

REFERENCE TITLE: Arizona trust code

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

HB 2333

Introduced by
Representatives Boone: Driggs

AN ACT

AMENDING SECTIONS 14-2903, 14-3715, 14-7403, 14-10103, 14-10105, 14-10402, 14-10407, 14-10504, 14-10505, 14-10818, 14-11003 AND 25-213, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 3, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-3916; AMENDING TITLE 14, CHAPTER 11, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10819; AMENDING TITLE 14, CHAPTER 11, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-11015; RELATING TO THE ARIZONA TRUST CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 14-2903, Arizona Revised Statutes, is amended to
3 read:

4 14-2903. Reformation of a disposition plan; conditions

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

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

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

14 3. A nonvested property interest that is not validated by section
15 14-2901, subsection A, paragraph 1 can vest but not within ninety years after
16 its creation.

17 Sec. 2. Section 14-3715, Arizona Revised Statutes, is amended to read:

18 14-3715. Transactions authorized for personal representatives;
19 exceptions

20 Except as restricted or otherwise provided by the will or by an order
21 in a formal proceeding and subject to the priorities stated in section
22 14-3902, a personal representative, acting reasonably for the benefit of the
23 interested persons, may properly:

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

27 2. Receive assets from fiduciaries or other sources.

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

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

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

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

44 5. If funds are not needed to meet debts and expenses currently
45 payable and are not immediately distributable, deposit or invest liquid

1 assets of the estate, including monies received from the sale of other
2 assets, in federally insured interest-bearing accounts, readily marketable
3 secured loan arrangements or other prudent investments which would be
4 reasonable for use by trustees generally.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 **14-3916. Community property**

42 **IN MAKING A DIVISION OR DISTRIBUTION OF COMMUNITY PROPERTY HELD IN THE**
43 **DECEDENT'S ESTATE, THE PERSONAL REPRESENTATIVE MAY CONSIDER COMMUNITY**
44 **PROPERTY HELD OUTSIDE THE ESTATE SO THAT THE DIVISION OF COMMUNITY PROPERTY**

1 HELD IN THE ESTATE AND OUTSIDE THE ESTATE IS BASED ON EQUAL VALUE BUT IS NOT
2 NECESSARILY PROPORTIONATE.

3 Sec. 4. Section 14-7403, Arizona Revised Statutes, is amended to read:
4 14-7403. Trustee's power to adjust

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

12 B. In deciding whether and to what extent to exercise the power
13 conferred by subsection A of this section, a trustee shall consider all
14 factors relevant to the trust and its beneficiaries, including the following
15 factors to the extent they are relevant:

- 16 1. The nature, purpose and expected duration of the trust.
- 17 2. The intent of the settlor.
- 18 3. The identity and circumstances of the beneficiaries.
- 19 4. The need for liquidity, regularity of income and preservation and
20 appreciation of capital.
- 21 5. The assets held in the trust and:
 - 22 (a) The extent to which:
 - 23 (i) They consist of financial assets, interests in closely held
24 enterprises, tangible and intangible personal property or real property.
 - 25 (ii) An asset is used by a beneficiary.
 - 26 (b) Whether an asset was purchased by the trustee or received from the
27 settlor.
- 28 6. The net amount allocated to income under this article and the
29 increase or decrease in the value of the principal assets, which the trustee
30 may estimate as to assets for which market values are not readily available.
- 31 7. Whether and to what extent the terms of the trust give the trustee
32 the power to invade principal or accumulate income or prohibit the trustee
33 from invading principal or accumulating income, and the extent to which the
34 trustee has exercised a power from time to time to invade principal or
35 accumulate income.

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

38 9. The anticipated tax consequences of an adjustment.

