

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 102
SENATE BILL 1204

AN ACT

AMENDING SECTIONS 14-1304, 14-2517, 14-3306, 14-3403 AND 14-10105, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 11, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-10113; AMENDING SECTIONS 14-10506, 14-10813, 14-10819 AND 14-11013, ARIZONA REVISED STATUTES; RELATING TO TRUSTS AND ESTATES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 14-1304, Arizona Revised Statutes, is amended to
3 read:

4 **14-1304. Practice in court**

5 Unless specifically provided to the contrary in this title or unless
6 inconsistent with its provisions, the rules of ~~civil~~ PROBATE procedure
7 ~~including the rules concerning vacation of orders and appellate review~~
8 govern formal proceedings under this title.

9 Sec. 2. Section 14-2517, Arizona Revised Statutes, is amended to
10 read:

11 **14-2517. Penalty clause for contest; restriction**

12 A provision in a will purporting to penalize an interested person
13 for contesting the will or instituting other proceedings **OR ACTIONS**
14 relating to the estate is unenforceable if probable cause exists for ~~that~~
15 ~~action THE CONTEST, PROCEEDINGS OR ACTIONS.~~

16 Sec. 3. Section 14-3306, Arizona Revised Statutes, is amended to
17 read:

18 **14-3306. Informal probate: notice requirements**

19 A. The applicant must give notice as described by section 14-1401
20 of the applicant's application for informal probate:

21 1. To any person demanding it pursuant to section 14-3204.

22 2. To any personal representative of the decedent whose appointment
23 has not been terminated. No other notice need be given ~~prior to~~ BEFORE
24 issuance of a statement of informal probate by the registrar.

25 B. On issuance of a statement of informal probate, the applicant
26 must within thirty days give written information to all heirs and devisees
27 of the admission of the will to probate, together with a copy of the will.
28 The information shall describe the court where papers relating to the
29 estate are on file and state that an heir **OR DEVISEE** has four months from
30 receipt of the information within which to commence a formal testacy
31 proceeding if the heir **OR DEVISEE** wishes to contest the probate. If a
32 personal representative has been appointed, the information given pursuant
33 to this section may be combined with the information required by section
34 14-3705 and may in that case be given by either the applicant or the
35 personal representative on behalf of both. This information shall be
36 delivered or sent by mail to each of the heirs and devisees whose address
37 is reasonably available to the applicant. An heir **OR DEVISEE** to whom the
38 information is given is barred from commencing a formal testacy proceeding
39 to contest the probate of the will after four months have elapsed from
40 receipt of the information, but an heir **OR DEVISEE** is not barred from
41 commencing a formal testacy proceeding to probate a later discovered will.
42 An heir **OR DEVISEE** to whom the information is not given may contest the
43 informal probate within the time limit specified in section 14-3108. The
44 applicant shall be liable to any heir or devisee damaged by failure to
45 comply with this subsection. An applicant's failure to give information

1 as required by this section is a breach of the applicant's duty to the
2 heirs and devisees but does not affect the validity of the probate.

3 Sec. 4. Section 14-3403, Arizona Revised Statutes, is amended to
4 read:

5 14-3403. Formal testacy proceeding; notice of hearing on
6 petition

7 A. ~~Upon~~ ON commencement of a formal testacy proceeding, the clerk
8 shall fix a time and place of hearing. Notice shall be given in the
9 manner prescribed by section 14-1401 by the petitioner to the persons
10 specified in this section and to any additional person who has filed a
11 demand for notice under section 14-3204. Notice shall be given to the
12 following persons: the surviving spouse, children and other heirs of the
13 decedent, the devisees and executors named in any will that is being, or
14 has been, probated, or offered for informal or formal probate in the
15 county, or that is known by the petitioner to have been probated, or
16 offered for informal or formal probate in another jurisdiction, and any
17 personal representative of the decedent whose appointment has not been
18 terminated. Notice may be given to other persons. ~~In addition to the~~
19 ~~extent that the petitioner is not otherwise required by section 14-1401 to~~
20 ~~give notice by publication~~, the petitioner shall give notice by
21 publication ~~one time at least fourteen days before the hearing in the~~
22 ~~manner prescribed by section 14-1401, subsection A, paragraph 3~~ to all
23 unknown persons ~~and to all known persons whose addresses are unknown who~~
24 ~~have any interest in the matter being litigated~~.

