context otherwise requires:

1. "Action", with respect to an act of a trustee, includes a failure to act.

2. "Beneficiary" means a person who either:

(a) Has a present or future beneficial interest in a trust, vested or contingent.

(b) In a capacity other than that of a trustee, holds a power of appointment over trust property.

3. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 14-10405, subsection A.

4. "Conservator" means a person appointed by the court to administer the estate of a minor or an adult.

5. "DISTRIBUTEE" MEANS A PERSON WHO RECEIVES PROPERTY FROM A TRUST OTHER THAN AS A CREDITOR OR PURCHASER.

~~5.~~ 6. "Environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.

~~6.~~ 7. "Guardian" means a person appointed by the court to make decisions regarding the support, care, education, health and welfare of a minor or an adult. Guardian does not include a guardian ad litem.

~~7.~~ 8. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

~~8.~~ 9. "Internal revenue code" has the same meaning prescribed in section 43-105.

~~9.~~ 10. "Jurisdiction", with respect to a geographic area, includes a state or country.

~~10.~~ 11. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

~~11.~~ 12. "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable either:

(a) By a trustee and limited by an ascertainable standard.

(b) By a person other than in a fiduciary capacity and only on the consent of the trustee or a person holding an adverse interest.

~~12.~~ 13. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest in anything that may be the subject of ownership.

~~13.~~ 14. "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(a) Is a distributee or permissible distributee of trust income or principal.

(b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subdivision (a) of this paragraph terminated on that date.

(c) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

~~14.~~ 15. "Revocable", as applied to a trust or a portion of a trust, means revocable by a settlor without the consent of any person, including the trustee or a person who holds an interest that is either adverse or not adverse.

~~15.~~ 16. "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

~~16.~~ 17. "Special needs trust" means a trust established for the benefit of one or more disabled persons if one of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to allow the disabled person to qualify or continue to qualify for public,

charitable or private benefits that might otherwise be available to the disabled person. The existence of one or more nondisabled remainder beneficiaries of the trust shall not disqualify it as a special needs trust for THE purposes of this paragraph. FOR THE PURPOSES OF THIS PARAGRAPH, "DISABLED PERSON" MEANS AN INDIVIDUAL WHO IS DISABLED PURSUANT TO 42 UNITED STATES CODE SECTION 1382c.

~~17.~~ 18. "Spendthrift provision" means a term of a trust that restrains ~~both~~ EITHER voluntary ~~and~~ OR involuntary transfer of a beneficiary's interest.

~~18.~~ 19. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. State includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

~~19.~~ 20. "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

~~20.~~ 21. "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments to that trust.

~~21.~~ 22. "Trustee" includes an original, additional and successor trustee and a cotrustee.

Sec. 8. Section 14-10105, Arizona Revised Statutes, is amended to read:

14-10105. Default and mandatory rules

A. Except as otherwise provided in the terms of the trust, this chapter governs:

1. The duties, powers, exercise of powers resignation, and appointment of a trustee.

2. Conflicts of interest of a trustee.

3. Relations among trustees.

4. Mergers or divisions of trusts.

5. The rights and interests of a beneficiary.

B. The terms of a trust prevail over any provision of this chapter except:

1. The requirements for creating a trust.

2. The duty of a trustee to act in good faith and in accordance with the purposes of the trust.

3. The requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve.

4. The power of the court to modify or terminate a trust under sections 14-10410, 14-10411, 14-10412, 14-10413, 14-10414, 14-10415 and 14-10416.

5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article 5 of this chapter.

6. The power of the court under section 14-10702 to require, dispense with, modify or terminate a bond.

7. The power of the court under section 14-10708, subsection B to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high.

8. The duty to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust.

9. The effect of an exculpatory term under section 14-11008.

10. The rights under sections 14-11010, 14-11011, 14-11012 and 14-11013 of a person other than a trustee or beneficiary.

11. Periods of limitation for commencing a judicial proceeding.

12. The power of the court to take action CONSISTENT WITH THE SETTLOR'S INTENT and exercise jurisdiction as may be necessary in the interests of justice.

