

REFERENCE TITLE: trusts and estates

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HB 2403

Introduced by  
Representatives Vogt: Smith D

AN ACT

AMENDING SECTIONS 12-2234, 14-2712, 14-10202, 14-10504, 14-10505, 14-10819, 14-11014, 25-213, 28-2055 AND 33-1126, ARIZONA REVISED STATUTES; RELATING TO PROBATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 12-2234, Arizona Revised Statutes, is amended to  
3 read:  
4 12-2234. Attorney and client  
5 A. In a civil action an attorney shall not, without the consent of ~~his~~  
6 THE ATTORNEY'S client, be examined as to any communication made by the client  
7 to ~~him~~ THE ATTORNEY, or ~~his~~ THE ATTORNEY'S advice given ~~thereon~~ in the course  
8 of professional employment. An attorney's paralegal, assistant, secretary,  
9 stenographer or clerk ~~shall not~~, without the consent of ~~his~~ THAT PERSON'S  
10 employer, SHALL NOT be examined concerning any fact the knowledge of which  
11 was acquired in such capacity.  
12 B. For THE purposes of subsection A, any communication is privileged  
13 between an attorney for a corporation, governmental entity, partnership,  
14 business, association or other similar entity or an employer and any  
15 employee, agent or member of the entity or employer regarding acts or  
16 omissions of or information obtained from the employee, agent or member if  
17 the communication is either:  
18 1. For the purpose of providing legal advice to the entity or employer  
19 or to the employee, agent or member.  
20 2. For the purpose of obtaining information in order to provide legal  
21 advice to the entity or employer or to the employee, agent or member.  
22 C. The privilege ~~defined~~ PRESCRIBED in this section ~~shall~~ DOES not ~~be~~  
23 ~~construed to~~ allow the employee to be relieved of a duty to disclose the  
24 facts solely because they have been communicated to an attorney.  
25 D. THE PRIVILEGE PRESCRIBED IN THIS SECTION MAY BE ASSERTED OR WAIVED  
26 BY THE CLIENT OR, IF THE CLIENT IS DECEASED, BY THE PERSONAL REPRESENTATIVE  
27 OF THE CLIENT'S ESTATE. IF THE CLIENT HAS A GUARDIAN OR A CONSERVATOR, THE  
28 GUARDIAN OR CONSERVATOR MAY ASSERT OR WAIVE THE PRIVILEGE ON BEHALF OF THE  
29 CLIENT BUT MAY NOT WAIVE THE PRIVILEGE IN AN ACTION BROUGHT AGAINST THE  
30 GUARDIAN OR CONSERVATOR BY THE CLIENT. THE COURT MAY APPOINT A GUARDIAN AD  
31 LITEM FOR A MINOR OR INCAPACITATED CLIENT FOR THE PURPOSE OF WAIVING THE  
32 PRIVILEGE, INCLUDING IN ACTION BROUGHT AGAINST THE CLIENT'S GUARDIAN OR  
33 CONSERVATOR.  
34 E. IF THE CLIENT IS A GUARDIAN, CONSERVATOR, PERSONAL REPRESENTATIVE,  
35 TRUSTEE OR AGENT UNDER A POWER OF ATTORNEY, THE PRIVILEGE PRESCRIBED IN THIS  
36 SECTION BELONGS ONLY TO THAT FIDUCIARY AND MAY NOT BE WAIVED BY A BENEFICIARY  
37 OF THE FIDUCIARY RELATIONSHIP OR BY A SUCCESSOR FIDUCIARY.  
38 F. SUBSECTIONS D AND E DO NOT APPLY TO ANY OF THE FOLLOWING:  
39 1. A COMMUNICATION RELEVANT TO AN ISSUE BETWEEN PARTIES WHO CLAIM  
40 THROUGH THE SAME DECEASED CLIENT, REGARDLESS OF WHETHER THE CLAIMS ARE BY  
41 TESTATE OR INTTESTATE SUCCESSION OR BY INTER VIVOS TRANSACTION.  
42 2. A COMMUNICATION RELEVANT TO AN ISSUE CONCERNING AN ATTESTED  
43 DOCUMENT EXECUTED BY A DECEASED CLIENT TO WHICH THE LAWYER IS AN ATTESTING  
44 WITNESS.