25 B. If it appears by the petition or otherwise that the fact of the
26 death of the alleged decedent may be in doubt, or on the written demand of
27 any interested person, a copy of the notice of the hearing on the petition
28 shall be sent by registered mail to the alleged decedent at ~~his~~ THE
29 ~~decedent's~~ last known address. The court shall direct the petitioner to
30 report the results of, or make and report back concerning, a reasonably
31 diligent search for the alleged decedent in any manner that may seem
32 advisable, including any or all of the following methods:

33 1. By inserting in one or more suitable periodicals a notice
34 requesting information from any person having knowledge of the whereabouts
35 of the alleged decedent.

36 2. By notifying law enforcement officials and public welfare
37 agencies in appropriate locations of the disappearance of the alleged
38 decedent.

39 3. By engaging the services of an investigator. The costs of any
40 search so directed shall be paid by the petitioner if there is no
41 administration or by the estate of the decedent in case there is
42 administration.

1 Sec. 5. Section 14-10105, Arizona Revised Statutes, is amended to
2 read:

3 **14-10105. Default and mandatory rules**

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

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

8 2. Conflicts of interest of a trustee.

9 3. Relations among trustees.

10 4. Mergers or divisions of trusts.

11 5. The rights and interests of a beneficiary.

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

14 1. The requirements for creating a trust.

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

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

20 4. The power of the court to modify or terminate a trust under
21 sections 14-10410, 14-10411, 14-10412, 14-10413, 14-10414, 14-10415 and
22 14-10416.

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

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

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

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

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

35 10. The rights under sections 14-11010, 14-11011, 14-11012 and
36 14-11013 of a person other than a trustee or beneficiary.

37 11. Periods of limitation for commencing a judicial proceeding.

38 12. The power of the court to take action consistent with the
39 settlor's intent and exercise jurisdiction as may be necessary in the
40 interests of justice.

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

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

44 15. THE ENFORCEABILITY OF A PENALTY CLAUSE UNDER SECTION 14-10113.

1 Sec. 6. Title 14, chapter 11, article 1, Arizona Revised Statutes,
2 is amended by adding section 14-10113, to read:

3 **14-10113. Penalty clause for contest; restriction**

4 A PROVISION IN A TRUST INSTRUMENT THAT PURPORTS TO PENALIZE AN
5 INTERESTED PERSON FOR CONTESTING THE TRUST INSTRUMENT OR INSTITUTING OTHER
6 PROCEEDINGS OR ACTIONS RELATING TO THE TRUST PROPERTY IS UNENFORCEABLE IF
7 PROBABLE CAUSE EXISTS FOR THE CONTEST, PROCEEDINGS OR ACTIONS.

8 Sec. 7. Section 14-10506, Arizona Revised Statutes, is amended to
9 read:

10 **14-10506. Overdue distribution: definition**

11 A. Whether or not a trust contains a spendthrift provision, a
12 creditor or assignee of a beneficiary may reach a mandatory distribution
13 of income or principal, ~~including a distribution on termination of the~~
14 ~~trust~~, if the trustee has not made the distribution to the beneficiary
15 within a reasonable period after the mandated distribution date unless the
16 terms of the trust expressly authorize the trustee to delay the
17 distribution to protect the beneficiary's interest in the distribution.

18 B. For the purposes of this section, "mandatory distribution" means
19 a distribution of income or principal that the trustee is required to make
20 to a beneficiary under the terms of the trust, including **A DISTRIBUTION**
AMOUNT FOR A STATED AGE, A DISTRIBUTION TO BE MADE PURSUANT TO THE
EXERCISE OF A POWER OF WITHDRAWAL AND a distribution on termination of the
23 trust. Mandatory distribution does not include a distribution that is
24 subject to the exercise of the trustee's discretion even if:

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

27 2. The terms of the trust authorizing a distribution couple
28 language of discretion with language of direction.

29 Sec. 8. Section 14-10813, Arizona Revised Statutes, is amended to
30 read:

31 **14-10813. Duty to inform and report**

32 A. Unless the trust instrument provides otherwise, a trustee shall
33 keep the qualified beneficiaries of the trust reasonably informed about
34 the administration of the trust and of the material facts necessary for
35 them to protect their interests. Unless the trustee determines that it is
36 unreasonable under the circumstances to do so, a trustee shall promptly
37 respond to a beneficiary's request for information related to the
38 administration of the trust.