13. The subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 14-10203 and 14-10204.

14. The notice provisions of section 14-10110, subsection B.

Sec. 9. Section 14-10108, Arizona Revised Statutes, is amended to read:

14-10108. Principal place of administration

A. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if either:

1. A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction.

2. All or part of the administration occurs in the designated jurisdiction.

B. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration and the interests of the beneficiaries.

C. Without precluding the right of the court to order, approve or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection B of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States AND, SUBJECT TO THE REQUIREMENTS OF SECTION 14-10818, MAY CHANGE THE APPLICABLE LAW GOVERNING THE TRUST.

D. The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration at least sixty days before initiating the transfer. Unless a corporate trustee indicates an intent to change the principal place of business in a notice to qualified beneficiaries, a transfer by the corporate trustee of some of the functions

of a trust to another state or states is not a transfer of the trust's principal place of business if the corporate trustee maintains an office in this state. The notice of proposed transfer must include:

1. The name of the jurisdiction to which the principal place of administration is to be transferred.

2. The address and telephone number of the new location at which the trustee can be contacted.

3. An explanation of the reasons for the proposed transfer.

4. The date on which the proposed transfer is anticipated to occur.

5. The date, at least sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

E. The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee in writing of ~~an~~ A REASONABLY FOUNDED objection to the proposed transfer on or before the date specified in the notice.

F. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 14-10704.

Sec. 10. Section 14-10111, Arizona Revised Statutes, is amended to read:

14-10111. Nonjudicial settlement agreements; definition

A. Except as otherwise provided in subsection B of this section, and except for modification or termination of a trust as otherwise permitted pursuant to the trust instrument, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

B. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

C. Matters that may be resolved by a nonjudicial settlement agreement include:

1. The interpretation or construction of the terms of the trust.

2. The approval of a trustee's report or accounting.

3. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.

4. The resignation or appointment of a trustee and the determination of a trustee's compensation.

5. The transfer of a trust's principal place of administration.

6. The liability of a trustee for an action relating to the trust.

D. Any interested person may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in article 3 of this chapter was adequate and to determine whether

the agreement contains terms and conditions the court could have properly approved.

~~E. This section applies only to any trust that becomes irrevocable on or after January 1, 2009.~~

~~F.~~ E. For the purposes of this section, "interested person" has the same meaning prescribed in section 14-1201.

Sec. 11. Section 14-10407, Arizona Revised Statutes, is amended to read:

14-10407. Evidence of oral trust

Except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust shall be established only by clear and convincing evidence and ~~it's~~ THE terms OF THE ORAL TRUST shall be established by a preponderance of the evidence. IF A TRUST IS CREATED BY WRITTEN INSTRUMENT, IT MAY BE AMENDED OR REVOKED ONLY BY WRITTEN INSTRUMENT EXECUTED BY THE SETTLOR.

Sec. 12. Section 14-10410, Arizona Revised Statutes, is amended to read:

14-10410. Modification or termination of trust; proceedings for approval or disapproval

A. In addition to the methods of termination prescribed by sections 14-10411, 14-10412, 14-10413 and 14-10414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful, contrary to public policy or impossible to achieve.

B. A proceeding to approve or disapprove a proposed modification or termination under sections 14-10411, 14-10412, 14-10413, 14-10414, 14-10415 and 14-10416, or trust combination or division under section 14-10417, may be commenced by a trustee or beneficiary~~, and a proceeding to approve or disapprove a proposed modification or termination under section 14-10411 may be commenced by the settlor~~. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 14-10413.

Sec. 13. Title 14, chapter 11, article 4, Arizona Revised Statutes, is amended by adding section 14-10418, to read:

14-10418. Name change

THE TRUSTEE MAY MODIFY A TRUST AGREEMENT TO CHANGE THE NAME OF THE TRUSTEE OR BENEFICIARY IF THE TRUSTEE OR BENEFICIARY'S NAME HAS BEEN LEGALLY CHANGED.