1           3. A COMMUNICATION RELEVANT TO AN ISSUE CONCERNING THE INTENTION OF A  
2 DECEASED CLIENT WITH RESPECT TO A DEED OF CONVEYANCE, WILL, TRUST OR OTHER  
3 WRITING EXECUTED BY THE CLIENT AND PURPORTING TO AFFECT AN INTEREST IN  
4 PROPERTY.

5           4. A COMMUNICATION RELEVANT TO AN ISSUE CONCERNING THE VALIDITY OF A  
6 DEED OF CONVEYANCE, PAYABLE ON DEATH DESIGNATION, WILL, TRUST OR OTHER  
7 WRITING EXECUTED BY A DECEASED CLIENT AND PURPORTING TO AFFECT AN INTEREST IN  
8 PROPERTY.

9           Sec. 2. Section 14-2712, Arizona Revised Statutes, is amended to read:

10           14-2712. Burdens relating to validity of governing instruments

11           A. A proponent of a governing instrument has the burden of  
12 establishing prima facie proof of due execution in all cases.

13           B. It is a rebuttable presumption that a person who executes a  
14 governing instrument is presumed to have capacity to execute the governing  
15 instrument and to have done so free from undue influence and duress.

16           C. If the validity of a governing instrument is challenged on the  
17 grounds of revocation by a later governing instrument, the validity of the  
18 later governing instrument must be determined first.

19           D. Except as prescribed pursuant to subsections E and F of this  
20 section, a party that challenges the validity of a governing instrument has  
21 the burden of establishing the invalidity of that governing instrument by a  
22 preponderance of the evidence.

23           E. A governing instrument is presumed to be the product of undue  
24 influence ~~and is invalid~~ if either:

25           1. A person who had a confidential relationship to the creator of the  
26 governing instrument was active in procuring its creation and execution and  
27 is a principal beneficiary of the governing instrument.

28           2. The preparer of the governing instrument or the preparer's spouse  
29 or parents or the issue of the preparer's spouse or parents is a principal  
30 beneficiary of the governing instrument. This paragraph does not apply if  
31 the governing instrument was prepared for a person who is a grandparent of  
32 the preparer, the issue of a grandparent of the preparer or the respective  
33 spouses or former spouses of persons related to the preparer.

34           F. The beneficiary of the governing instrument may overcome a  
35 presumption of undue influence by a preponderance of the evidence.

36           G. For the purposes of this section, determining if a person is a  
37 principal beneficiary of a governing instrument or the preparer of a  
38 governing instrument is a question of fact to be determined by the totality  
39 of the circumstances.

40           H. This section does not apply to the following:

41           1. Proceedings to determine the validity of a durable power of  
42 attorney pursuant to section 14-5506, subsection B.

43           2. Proceedings to determine ownership of multiple party accounts  
44 pursuant to section 14-6211.

1           Sec. 3. Section 14-10202, Arizona Revised Statutes, is amended to  
2 read:

3           14-10202. Jurisdiction over trustee and beneficiary

4           A. By accepting the trusteeship of a trust having its principal place  
5 of administration in this state or by moving the principal place of  
6 administration to this state, **OR UNTIL OTHERWISE DECLARED BY THE TRUSTEE IF A**  
7 **PROCEEDING REGARDING A MATTER INVOLVING THE TRUST IS NOT PENDING IN A COURT**  
8 **OF THIS STATE, BY DECLARING THAT THE TRUST IS SUBJECT TO THE JURISDICTION OF**  
9 **THE COURTS OF THIS STATE**, the trustee submits personally to the jurisdiction  
10 of the courts of this state regarding any matter involving the trust.

11           B. With respect to their interests in the trust, the beneficiaries of  
12 a trust having its principal place of administration in this state are  
13 subject to the jurisdiction of the courts of this state regarding any matter  
14 involving the trust. By accepting a distribution from such a trust, the  
15 recipient submits personally to the jurisdiction of the courts of this state  
16 regarding any matter involving the trust.

17           C. This section does not preclude other methods of obtaining  
18 jurisdiction over a trustee, beneficiary or other person receiving property  
19 from the trust.