39 B. A trustee:

40 1. On request of a beneficiary, shall promptly furnish to the
41 beneficiary a copy of the portions of the trust instrument that are
42 necessary to describe the beneficiary's interest.

43 2. Within sixty days after accepting a trusteeship, shall notify
44 the qualified beneficiaries of the acceptance and of the trustee's name,
45 address and telephone number.

1 3. Within sixty days after the date the trustee acquires knowledge
2 of the creation of an irrevocable trust or the date the trustee acquires
3 knowledge that a formerly revocable trust has become irrevocable, whether
4 by the death of the settlor or otherwise, shall notify the qualified
5 beneficiaries of the trust's existence, of the identity of the settlor or
6 settlors, of the trustee's name, address and telephone number, of the
7 right to request a copy of the relevant portions of the trust instrument
8 and of the right to a trustee's report as provided in subsection C **OF THIS
9 SECTION**.

10 4. Shall notify the qualified beneficiaries at least thirty days in
11 advance of any change in the method or rate of the trustee's compensation.

12 C. A trustee shall send to the distributees or permissible
13 distributees of trust income or principal and to other beneficiaries who
14 request it, at least annually and at the termination of the trust, a
15 report of the trust property, liabilities, receipts and disbursements,
16 including the source and amount of the trustee's compensation, a listing
17 of the trust assets and, if feasible, their respective market values. On
18 a vacancy in a trusteeship, unless a cotrustee remains in office, a report
19 must be sent to the qualified beneficiaries by the former trustee. A
20 personal representative, conservator or guardian may send the qualified
21 beneficiaries a report on behalf of a deceased or incapacitated trustee.

22 D. A beneficiary may waive the right to a trustee's report or other
23 information otherwise required to be furnished under this section. A
24 beneficiary, with respect to future reports and other information, may
25 withdraw a waiver previously given.

26 E. Subsection B, paragraphs 2 and 3 **OF THIS SECTION** apply only to a
27 trustee who accepts a trusteeship on or after January 1, 2009, to an
28 irrevocable trust created on or after January 1, 2009 and to a revocable
29 trust that becomes irrevocable on or after January 1, 2009.

30 F. **EXCEPT FOR THE NOTICE REQUIREMENT IN SUBSECTION B, PARAGRAPH 2
31 OF THIS SECTION, FOR THE PURPOSES OF THIS SECTION, A PERSON IS NOT A
32 QUALIFIED BENEFICIARY, DISTRIBUTEE OR OTHER BENEFICIARY WHO REQUESTS A
33 REPORT PURSUANT TO SUBSECTION C OF THIS SECTION SOLELY BECAUSE THE PERSON
34 IS OR WOULD BE ENTITLED UNDER THE TERMS OF THE TRUST INSTRUMENT TO ONE OR
35 MORE SPECIFIC DISTRIBUTIONS OF PROPERTY THAT ALREADY HAVE BEEN MADE TO THE
36 PERSON OR HAVE OTHERWISE BEEN SATISFIED.**

37 Sec. 9. Section 14-10819, Arizona Revised Statutes, is amended to
38 read:

39 14-10819. **Trustee's special power to appoint to other trust**
40 A. Unless the terms of the **TRUST** instrument expressly provide
41 otherwise, a trustee who has the discretion under the terms of a
42 testamentary instrument or irrevocable inter vivos agreement to make
43 distributions, regardless of whether a standard is provided in the **TRUST**
44 instrument **TO** or **agreement**, for the benefit of a beneficiary of the trust,
45 may exercise without prior court approval the trustee's discretion by

1 appointing part or all of the ~~estate~~ trust **PROPERTY** in favor of a trustee
2 of another trust if the exercise of this discretion:

3 1. Does not reduce any fixed nondiscretionary income payment to a
4 beneficiary.

5 2. Does not alter any nondiscretionary annuity or unitrust payment
6 to a beneficiary.

7 3. Is in favor of the beneficiaries of the trust.

8 4. Results in any ascertainable standard applicable for
9 distributions from the trust being the same or more restrictive standard
10 applicable for distributions from the recipient trust when the trustee
11 exercising the power **TO APPOINT TRUST PROPERTY** described in this
12 subsection is a possible beneficiary under the standard.

13 5. Does not adversely affect the tax treatment of the trust, the
14 trustee, the settlor or the beneficiaries.

15 6. Does not violate the limitations on validity under sections
16 14-2901 and 14-2905.