Sec. 14. Section 14-10504, Arizona Revised Statutes, is amended to read:

14-10504. Discretionary trusts; effect of standard; definition

A. Except as provided in subsection B of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if either:

1. The discretion is expressed in the form of a standard of distribution.

2. The trustee has not complied with the applicable standard of distribution or has abused the discretion regarding distributions.

B. To the extent a trustee has not complied with the applicable standard of distribution or has abused the discretion regarding distributions:

1. Except as provided in section 14-10503, a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child.

2. The court shall direct the trustee to pay to the child an amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

C. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution, provided that this right may not be exercised by a creditor of the beneficiary.

D. Whether or not a trust contains a spendthrift provision:

1. A creditor of a trust beneficiary may not compel a distribution from insurance proceeds payable to the trustee as beneficiary to the extent state law exempts such insurance proceeds from creditors' claims if it had been paid directly to the trust beneficiary.

2. To the extent that under Arizona law life insurance proceeds, policy cash surrender values or other distributions or payments are exempt from attachment or garnishment by, execution on or otherwise the reach of creditors, if the death benefit is payable to an individual beneficiary, the life insurance proceeds, policy cash surrender values or other distributions or payments are also exempt from attachment or garnishment by, execution on or otherwise the reach of creditors if payable to a trust ~~for~~ OF WHICH A BENEFICIARY IS that individual.

E. A creditor of a beneficiary, whether or not the beneficiary is also a trustee or cotrustee, may not reach the beneficiary's beneficial interest or otherwise compel a distribution if either the trustee's discretion to make distributions for the trustee's own benefit is purely discretionary or is limited by an ascertainable standard, including a standard relating to the beneficiary's health, education, support or maintenance or similar language within the meaning of section 2041(b)(1)(a) of the internal revenue code.

F. For the purposes of this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

Sec. 15. Section 14-10505, Arizona Revised Statutes, is amended to read:

14-10505. 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. If a trust has more than one settlor or contributor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This paragraph does not abrogate otherwise applicable laws relating to community property.

2. Subject to the requirements of this section, 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 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. This paragraph does not apply to any trust from which any distribution to the settlor can be made pursuant to the exercise of a power of appointment held by a third party or abrogate otherwise applicable laws relating to community property. A creditor of a settlor:

(a) Shall not reach any trust property based on a trustee's, trust protector's or third party's power, whether or not discretionary, to pay or reimburse the settlor for any income tax on trust income or trust principal that is payable by the settlor under the law imposing the tax or to pay the tax directly to any taxing authority.

(b) Is not entitled to any payment or reimbursement that is to be made directly to any taxing authority.

(c) Shall not reach or compel distributions to or for the benefit of the beneficiary of a special needs trust.

3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and allowances, except to the extent that state or federal law exempts any property of the trust from these claims, costs, expenses or allowances.

B. For the purposes of this section:

1. During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power.

2. On the lapse, release or waiver of a power of withdrawal, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the internal revenue code, or section 2503(b) of the internal revenue code. On the lapse, release or waiver of a power of withdrawal in the case of a trust created under section 2503(c) of the internal revenue code, the holder will not be treated as the settlor of the trust.

C. For the purposes of this section, a trust settled or established by a corporation, professional corporation, partnership, limited liability company, governmental entity, trust, foundation or other entity is not deemed to be settled or established by its directors, officers, shareholders, partners, members, managers, employees, beneficiaries or agents.

D. For the purposes of this section, amounts contributed to a trust by a corporation, professional corporation, partnership, limited liability company, governmental entity, trust, foundation or other entity are not deemed to have been contributed by its directors, officers, shareholders, partners, employees, beneficiaries or agents. Powers, duties or responsibilities granted to or reserved by the settlor pursuant to the trust and any actions or omissions taken pursuant to the trust are deemed to be the powers, responsibilities, duties, actions or omissions of the settlor and not those of its directors, officers, shareholders, partners, members, managers, employees, beneficiaries or agents.