20           Sec. 4. Section 14-10504, Arizona Revised Statutes, is amended to  
21 read:

22           14-10504. Discretionary trusts; effect of standard; definition

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

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

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

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

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

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

42           C. This section does not limit the right of a beneficiary to maintain  
43 a judicial proceeding against a trustee for an abuse of discretion or failure  
44 to comply with a standard for distribution, provided that this right may not  
45 be exercised by a creditor of the beneficiary **OR TO THE EXTENT THAT ANY**

1 CREDITOR OF THE BENEFICIARY TAKES THROUGH THE NAME OR RIGHTS OF THE  
2 BENEFICIARY.

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

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

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

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

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

26 Sec. 5. Section 14-10505, Arizona Revised Statutes, is amended to  
27 read:

28 14-10505. Creditor's claim against settlor

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

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

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

1 by a third party or abrogate otherwise applicable laws relating to community  
2 property. A creditor of a settlor:

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

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

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

12 3. After the death of a settlor, and subject to the settlor's right to  
13 direct the source from which liabilities will be paid, the property of a  
14 trust that was revocable at the settlor's death is subject to claims of the  
15 settlor's creditors, costs of administration of the settlor's estate, the  
16 expenses of the settlor's funeral and disposal of remains and statutory  
17 allowances to a surviving spouse and children to the extent the settlor's  
18 probate estate is inadequate to satisfy those claims, costs, expenses and  
19 allowances, except to the extent that state or federal law exempts any  
20 property of the trust from these claims, costs, expenses or allowances. IF A  
21 TRUST HAS MORE THAN ONE SETTLOR OR CONTRIBUTOR, THE AMOUNT THE CREDITOR OR  
22 ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S  
23 INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S  
24 CONTRIBUTION. THIS PARAGRAPH DOES NOT ABROGATE OTHERWISE APPLICABLE LAWS  
25 RELATING TO COMMUNITY PROPERTY.

26 B. For the purposes of this section:

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

30 2. On the lapse, release or waiver of a power of withdrawal, the  
31 holder is ~~treated as the settlor of the trust only to the extent the value of~~  
32 ~~the property affected by the lapse, release or waiver exceeds the greater of~~  
33 ~~the amount specified in section 2041(b)(2) or 2514(e) of the internal revenue~~  
34 ~~code, or section 2503(b) of the internal revenue code. On the lapse, release~~  
35 ~~or waiver of a power of withdrawal in the case of a trust created under~~  
36 ~~section 2503(c) of the internal revenue code, the holder will not be treated~~  
37 ~~as the settlor of the trust~~ NOT, BY REASON OF ANY SUCH LAPSE, RELEASE OR  
38 WAIVER, TREATED AS THE SETTLOR OF THE TRUST.

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

44 D. For the purposes of this section, amounts contributed to a trust by  
45 a corporation, professional corporation, partnership, limited liability

1 company, governmental entity, trust, foundation or other entity are not  
2 deemed to have been contributed by its directors, officers, shareholders,  
3 partners, employees, beneficiaries or agents. Powers, duties or  
4 responsibilities granted to or reserved by the settlor pursuant to the trust  
5 and any actions or omissions taken pursuant to the trust are deemed to be the  
6 powers, responsibilities, duties, actions or omissions of the settlor and not  
7 those of its directors, officers, shareholders, partners, members, managers,  
8 employees, beneficiaries or agents.

9 E. For the purposes of this section, amounts and property contributed  
10 to the following trusts are not deemed to have been contributed by the  
11 settlor, and a person who would otherwise be treated as a settlor or a deemed  
12 settlor of the following trusts shall not be treated as a settlor:

13 1. An irrevocable inter vivos marital trust that is treated as  
14 qualified terminable interest property under section 2523(f) of the internal  
15 revenue code if the settlor is a beneficiary of the trust after the death of  
16 the settlor's spouse.

17 2. An irrevocable inter vivos marital trust that is treated as a  
18 general power of appointment trust under section 2523(e) of the internal  
19 revenue code if the settlor is a beneficiary of the trust after the death of  
20 the settlor's spouse.

21 3. An irrevocable inter vivos trust for the settlor's spouse ~~that does~~  
22 ~~not qualify for the gift tax marital deduction~~ if the settlor is a  
23 beneficiary of the trust after the death of the settlor's spouse.

24 ~~4. An irrevocable inter vivos trust created by the settlor's spouse~~  
25 ~~for the benefit of the settlor, regardless of whether or when the settlor~~  
26 ~~also created an irrevocable inter vivos trust with respect to which such~~  
27 ~~spouse is a beneficiary.~~

28 4. AN IRREVOCABLE TRUST FOR THE BENEFIT OF A PERSON, THE SETTLOR OF  
29 WHICH IS THE PERSON'S SPOUSE, REGARDLESS OF WHETHER OR WHEN THE PERSON WAS  
30 THE SETTLOR OF AN IRREVOCABLE TRUST FOR THE BENEFIT OF THAT SPOUSE.