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

20 C. The exercise of the **TRUSTEE'S** power to ~~invade the principal of a~~
21 **APPOINT** trust **PROPERTY** under subsection A of this section is considered to
22 be the exercise of a special power of appointment.

23 D. The trustee, in the trustee's sole discretion, before or after
24 the exercise of the trustee's ~~discretion~~ **POWER TO APPOINT TRUST PROPERTY**
25 under **SUBSECTION A OF** this section, may request the court to approve the
26 exercise.

27 E. The trustee may exercise the ~~discretion~~ **POWER** to appoint all of
28 the trust ~~estate~~ **PROPERTY** pursuant to **SUBSECTION A OF** this section by
29 restating the trust **INSTRUMENT**.

30 Sec. 10. Section 14-11013, Arizona Revised Statutes, is amended to
31 read:

32 14-11013. **Certification of trust**

33 A. Instead of furnishing a copy of the trust instrument to a person
34 other than a beneficiary, the trustee may furnish to the person a
35 certification of trust containing the following information:

36 1. That the trust exists and the date the trust instrument was
37 executed.

38 2. The identity of the settlor.

39 3. The identity and address of the currently acting trustee.

40 4. The powers of the trustee.

41 5. The revocability or irrevocability of the trust and the identity
42 of any person holding a power to revoke the trust.

43 6. The authority of cotrustees to sign or otherwise authenticate
44 and whether all or less than all are required in order to exercise powers
45 of the trustee.

1 7. The manner of taking title to trust property.

2 B. A certification of trust may be signed or otherwise
3 authenticated by any trustee.

4 C. A certification of trust must state that the trust has not been
5 revoked, modified or amended in any manner that would cause the
6 representations contained in the certification of trust to be incorrect.

7 D. A certification of trust need not contain the dispositive terms
8 of a trust.

9 E. A recipient of a certification of trust, **ACTING IN GOOD FAITH**,
10 may require the trustee to furnish copies of those excerpts from the
11 ~~original~~ trust instrument ~~and later amendments~~ that designate the trustee
12 and confer on the trustee the power to act in the pending transaction. **A**
13 **PERSON MAY NOT REQUIRE THE TRUSTEE TO FURNISH COPIES OF EXCERPTS FROM THE**
14 **TRUST INSTRUMENT THAT CONTAIN DISPOSITIVE TERMS OF THE TRUST OR PROVISIONS**
15 **ON NAMED SUCCESSOR TRUSTEES UNLESS THE PERSON FIRST PROVIDES THE TRUSTEE**
16 **WITH A VERIFIED STATEMENT THAT STATES A REASONABLE BASIS FOR THE REQUEST.**

17 F. A person who acts in reliance on a certification of trust
18 without **ACTUAL** knowledge that the representations contained in the
19 certification **OF TRUST** are incorrect is not liable to any person for so
20 acting and may assume without inquiry the existence of the facts contained
21 in the certification **OF TRUST**. **ACTUAL** knowledge of the terms of the trust
22 ~~may~~ **SHALL** not be inferred solely from the fact that a copy of all or part
23 of the trust instrument is held by the person relying on the certification
24 **OF TRUST OR BY THE EMPLOYEES OF THE PERSON RELYING ON THE CERTIFICATION OF**
25 **TRUST IF THE PERSON IS AN ENTITY OR ORGANIZATION THAT CONDUCTS ACTIVITIES**
26 **THROUGH EMPLOYEES.**

27 G. A person who in good faith enters into a transaction in reliance
28 on a certification of trust may enforce the transaction against the trust
29 property as if the representations contained in the certification were
30 correct.

31 H. A person making a demand for the trust instrument **OR EXCERPTS**
32 **FROM THE TRUST INSTRUMENT** in addition to a certification of trust ~~OR~~
33 ~~excerpts~~ is liable for damages, **COSTS, EXPENSES AND ATTORNEY FEES** if the
34 court determines that the person did not act in good faith **OR DID NOT**
35 **OTHERWISE COMPLY WITH SUBSECTION E OF THIS SECTION** in demanding the trust
36 instrument.

37 I. This section does not limit the right of a person to obtain a
38 copy of the trust instrument in a judicial proceeding concerning the trust
39 **INSTRUMENT OR EXCERPTS FROM THE TRUST INSTRUMENT.**

APPROVED BY THE GOVERNOR MARCH 29, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 29, 2018.