~~E. For the purposes of this section, amounts contributed to an inter vivos marital trust that is treated as qualified terminable interest property under section 2523(f) of the internal revenue code or to an inter vivos marital trust that is treated as a general power of appointment trust under section 2523(e) of the internal revenue code and over which the beneficiary holds a limited power of appointment or a general power of appointment exercisable in favor of the holder's estate, or both, are not deemed to have been contributed by the settlor even if the settlor is a beneficiary of the trust following the death of the beneficiary's spouse.~~

E. FOR THE PURPOSES OF THIS SECTION, AMOUNTS AND PROPERTY CONTRIBUTED TO THE FOLLOWING TRUSTS ARE NOT DEEMED TO HAVE BEEN CONTRIBUTED BY THE SETTLOR, AND A PERSON WHO WOULD OTHERWISE BE TREATED AS A SETTLOR OR A DEEMED SETTLOR OF THE FOLLOWING TRUSTS SHALL NOT BE TREATED AS A SETTLOR:

1. AN IRREVOCABLE INTER VIVOS MARITAL TRUST THAT IS TREATED AS QUALIFIED TERMINABLE INTEREST PROPERTY UNDER SECTION 2523(f) OF THE INTERNAL REVENUE CODE IF THE SETTLOR IS A BENEFICIARY OF THE TRUST AFTER THE DEATH OF THE SETTLOR'S SPOUSE.

2. AN IRREVOCABLE INTER VIVOS MARITAL TRUST THAT IS TREATED AS A GENERAL POWER OF APPOINTMENT TRUST UNDER SECTION 2523(e) OF THE INTERNAL REVENUE CODE IF THE SETTLOR IS A BENEFICIARY OF THE TRUST AFTER THE DEATH OF THE SETTLOR'S SPOUSE.

3. AN IRREVOCABLE INTER VIVOS TRUST FOR THE SETTLOR'S SPOUSE THAT DOES NOT QUALIFY FOR THE GIFT TAX MARITAL DEDUCTION IF THE SETTLOR IS A BENEFICIARY OF THE TRUST AFTER THE DEATH OF THE SETTLOR'S SPOUSE.

4. AN IRREVOCABLE INTER VIVOS TRUST CREATED BY THE SETTLOR'S SPOUSE FOR THE BENEFIT OF THE SETTLOR, REGARDLESS OF WHETHER OR WHEN THE SETTLOR ALSO CREATED AN IRREVOCABLE INTER VIVOS TRUST WITH RESPECT TO WHICH SUCH SPOUSE IS A BENEFICIARY.

F. FOR THE PURPOSES OF SUBSECTION E, A PERSON IS A BENEFICIARY WHETHER SO NAMED UNDER THE INITIAL TRUST INSTRUMENT OR THROUGH THE EXERCISE BY THAT PERSON'S SPOUSE OR BY ANOTHER PERSON OF A LIMITED OR GENERAL POWER OF APPOINTMENT.

~~F.~~ G. Subsections C and D do not apply to:

1. A trust that has no valid business purpose and that has as its principal purpose the evasion of the claims of the creditors of the persons or entities listed in those subsections.

2. A trust that would be treated as a grantor trust pursuant to sections 671 through 679 of the internal revenue code. This paragraph does not apply to a qualified subchapter S trust that is treated as a grantor trust solely by application of section 1361(d) of the internal revenue code.

Sec. 16. Section 14-10818, Arizona Revised Statutes, is amended to read:

14-10818. Trust protector

A. A trust instrument may provide for the appointment of a trust protector. For the purposes of this section, a person designated with a status or title, other than that of a beneficiary, with powers similar to those specified in subsection B is a trust protector, except to the extent otherwise provided in the trust instrument.