31 5. AN IRREVOCABLE TRUST FOR THE BENEFIT OF A PERSON TO THE EXTENT THAT  
32 THE PROPERTY OF THE TRUST WAS SUBJECT TO A GENERAL POWER OF APPOINTMENT IN  
33 ANOTHER PERSON.

34 F. For the purposes of subsection E, a person is a beneficiary whether  
35 so named under the initial trust instrument or through the exercise by that  
36 person's spouse or by another person of a limited or general power of  
37 appointment.

38 G. Subsections C and D do not apply to:

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

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

1           Sec. 6. Section 14-10819, Arizona Revised Statutes, is amended to  
2 read:

3           14-10819. Trustee's special power to appoint to other trust

4           A. Unless the terms of the instrument expressly provide otherwise, a  
5 trustee who has the discretion under the terms of a testamentary instrument  
6 or irrevocable inter vivos agreement to make distributions, regardless of  
7 whether a standard is provided in the instrument or agreement, for the  
8 benefit of a beneficiary of the trust may exercise without prior court  
9 approval the trustee's discretion by appointing part or all of the estate  
10 trust in favor of a trustee of ~~a- ANOTHER trust under an instrument other~~  
11 ~~than that under which the power to make distributions was created~~ if the  
12 exercise of this discretion:

- 13           1. Does not reduce any fixed nondiscretionary income payment to a  
14 beneficiary.
- 15           2. Does not alter any nondiscretionary annuity or unitrust payment to  
16 a beneficiary.
- 17           3. Is in favor of the beneficiaries of the trust.
- 18           4. Results in any ascertainable standard applicable for distributions  
19 from the trust being the same or more restrictive standard applicable for  
20 distributions from the recipient trust when the trustee exercising the power  
21 described in this subsection is a possible beneficiary under the standard.
- 22           5. Does not adversely affect the tax treatment of the trust, the  
23 trustee, the settlor or the beneficiaries.
- 24           6. Does not violate the limitations on validity under sections 14-2901  
25 and 14-2905.

26           B. This section applies to a trust governed by the laws of this state,  
27 including a trust whose governing jurisdiction is transferred to this state.

28           C. The exercise of the power to invade the principal of a trust under  
29 subsection A of this section is considered to be the exercise of a special  
30 power of appointment.

31           D. The trustee, in the trustee's sole discretion, ~~prior to~~ BEFORE or  
32 after the exercise of the trustee's discretion under this section, may  
33 request the court to approve the exercise.

34           E. **THE TRUSTEE MAY EXERCISE THE DISCRETION TO APPOINT ALL OF THE TRUST**  
35 **ESTATE PURSUANT TO THIS SECTION BY RESTATING THE TRUST.**

36           Sec. 7. Section 14-11014, Arizona Revised Statutes, is amended to  
37 read:

38           14-11014. Total return trusts; definitions

39           A. A trustee, other than an interested trustee, or if two or more  
40 persons are acting as trustee, a majority of the trustees who are not an  
41 interested trustee, in its sole discretion and without the approval of the  
42 ~~probate~~ court may:

- 43           1. Convert an income trust to a total return unitrust.
- 44           2. Reconvert a total return unitrust to an income trust.

1           3. Change the percentage used to calculate the unitrust amount or the  
2 method used to determine the fair market value of the trust, or both, if:

3           (a) The trustee adopts a written policy for the trust providing  
4 either:

5           (i) In the case of a trust being administered as an income trust,  
6 future distributions from the trust will be unitrust amounts rather than net  
7 income.

8           (ii) In the case of a trust being administered as a total return  
9 unitrust, future distributions from the trust will be net income rather than  
10 unitrust amounts.

11           (iii) That the percentage used to calculate the unitrust amount or the  
12 method used to determine the fair market value of the trust, or both, will be  
13 changed as stated in the policy.

14           (b) The trustee sends written notice of its intention to take this  
15 action, along with copies of the written policy and this section, to:

16           (i) The settlor of the trust, if living.

17           (ii) All ~~living persons who are currently receiving or eligible to~~  
18 ~~receive distributions of income~~ QUALIFIED BENEFICIARIES of the trust.