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

41 C. A trustee may not make an adjustment:

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

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

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

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

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

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

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

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

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

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

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

40 Sec. 5. Section 14-10103, Arizona Revised Statutes, is amended to
41 read:

42 14-10103. Definitions

43 In this chapter, unless the context otherwise requires:

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

- 1 2. "Beneficiary" means a person who either:
2 (a) Has a present or future beneficial interest in a trust, vested or
3 contingent.
4 (b) In a capacity other than that of a trustee, holds a power of
5 appointment over trust property.
6 3. "Charitable trust" means a trust, or portion of a trust, created
7 for a charitable purpose described in section 14-10405, subsection A.
8 4. "Conservator" means a person appointed by the court to administer
9 the estate of a minor or an adult.
10 5. "Environmental law" means a federal, state or local law, rule,
11 regulation or ordinance relating to protection of the environment.
12 6. "Guardian" means a person appointed by the court to make decisions
13 regarding the support, care, education, health and welfare of a minor or an
14 adult. Guardian does not include a guardian ad litem.
15 7. "Interests of the beneficiaries" means the beneficial interests
16 provided in the terms of the trust.
17 8. "Internal revenue code" has the same meaning prescribed in section
18 43-105.
19 9. "Jurisdiction", with respect to a geographic area, includes a state
20 or country.
21 10. "Person" means an individual, corporation, business trust, estate,
22 trust, partnership, limited liability company, association, joint venture,
23 government, governmental subdivision, agency or instrumentality, public
24 corporation or any other legal or commercial entity.
25 11. "Power of withdrawal" means a presently exercisable general power
26 of appointment other than a power exercisable either:
27 (a) By a trustee and limited by an ascertainable standard.
28 (b) By a person other than in a fiduciary capacity and only on the
29 consent of the trustee or a person holding an adverse interest.
30 12. "Property" means anything that may be the subject of ownership,
31 whether real or personal, legal or equitable, or any interest in anything
32 that may be the subject of ownership.
33 13. "Qualified beneficiary" means a beneficiary who, on the date the
34 beneficiary's qualification is determined:
35 (a) Is a distributee or permissible distributee of trust income or
36 principal.
37 (b) Would be a distributee or permissible distributee of trust income
38 or principal if the interests of the distributees described in subdivision
39 (a) of this paragraph terminated on that date.
40 (c) Would be a distributee or permissible distributee of trust income
41 or principal if the trust terminated on that date.
42 14. "Revocable", as applied to a trust or a portion of a trust, means
43 revocable by a settlor without the consent of any person, including the
44 trustee or a person who holds an interest that is either adverse or not
45 adverse.

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

6 16. "Special needs trust" means a trust established for the benefit of
7 one or more disabled persons if one of the purposes of the trust, expressed
8 in the trust instrument or implied from the trust instrument, is to allow the
9 disabled person to qualify or continue to qualify for public, charitable or
10 private benefits that might otherwise be available to the disabled person.
11 The existence of one or more nondisabled remainder beneficiaries of the trust
12 shall not disqualify it as a special needs trust for **THE** purposes of this
13 paragraph.

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

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

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

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

27 21. "Trustee" includes an original, additional and successor trustee
28 and a cotrustee.

29 Sec. 6. Section 14-10105, Arizona Revised Statutes, is amended to
30 read:

31 14-10105. Default and mandatory rules

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

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

36 2. Conflicts of interest of a trustee.

37 3. Relations among trustees.

38 4. Mergers or divisions of trusts.

39 5. The rights and interests of a beneficiary.

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

42 1. The requirements for creating a trust.