B. A trust protector appointed by the trust instrument has the powers, delegations and functions conferred on the trust protector by the trust instrument~~, including~~. THESE POWERS, DELEGATIONS AND FUNCTIONS MAY INCLUDE the following:

1. Remove and appoint a trustee.

2. Modify or amend the trust instrument for any valid purpose or reason, including, without limitation, to achieve favorable tax status or to respond to changes in the internal revenue code or state law, or the rulings and regulations under that code or law.

3. Increase, decrease, modify or restrict the interests of any beneficiary of the trust.

4. Modify the terms of a power of appointment granted by the trust.

5. Change the applicable law governing the trust.

C. Except to the extent otherwise specifically provided in the trust instrument, a modification authorized under subsection B may not:

1. Grant a beneficial interest to an individual or a class of individuals unless the individual or class of individuals is specifically provided for under the trust instrument.

2. Modify the beneficial interest of a governmental unit in a special needs trust.

D. Any provision of this title to the contrary, but except to the extent otherwise provided by the trust instrument, a trust protector is not a trustee or fiduciary and is not liable or accountable as a trustee or fiduciary because of an act or omission of the trust protector when performing or failing to perform the duties of a trust protector under the trust instrument. This subsection does not apply to trusts that become irrevocable before ~~the effective date of this section.~~ JANUARY 1, 2009 IF THE TRUST INSTRUMENT ALLOWS THE SETTLOR TO REMOVE AND REPLACE THE TRUST PROTECTOR.

Sec. 17. Title 14, chapter 11, article 8, Arizona Revised Statutes, is amended by adding section 14-10819, to read:

14-10819. Trustee's special power to appoint to other trust

A. UNLESS THE TERMS OF THE INSTRUMENT EXPRESSLY PROVIDE OTHERWISE, A TRUSTEE WHO HAS THE DISCRETION UNDER THE TERMS OF A TESTAMENTARY INSTRUMENT OR IRREVOCABLE INTER VIVOS AGREEMENT TO MAKE DISTRIBUTIONS, REGARDLESS OF WHETHER A STANDARD IS PROVIDED IN THE INSTRUMENT OR AGREEMENT, FOR THE BENEFIT OF A BENEFICIARY OF THE TRUST MAY EXERCISE WITHOUT PRIOR COURT APPROVAL THE TRUSTEE'S DISCRETION BY APPOINTING PART OR ALL OF THE ESTATE TRUST IN FAVOR OF A TRUSTEE OF A TRUST UNDER AN INSTRUMENT OTHER THAN THAT UNDER WHICH THE POWER TO MAKE DISTRIBUTIONS WAS CREATED IF THE EXERCISE OF THIS DISCRETION:

1. DOES NOT REDUCE ANY FIXED NONDISCRETIONARY INCOME PAYMENT TO A BENEFICIARY.

2. DOES NOT ALTER ANY NONDISCRETIONARY ANNUITY OR UNITRUST PAYMENT TO A BENEFICIARY.

3. IS IN FAVOR OF THE BENEFICIARIES OF THE TRUST.

4. RESULTS IN ANY ASCERTAINABLE STANDARD APPLICABLE FOR DISTRIBUTIONS FROM THE TRUST BEING THE SAME OR MORE RESTRICTIVE STANDARD APPLICABLE FOR DISTRIBUTIONS FROM THE RECIPIENT TRUST WHEN THE TRUSTEE EXERCISING THE POWER DESCRIBED IN THIS SUBSECTION IS A POSSIBLE BENEFICIARY UNDER THE STANDARD.

5. DOES NOT ADVERSELY AFFECT THE TAX TREATMENT OF THE TRUST, THE TRUSTEE, THE SETTLOR OR THE BENEFICIARIES.

6. DOES NOT VIOLATE THE LIMITATIONS ON VALIDITY UNDER SECTIONS 14-2901 AND 14-2905.

B. THIS SECTION APPLIES TO A TRUST GOVERNED BY THE LAWS OF THIS STATE, INCLUDING A TRUST WHOSE GOVERNING JURISDICTION IS TRANSFERRED TO THIS STATE.