19           ~~(iii) Without regard to the exercise of any power of appointment, all~~  
20 ~~living persons who would receive principal of the trust if the trust were to~~  
21 ~~terminate at the time of the giving of the notice and all living persons who~~  
22 ~~would receive or be eligible to receive distributions of income or principal~~  
23 ~~of the trust if the interests of all of the beneficiaries currently eligible~~  
24 ~~to receive income under item (ii) of this subdivision were to terminate at~~  
25 ~~the time of the giving of the notice.~~

26           ~~(iv)~~ (iii) All persons acting as adviser or trust protector of the  
27 trust.

28           (c) At least one person receiving notice under subdivision (b), item  
29 (ii) or (iii) of this subsection is legally competent.

30           (d) No person receiving notice objects to the proposed action of the  
31 trustee by submitting a written instrument delivered to the trustee within  
32 thirty days after receipt of the notice.

33           B. If there is no trustee of the trust other than an interested  
34 trustee, the interested trustee or, if two or more persons are acting as  
35 trustee and are interested trustees, a majority of interested trustees, in  
36 its sole discretion and without the approval of the probate court may:

37           1. Convert an income trust to a total return unitrust.

38           2. Reconvert a total return unitrust to an income trust.

39           3. Change the percentage used to calculate the unitrust amount or the  
40 method used to determine the fair market value of the trust, or both, if:

41           (a) The trustee adopts a written policy for the trust providing  
42 either:

43           (i) In the case of a trust being administered as an income trust, that  
44 future distributions from the trust will be unitrust amounts rather than net  
45 income.

1 (ii) In the case of a trust being administered as a total return  
2 unitrust, that future distributions from the trust will be net income rather  
3 than unitrust amounts.

4 (iii) That the percentage used to calculate the unitrust amount or the  
5 method used to determine the fair market value of the trust, or both, will be  
6 changed as stated in the policy.

7 (b) The trustee appoints a disinterested person who, in its sole  
8 discretion but acting in a fiduciary capacity, determines for the trustee:

9 (i) The percentage to be used to calculate the unitrust amount.

10 (ii) The method to be used in determining the fair market value of the  
11 trust.

12 (iii) Which assets, if any, are to be excluded in determining the  
13 unitrust amount.

14 (c) The trustee sends written notice of its intention to take such  
15 action, along with copies of the written policy and this section, and the  
16 determinations of the disinterested person to:

17 (i) The settlor of the trust, if living.

18 (ii) All ~~living persons who are currently receiving or eligible to~~  
19 ~~receive distributions of income~~ QUALIFIED BENEFICIARIES of the trust.

20 ~~(iii) Without regard to the exercise of any power of appointment, all~~  
21 ~~living persons who would receive principal of the trust if the trust were to~~  
22 ~~terminate at the time of the giving of the notice and all living persons who~~  
23 ~~would receive or be eligible to receive distributions of income or principal~~  
24 ~~of the trust if the interests of all of the beneficiaries currently eligible~~  
25 ~~to receive income under item (ii) of this subdivision were to terminate at~~  
26 ~~the time of the giving of the notice.~~

27 ~~(iv)~~ (iii) All persons acting as adviser or protector of the trust.

28 (d) At least one person receiving notice under subdivision (c), item  
29 (ii) or (iii) of this subsection is legally competent.

30 (e) No person receiving notice objects to the proposed action or the  
31 determinations of the disinterested person by submitting a written instrument  
32 delivered to the trustee within thirty days after receipt of the notice.

33 C. If any trustee wishes to convert an income trust to a total return  
34 unitrust, reconvert a total return unitrust to an income trust or change the  
35 percentage used to calculate the unitrust amount or the method used to  
36 determine the fair market value of the trust, or both, but does not have the  
37 ability to or elects not to do it pursuant to subsection A or B of this  
38 section, the trustee may petition the probate court for an order as the  
39 trustee deems appropriate. If there is only one trustee of such a trust and  
40 that trustee is an interested trustee or if there are two or more trustees of  
41 such a trust and a majority of them are interested trustees, the court, in  
42 its discretion or on petition of the trustee or trustees or of any person  
43 interested in the trust, may appoint a disinterested person who, acting in a  
44 fiduciary capacity, shall present information to the court necessary to  
45 enable the court to make its determinations.

1 D. The fair market value of the trust shall be determined at least  
2 annually, using a valuation date or dates or averages of valuation dates as  
3 are deemed appropriate. Assets for which a fair market value cannot be  
4 readily ascertained shall be valued using valuation methods as are deemed  
5 reasonable and appropriate. Assets used by a trust beneficiary, such as a  
6 residence property or tangible personal property, may be excluded from fair  
7 market value for computing the unitrust amount.