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

- 1 3. The requirement that a trust and its terms be for the benefit of
2 its beneficiaries and that the trust have a purpose that is lawful, not
3 contrary to public policy and possible to achieve.
- 4 4. The power of the court to modify or terminate a trust under
5 sections 14-10410, 14-10411, 14-10412, 14-10413, 14-10414, 14-10415 and
6 14-10416.
- 7 5. The effect of a spendthrift provision and the rights of certain
8 creditors and assignees to reach a trust as provided in article 5 of this
9 chapter.
- 10 6. The power of the court under section 14-10702 to require, dispense
11 with, modify or terminate a bond.
- 12 7. The power of the court under section 14-10708, subsection B to
13 adjust a trustee's compensation specified in the terms of the trust that is
14 unreasonably low or high.
- 15 8. The duty to respond to the request of a qualified beneficiary of an
16 irrevocable trust for trustee's reports and other information reasonably
17 related to the administration of a trust.
- 18 9. The effect of an exculpatory term under section 14-11008.
- 19 10. The rights under sections 14-11010, 14-11011, 14-11012 and 14-11013
20 of a person other than a trustee or beneficiary.
- 21 11. Periods of limitation for commencing a judicial proceeding.
- 22 12. The power of the court to take action **CONSISTENT WITH THE TRUST**
23 **INSTRUMENT** and exercise jurisdiction as may be necessary in the interests of
24 justice.
- 25 13. The subject matter jurisdiction of the court and venue for
26 commencing a proceeding as provided in sections 14-10203 and 14-10204.
- 27 14. The notice provisions of section 14-10110, subsection B.
- 28 Sec. 7. Section 14-10402, Arizona Revised Statutes, is amended to
29 read:
- 30 14-10402. Requirements for creation
- 31 A. Except as provided in section 14-5409, a trust is created only if
32 all of the following are true:
- 33 1. The settlor has capacity to create a trust.
- 34 2. The settlor indicates an intention to create the trust.
- 35 3. The trust has a definite beneficiary or is:
- 36 (a) A charitable trust.
- 37 (b) A trust for the care of an animal, as provided in section
38 14-10408.
- 39 (c) A trust for a noncharitable purpose, as provided in section
40 14-10409.
- 41 4. The trustee has duties to perform.
- 42 5. The same person is not the sole trustee and sole beneficiary.
- 43 B. A beneficiary is definite if the beneficiary can be ascertained now
44 or in the future, subject to any applicable rule against perpetuities.

1 C. A power in a trustee or other person to select a beneficiary from
2 an indefinite class is valid. If the power is not exercised within a
3 reasonable time, the power fails and the property subject to the power passes
4 to the persons who would have taken the property had the power not been
5 conferred.

6 D. IF THE POWER IS NOT EXERCISED WITHIN A REASONABLE TIME, THE POWER
7 FAILS AND THE PROPERTY SUBJECT TO THE POWER PASSES TO THE PERSONS WHO WOULD
8 HAVE TAKEN THE PROPERTY IF THE POWER HAD NOT BEEN CONFERRED.

9 Sec. 8. Section 14-10407, Arizona Revised Statutes, is amended to
10 read:

11 14-10407. Evidence of oral trust

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

18 Sec. 9. Section 14-10504, Arizona Revised Statutes, is amended to
19 read:

20 14-10504. Discretionary trusts; effect of standard; definition

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

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

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

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

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

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

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

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

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

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

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

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

24 Sec. 10. Section 14-10505, Arizona Revised Statutes, is amended to
25 read:

26 14-10505. Creditor's claim against settlor

27 A. Whether or not the terms of a trust contain a spendthrift
28 provision, the following rules apply:

29 1. During the lifetime of the settlor, the property of a revocable
30 trust is subject to claims of the settlor's creditors. If a trust has more
31 than one settlor or contributor, the amount the creditor or assignee of a
32 particular settlor may reach may not exceed the settlor's interest in the
33 portion of the trust attributable to that settlor's contribution. This
34 paragraph does not abrogate otherwise applicable laws relating to community
35 property.

36 2. Subject to the requirements of this section, with respect to an
37 irrevocable trust, a creditor or assignee of the settlor may reach the
38 maximum amount that can be distributed to or for the settlor's benefit. If a
39 trust has more than one settlor, the amount the creditor or assignee of a
40 particular settlor may reach may not exceed the settlor's interest in the
41 portion of the trust attributable to that settlor's contribution. This
42 paragraph does not apply to any trust from which any distribution to the
43 settlor can be made pursuant to the exercise of a power of appointment held
44 by a third party or abrogate otherwise applicable laws relating to community
45 property. A creditor of a settlor:

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

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

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

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

19 B. For the purposes of this section:

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

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

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

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

1 E. For the purposes of this section, amounts contributed to THE
2 FOLLOWING ARE NOT DEEMED TO HAVE BEEN CONTRIBUTED BY THE SETTLOR EVEN IF THE
3 SETTLOR IS A BENEFICIARY OF THE TRUST FOLLOWING THE DEATH OF THE
4 BENEFICIARY'S SPOUSE, WHETHER THROUGH THE INITIAL TRUST INSTRUMENT OR THROUGH
5 A TRUST CREATED BY THE BENEFICIARY WHO HOLDS THE POWER OF APPOINTMENT IF THE
6 BENEFICIARY HOLDS A GENERAL POWER OF APPOINTMENT EXERCISABLE IN FAVOR OF THE
7 HOLDER'S ESTATE OR A LIMITED POWER OF APPOINTMENT, OR BOTH:

8 1. An IRREVOCABLE inter vivos marital trust that is treated as
9 qualified terminable interest property under section 2523(f) of the internal
10 revenue code. ~~or to~~

11 2. An IRREVOCABLE inter vivos marital trust that is treated as a
12 general power of appointment trust under section 2523(e) of the internal
13 revenue code ~~and over which the beneficiary holds a limited power of~~
14 ~~appointment or a general power of appointment exercisable in favor of the~~
15 ~~holder's estate, or both, are not deemed to have been contributed by the~~
16 ~~settlor even if the settlor is a beneficiary of the trust following the death~~
17 ~~of the beneficiary's spouse.~~

18 3. An irrevocable inter vivos trust for the settlor's spouse that does
19 not qualify for the gift tax marital deduction.

20 F. Subsections C and D do not apply to:

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

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

28 Sec. 11. Section 14-10818, Arizona Revised Statutes, is amended to
29 read:

30 14-10818. Trust protector

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

36 B. A trust protector appointed by the trust instrument has the powers,
37 delegations and functions conferred on the trust protector by the trust
38 instrument, including the following:

39 1. Remove and appoint a trustee.

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

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

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

2 5. Change the applicable law governing the trust.

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

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

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

10 D. Any provision of this title to the contrary, but except to the
11 extent otherwise provided by the trust instrument, a trust protector is not a
12 trustee or fiduciary and is not liable or accountable as a trustee or
13 fiduciary because of an act or omission of the trust protector when
14 performing or failing to perform the duties of a trust protector under the
15 trust instrument. ~~This subsection does not apply to trusts that become~~
16 ~~irrevocable before the effective date of this section.~~ EXCEPT IN THOSE
17 INSTANCES IN WHICH THE TRUST INSTRUMENT ALLOWS THE SETTLOR TO REMOVE AND
18 REPLACE THE TRUST PROTECTOR, THIS SUBSECTION APPLIES TO ALL TRUSTS REGARDLESS
19 OF THE DATE ON WHICH THE TRUST WAS CREATED.

20 Sec. 12. Title 14, chapter 11, article 8, Arizona Revised Statutes, is
21 amended by adding section 14-10819, to read:

22 14-10819. Trustee's special power to appoint to other trust

23 A. UNLESS THE TERMS OF THE INSTRUMENT EXPRESSLY PROVIDE OTHERWISE, A
24 TRUSTEE WHO HAS THE ABSOLUTE DISCRETION UNDER THE TERMS OF A TESTAMENTARY
25 INSTRUMENT OR IRREVOCABLE INTER VIVOS AGREEMENT TO INVADE THE PRINCIPAL OF A
26 TRUST FOR THE BENEFIT OF THE BENEFICIARY WHO IS ELIGIBLE OR ENTITLED TO THE
27 INCOME OF THE TRUST MAY EXERCISE WITHOUT PRIOR COURT APPROVAL THE TRUSTEE'S
28 DISCRETION BY APPOINTING PART OR ALL OF THE PRINCIPAL OF THE TRUST IN FAVOR
29 OF A TRUSTEE OF A TRUST UNDER AN INSTRUMENT OTHER THAN THAT UNDER WHICH THE
30 POWER TO INVADE WAS CREATED IF THE EXERCISE OF THIS DISCRETION:

31 1. DOES NOT REDUCE ANY FIXED INCOME INTEREST OF AN INCOME BENEFICIARY
32 OF THE TRUST.