C. THE EXERCISE OF THE POWER TO INVADE THE PRINCIPAL OF A TRUST UNDER SUBSECTION A OF THIS SECTION IS CONSIDERED TO BE THE EXERCISE OF A SPECIAL POWER OF APPOINTMENT.

D. THE TRUSTEE, IN THE TRUSTEE'S SOLE DISCRETION, PRIOR TO OR AFTER THE EXERCISE OF THE TRUSTEE'S DISCRETION UNDER THIS SECTION, MAY REQUEST THE COURT TO APPROVE THE EXERCISE.

Sec. 18. Section 14-11003, Arizona Revised Statutes, is amended to read:

14-11003. Damages in absence of breach

A. Except as provided in section 14-7404, a trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. FOR THE PURPOSES OF THIS SUBSECTION, PROFIT DOES NOT INCLUDE:

1. REASONABLE COMPENSATION TO WHICH THE TRUSTEE IS ENTITLED PURSUANT TO SECTION 14-10708.

2. COMPENSATION OR FEES PERMITTED PURSUANT TO SECTION 14-10802.

3. REASONABLE FEES OR COMPENSATION FOR SERVICES RENDERED THAT THE TRUSTEE OR AN AFFILIATE CUSTOMARILY PROVIDES IN THE NORMAL COURSE OF BUSINESS AND THAT ARE TYPICAL IN THE GEOGRAPHIC AREA WHERE THE TRUST IS ADMINISTERED.

4. REASONABLE REMUNERATION FOR SERVICES PERMITTED PURSUANT TO SECTION 6-246.

B. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Sec. 19. Title 14, chapter 11, article 10, Arizona Revised Statutes, is amended by adding section 14-11015, to read:

14-11015. Express total return unitrusts; definition

A. A UNITRUST AMOUNT MAY BE DETERMINED BY REFERENCE TO THE NET FAIR MARKET VALUE OF THE TRUST'S ASSETS IN ONE YEAR OR MORE THAN ONE YEAR.

B. DISTRIBUTION OF A FIXED PERCENTAGE UNITRUST AMOUNT IS CONSIDERED A DISTRIBUTION OF ALL OF THE INCOME OF THE TOTAL RETURN UNITRUST AND IS NOT A FUNDAMENTAL DEPARTURE FROM APPLICABLE STATE LAW, REGARDLESS OF WHETHER THE TOTAL RETURN UNITRUST IS CREATED AND GOVERNED PURSUANT TO SECTION 14-11014 OR BY THE TERMS OF THE GOVERNING INSTRUMENT.

C. AN EXPRESS TOTAL RETURN UNITRUST MAY PROVIDE A MECHANISM FOR CHANGING THE UNITRUST PERCENTAGE SIMILAR TO THE MECHANISM PROVIDED UNDER SECTION 14-11014 BASED ON THE FACTORS PRESCRIBED IN THAT SECTION AND MAY PROVIDE FOR A CHANGE FROM A UNITRUST TO AN INCOME TRUST SIMILAR TO THE MECHANISM PRESCRIBED PURSUANT TO SECTION 14-11014.

D. IF AN EXPRESS TOTAL RETURN UNITRUST DOES NOT SPECIFICALLY OR BY REFERENCE TO SECTION 14 11014 GRANT A POWER TO CHANGE THE UNITRUST PERCENTAGE OR CHANGE TO AN INCOME TRUST, THE TRUSTEE SHALL HAVE NO SUCH POWER.

E. A DISTRIBUTION OF THE FIXED PERCENTAGE OF NOT LESS THAN THREE PER CENT NOR MORE THAN FIVE PER CENT REASONABLY APPORTIONS THE TOTAL RETURN OF A TOTAL RETURN UNITRUST.