8 E. The percentage to be used in determining the unitrust amount shall  
9 be a reasonable current return from the trust, but not less than three per  
10 cent or more than five per cent, taking into account the intentions of the  
11 settlor of the trust as expressed in the governing instrument, the needs of  
12 the beneficiaries, general economic conditions, projected current earnings  
13 and appreciation for the trust, and projected inflation and its impact on the  
14 trust.

15 F. A trustee may act pursuant to subsection A or B of this section  
16 with respect to a trust for which both income and principal have been  
17 permanently set aside for charitable purposes under the governing instrument  
18 and for which a federal estate or gift tax deduction has been taken, provided  
19 that:

20 1. Instead of sending written notice to the persons described in  
21 subsection A, paragraph 3, subdivision (b), ~~items ITEM (ii) and (iii)~~ of this  
22 section or pursuant to subsection B, paragraph 3, subdivision (c), ~~items ITEM~~  
23 ~~(ii) and (iii)~~ of this section, as the case may be, the trustee shall send  
24 the written notice to the named charity or charities then entitled to receive  
25 income of the trust and, if no named charity or charities are entitled to  
26 receive all of that income, to the attorney general of this state.

27 2. Subsection A, paragraph 3, subdivision (c) of this section or  
28 subsection B, paragraph 3, subdivision (d) of this section, as the case may  
29 be, does not apply to that action.

30 3. In each taxable year, the trustee must distribute the greater of  
31 the unitrust amount and the amount required by section 4942 of the internal  
32 revenue code.

33 G. Following the conversion of an income trust to a total return  
34 unitrust, the trustee:

35 1. Shall consider the unitrust amount as paid from net accounting  
36 income determined as if the trust were not a unitrust.

37 2. Shall then consider the unitrust amount as paid from ordinary  
38 income not allocable to net accounting income.

39 3. After calculating the trust's capital gain net income described in  
40 section 1222(9) of the internal revenue code, may consider the unitrust  
41 amount as paid from net short-term capital gain described in section 1222(5)  
42 of the internal revenue code and then from net long-term capital gain  
43 described in section 1222(7) of the internal revenue code.

44 4. Shall then consider the unitrust amount as coming from the  
45 principal of the trust.

1           H. In administering a total return unitrust, the trustee, in its sole  
2 discretion but subject to the provisions of the governing instrument, may  
3 determine:

4           1. The effective date of the conversion.

5           2. The timing of distributions, including provisions for prorating a  
6 distribution for a short year in which a beneficiary's right to payments  
7 commences or ceases.

8           3. Whether distributions are to be made in cash or in kind or partly  
9 in cash and partly in kind.

10          4. If the trust is reconverted to an income trust, the effective date  
11 of the reconversion.

12          5. Any other administrative issues as may be necessary or appropriate  
13 to carry out the purposes of this section.

14          I. Conversion to a total return unitrust under this section does not  
15 affect any other provision of the governing instrument, if any, regarding  
16 distributions of principal.

17          J. Notwithstanding anything in this section to the contrary, in the  
18 case of a trust for which a marital deduction has been taken for federal tax  
19 purposes under section 2056 or 2523 of the internal revenue code, the spouse  
20 otherwise entitled to receive the net income of the trust has the right, by  
21 written instrument delivered to the trustee, to prohibit conversion to a  
22 total return unitrust and to compel the reconversion during that spouse's  
23 lifetime of the trust from a total return unitrust to an income trust.

24          K. This section pertains to the administration of a trust and is  
25 available to any trust that is administered in this state under Arizona law  
26 or to any trust, regardless of its place of administration, whose governing  
27 instrument provides that Arizona law governs matters of construction or  
28 administration unless:

29          1. The governing instrument reflects an intention that the current  
30 beneficiary or beneficiaries are to receive an amount other than a reasonable  
31 current return from the trust.

32          2. The trust is a pooled income fund described in section 642(c)(5) of  
33 the internal revenue code or a charitable remainder **ANNUITY** trust described  
34 in section 664(d) of the internal revenue code.

35          3. The governing instrument expressly prohibits use of this section by  
36 specific reference to this section or expressly states the settlor's intent  
37 that net income not be calculated as a unitrust amount. A provision in the  
38 governing instrument that "the provisions of Arizona Revised Statutes,  
39 section 14-11014, as amended, or any corresponding provision of future law,  
40 shall not be used in the administration of this trust" or "my trustee shall  
41 not determine the distributions to the income beneficiary as a unitrust  
42 amount" or similar words reflecting such intent shall be sufficient to  
43 preclude the use of this section.