33 2. IS IN FAVOR OF THE BENEFICIARY OF THE TRUST.

34 3. DOES NOT VIOLATE THE LIMITATIONS ON VALIDITY UNDER SECTIONS 14-2901
35 AND 14-2905.

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

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

41 Sec. 13. Section 14-11003, Arizona Revised Statutes, is amended to
42 read:

43 14-11003. Damages in absence of breach

44 A. Except as provided in section 14-7404, a trustee is accountable to
45 an affected beneficiary for any profit made by the trustee arising from the

1 administration of the trust, even absent a breach of trust. FOR THE PURPOSES
2 OF THIS SUBSECTION, PROFIT DOES NOT INCLUDE:

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

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

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

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

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

14 14-11015. Express total return unitrusts; definition

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

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

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

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

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

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

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

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

- 1 1. FROM NET ACCOUNTING INCOME DETERMINED AS IF THE TRUST WERE NOT A
2 UNITRUST.
- 3 2. FROM ORDINARY INCOME NOT ALLOCABLE TO NET ACCOUNTING INCOME.
- 4 3. FROM NET REALIZED SHORT-TERM CAPITAL GAINS.
- 5 4. FROM NET REALIZED LONG-TERM CAPITAL GAINS.
- 6 5. FROM THE PRINCIPAL OF THE TRUST ESTATE.
- 7 I. THE TRUST DOCUMENT MAY PROVIDE THAT ASSETS USED BY THE TRUST
8 BENEFICIARY, SUCH AS A RESIDENCE PROPERTY OR TANGIBLE PERSONAL PROPERTY, MAY
9 BE EXCLUDED FROM THE NET FAIR MARKET VALUE FOR COMPUTING THE UNITRUST AMOUNT.
10 THIS USE MAY BE CONSIDERED EQUIVALENT TO THE INCOME OR UNITRUST AMOUNT.
- 11 J. FOR THE PURPOSES OF THIS SECTION, "EXPRESS TOTAL RETURN UNITRUST"
12 MEANS A TRUST THAT BY ITS GOVERNING INSTRUMENT REQUIRES THE DISTRIBUTION AT
13 LEAST ANNUALLY OF A UNITRUST AMOUNT EQUAL TO A FIXED PERCENTAGE OF NOT LESS
14 THAN THREE NOR MORE THAN FIVE PER CENT PER YEAR OF THE NET FAIR MARKET VALUE
15 OF THE TRUST'S ASSETS, VALUED AT LEAST ANNUALLY.
- 16 Sec. 15. Section 25-213, Arizona Revised Statutes, is amended to read:
17 25-213. Separate property
- 18 A. A spouse's real and personal property that is owned by that spouse
19 before marriage and that is acquired by that spouse during the marriage by
20 gift, devise or descent, and the increase, rents, issues and profits of that
21 property, is the separate property of that spouse.
- 22 B. Property that is acquired by a spouse after service of a petition
23 for dissolution of marriage, legal separation or annulment is also the
24 separate property of that spouse if the petition results in a decree of
25 dissolution of marriage, legal separation or annulment.
- 26 C. Notwithstanding subsection B of this section and section 25-214,
27 subsection C, a mortgage or deed of trust executed by a spouse who acquires
28 the real property encumbered by that mortgage or deed of trust after service
29 of a petition for dissolution of marriage, legal separation or annulment
30 shall be enforceable against the real property if the petition does not
31 result in a decree of dissolution of marriage, legal separation or annulment.
- 32 D. A CONTRIBUTION TO AN IRREVOCABLE TRUST THAT HAS AS ITS PRINCIPAL
33 ASSET LIFE INSURANCE ON THE PERSON MAKING THE CONTRIBUTION IS A CONTRIBUTION
34 OF THE INSURED'S SEPARATE PROPERTY IF THE SPOUSE OF THE INSURED IS THE
35 PRIMARY BENEFICIARY OF THE TRUST.