F. AN EXPRESS TOTAL RETURN UNITRUST THAT PROVIDES FOR A FIXED PERCENTAGE PAYOUT IN EXCESS OF FIVE PER CENT PER YEAR IS CONSIDERED TO HAVE PAID OUT ALL OF THE INCOME OF THE TOTAL RETURN UNITRUST AND TO HAVE PAID OUT PRINCIPAL OF THE TRUST TO THE EXTENT THAT THE FIXED PERCENTAGE PAYOUT EXCEEDS FIVE PER CENT PER YEAR.

G. THE TRUST DOCUMENT MAY GRANT DISCRETION TO THE TRUSTEE TO ADOPT A CONSISTENT PRACTICE OF TREATING CAPITAL GAINS AS PART OF THE UNITRUST DISTRIBUTION, TO THE EXTENT THAT THE UNITRUST DISTRIBUTION EXCEEDS THE NET ACCOUNTING INCOME, OR IT MAY SPECIFY THE ORDERING OF THESE CLASSES OF INCOME.

H. UNLESS THE TERMS OF THE TRUST SPECIFICALLY PROVIDE OTHERWISE, A DISTRIBUTION OF THE UNITRUST AMOUNT IS CONSIDERED TO HAVE BEEN MADE FROM THE FOLLOWING SOURCES IN ORDER OF PRIORITY:

1. FROM NET ACCOUNTING INCOME DETERMINED AS IF THE TRUST WERE NOT A UNITRUST.

2. FROM ORDINARY INCOME NOT ALLOCABLE TO NET ACCOUNTING INCOME.

3. FROM NET REALIZED SHORT-TERM CAPITAL GAINS.

4. FROM NET REALIZED LONG-TERM CAPITAL GAINS.

5. FROM THE PRINCIPAL OF THE TRUST ESTATE.

I. THE TRUST DOCUMENT MAY PROVIDE THAT ASSETS USED BY THE TRUST BENEFICIARY, SUCH AS A RESIDENCE PROPERTY OR TANGIBLE PERSONAL PROPERTY, MAY BE EXCLUDED FROM THE NET FAIR MARKET VALUE FOR COMPUTING THE UNITRUST AMOUNT. THIS USE MAY BE CONSIDERED EQUIVALENT TO THE INCOME OR UNITRUST AMOUNT.

J. FOR THE PURPOSES OF THIS SECTION, "EXPRESS TOTAL RETURN UNITRUST" MEANS A TRUST THAT BY ITS GOVERNING INSTRUMENT REQUIRES THE DISTRIBUTION AT LEAST ANNUALLY OF A UNITRUST AMOUNT EQUAL TO A FIXED PERCENTAGE OF NOT LESS THAN THREE NOR MORE THAN FIVE PER CENT PER YEAR OF THE NET FAIR MARKET VALUE OF THE TRUST'S ASSETS, VALUED AT LEAST ANNUALLY.

Sec. 20. Section 25-213, Arizona Revised Statutes, is amended to read:

25-213. Separate property

A. A spouse's real and personal property that is owned by that spouse before marriage and that is acquired by that spouse during the marriage by gift, devise or descent, and the increase, rents, issues and profits of that property, is the separate property of that spouse.

B. Property that is acquired by a spouse after service of a petition for dissolution of marriage, legal separation or annulment is also the separate property of that spouse if the petition results in a decree of dissolution of marriage, legal separation or annulment.

C. Notwithstanding subsection B of this section and section 25-214, subsection C, a mortgage or deed of trust executed by a spouse who acquires the real property encumbered by that mortgage or deed of trust after service of a petition for dissolution of marriage, legal separation or annulment shall be enforceable against the real property if the petition does not result in a decree of dissolution of marriage, legal separation or annulment.

D. A CONTRIBUTION TO AN IRREVOCABLE TRUST THAT HAS AS ITS PRINCIPAL ASSET LIFE INSURANCE ON THE PERSON MAKING THE CONTRIBUTION IS A CONTRIBUTION OF THE INSURED'S SEPARATE PROPERTY IF THE SPOUSE OF THE INSURED IS THE PRIMARY BENEFICIARY OF THE TRUST.