44          L. Any trustee or disinterested person who in good faith takes or  
45 fails to take any action under this section is not liable to any person

1 affected by that action or inaction, regardless of whether the person  
2 received written notice as prescribed in this section and regardless of  
3 whether the person was under a legal disability at the time of the delivery  
4 of the notice. The person's exclusive remedy is to obtain a court order  
5 directing the trustee to convert an income trust to a total return unitrust,  
6 to reconvert from a total return unitrust to an income trust or to change the  
7 percentage used to calculate the unitrust amount.

8 M. This section is available to trusts in existence on October 1, 2008  
9 or created after that date.

10 N. For the purposes of this section:

11 1. "Disinterested person" means a person who is not a related or  
12 subordinate party pursuant to section 672(c) of the internal revenue code  
13 with respect to the person then acting as trustee of the trust and excludes  
14 the settlor of the trust and any interested trustee.

15 2. "Income trust" means a trust that is created by either an inter  
16 vivos or a testamentary instrument and that directs or permits the trustee to  
17 distribute the net income of the trust to one or more persons, either in  
18 required amounts or proportions, or in amounts or proportions determined by  
19 the trustee and regardless of whether the trust directs or permits the  
20 trustee to distribute the principal of the trust to one or more of these  
21 persons.

22 3. "Interested distributee" means a person to whom distributions of  
23 income or principal can currently be made who has the power to remove the  
24 existing trustee and designate as successor a person who may be a related or  
25 subordinate party pursuant to section 672(c) of the internal revenue code  
26 with respect to that distributee.

27 4. "Interested trustee" means:

28 (a) An individual trustee to whom the net income or principal of the  
29 trust can currently be distributed or would be distributed if the trust were  
30 then to terminate and be distributed.

31 (b) Any trustee who may be removed and replaced by an interested  
32 distributee.

33 (c) An individual trustee whose legal obligation to support a  
34 beneficiary may be satisfied by distributions of income and principal of the  
35 trust.

36 5. "Total return unitrust" means an income trust that has been  
37 converted under and meets the requirements of this section.

38 6. "Trustee" means any person acting as trustee of the trust, unless  
39 expressly noted otherwise, whether acting in that person's discretion or on  
40 the direction of one or more persons acting in a fiduciary capacity.

41 7. "Unitrust amount" means an amount computed as a percentage of the  
42 fair market value of the trust.



1           Sec. 10. Section 33-1126, Arizona Revised Statutes, is amended to  
2 read:

3           33-1126. Money benefits or proceeds; exception

4           A. The following property of a debtor ~~shall be~~ IS exempt from  
5 execution, attachment or sale on any process issued from any court:

6           1. All money received by or payable to a surviving spouse or child  
7 ~~upon~~ ON the life of a deceased spouse, parent or legal guardian, not  
8 exceeding twenty thousand dollars.

9           2. The earnings of the minor child of a debtor or the proceeds ~~thereof~~  
10 OF THESE EARNINGS by reason of any liability of ~~such~~ THE debtor not  
11 contracted for the special benefit of ~~such~~ THE minor child.

12           3. All monies received by or payable to a person entitled to receive  
13 child support or spousal maintenance pursuant to a court order.

14           4. All money, proceeds or benefits of any kind to be paid in a lump  
15 sum or to be rendered on a periodic or installment basis to the insured or  
16 any beneficiary under any policy of health, accident or disability insurance  
17 or any similar plan or program of benefits in use by any employer, except for  
18 premiums payable on such policy or debt of the insured secured by a pledge,  
19 and except for collection of any debt or obligation for which the insured or  
20 beneficiary has been paid under the plan or policy and except for payment of  
21 amounts ordered for support of a person from proceeds and benefits furnished  
22 in lieu of earnings ~~which~~ THAT would have been subject to ~~such~~ THAT order and  
23 subject to any exemption applicable to earnings so replaced.

24           5. All money arising from any claim for the destruction of, or damage  
25 to, exempt property and all proceeds or benefits of any kind arising from  
26 fire or other insurance ~~upon~~ ON any property exempt under this article.

27           6. The cash surrender value of life insurance policies where for a  
28 continuous unexpired period of two years ~~such~~ THE policies have been owned by  
29 a debtor and have named as beneficiary the debtor's surviving spouse, child,  
30 parent, brother or sister, or any other dependent family member, in the  
31 proportion that the policy names any such beneficiary, except that, subject  
32 to the statute of limitations, the amount of any premium ~~which~~ THAT is  
33 recoverable or avoidable by a creditor pursuant to title 44, chapter 8,  
34 article 1, with interest thereon, ~~shall~~ IS not ~~be~~ exempt. The exemption  
35 provided by this paragraph does not apply to a claim for the payment of a  
36 debt of the insured or beneficiary that is secured by a pledge or assignment  
37 of the cash value of the insurance policy or the proceeds of the policy. For  
38 the purposes of this paragraph, "dependent" means a family member who is  
39 dependent on the insured debtor for not less than half support.

40           7. An annuity contract where for a continuous unexpired period of two  
41 years ~~such~~ THAT contract has been owned by a debtor and has named as  
42 beneficiary the debtor, THE debtor's surviving spouse, child, parent, brother  
43 or sister, or any other dependent family member, except that, subject to the  
44 statute of limitations, the amount of any premium, payment or deposit with  
45 respect to ~~such~~ THAT contract is recoverable or avoidable by a creditor

1 pursuant to title 44, chapter 8, article 1 ~~shall~~ IS not ~~be~~ exempt. The  
2 exemption provided by this paragraph does not apply to a claim for a payment  
3 of a debt of the annuitant or beneficiary that is secured by a pledge or  
4 assignment of the contract or its proceeds. For the purposes of this  
5 paragraph, "dependent" means a family member who is dependent on the debtor  
6 for not less than half support.

7 8. Any claim for damages recoverable by any person by reason of any  
8 levy ~~upon~~ ON or sale under execution of ~~his~~ THAT PERSON'S exempt personal  
9 property or by reason of the wrongful taking or detention of ~~such~~ THAT  
10 property by any person, and the judgment recovered for ~~such~~ damages.

11 9. A total of one hundred fifty dollars held in a single account in  
12 any one financial institution as defined by section 6-101. The property  
13 declared exempt by this paragraph is not exempt from normal service charges  
14 assessed against the account by the financial institution at which the  
15 account is carried.

16 10. ANY INTEREST IN A COLLEGE SAVINGS PLAN UNDER SECTION 529 OF THE  
17 UNITED STATES INTERNAL REVENUE CODE OF 1986, WHETHER THAT INTEREST IS AS THE  
18 OWNER OR AS THE BENEFICIARY, EXCEPT FOR ANY MONEY CONTRIBUTED TO THE PLAN  
19 WITHIN ONE HUNDRED TWENTY DAYS BEFORE A DEBTOR FILES FOR BANKRUPTCY.

20 B. Any money or other assets payable to a participant in or  
21 beneficiary of, or any interest of any participant or beneficiary in, a  
22 retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a  
23 deferred compensation plan under section 457 of the United States internal  
24 revenue code of 1986, as amended, ~~shall be~~ WHETHER THE BENEFICIARY'S INTEREST  
25 ARISES BY INHERITANCE, DESIGNATION, APPOINTMENT OR OTHERWISE, IS exempt from  
26 ~~any and~~ all claims of creditors of the beneficiary or participant. This  
27 subsection ~~shall~~ DOES not apply to any of the following:

28 1. An alternate payee under a qualified domestic relations order, as  
29 defined in section 414(p) of the United States internal revenue code of 1986,  
30 as amended. The interest of any and all alternate payees is exempt from any  
31 and all claims of any creditor of the alternate payee.

32 2. Amounts contributed within one hundred twenty days before a debtor  
33 files for bankruptcy.

34 3. The assets of bankruptcy proceedings filed before July 1, 1987.

35 C. Any person ~~the age of~~ eighteen years OF AGE or over, married or  
36 single, who resides within this state and who does not exercise the homestead  
37 exemption under article 1 of this chapter may claim as a personal property  
38 homestead exempt from all process prepaid rent, including security deposits  
39 as provided in section 33-1321, subsection A, for the claimant's residence,  
40 not exceeding the lesser of one thousand dollars or one and one-half months'  
41 rent.

42 D. ~~Nothing in~~ This section ~~exempts~~ DOES NOT EXEMPT property from  
43 orders ~~which~~ THAT are the result of a judgment for arrearages of child  
44 support or for a child support debt.