

ARIZONA TRUST CODE LEGISLATION (8-24-07)

AN ACT AMENDING SECTION 6-246, ARIZONA REVISED STATUTES; REPEALING SECTION 14-1108, ARIZONA REVISED STATUTES; AMENDING SECTIONS 14-1201 AND 14-1403, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 14-1404 THROUGH 14-1408; AMENDING SECTIONS 14-2901 AND 14-2905; AMENDING SECTIONS 14-3703, 14-3913, 14-3933, 14-5417, 14-5419 AND 14-5603, ARIZONA REVISED STATUTES; REPEALING TITLE 14, CHAPTER 7, ARTICLES 2, 2.1, 3, 6 AND 8, ARIZONA REVISED STATUTES; AMENDING TITLE 14, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 10; RELATING TO THE ARIZONA TRUST CODE.

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

Section 1. Section 6-246, Arizona Revised Statutes, is amended to read:

6-246. Permitted investments; limitations

A. In addition to other investments authorized by law, a bank or trust company that is acting as a fiduciary may invest and reinvest in the securities of an open-end or closed-end management investment company or investment trust that is registered under the investment company act of 1940 (15 United States Code section 80A-1), as amended, if the portfolios of that investment company or investment trust consist of investments permitted by the applicable fiduciary instrument. A bank or trust company may invest in these securities notwithstanding that the bank or trust company, or an affiliate of the bank or trust company, provides services to the investment company or investment trust as an investment adviser, custodian, transfer agent, registrar, sponsor, distributor, administrator, manager or otherwise and receives reasonable remuneration for those services.

B. A bank or trust company that invests and reinvests in the securities of an open-end or closed-end management investment company or investment trust authorized under subsection A of this section shall disclose in the statement of the fiduciary account to all persons whose funds are invested in the investment company or investment trust that the bank or trust company provides services for and receives fees from the open-end or closed-end management company or investment trust. A PERSON WHO COMPLIES WITH THE REQUIREMENTS OF SECTION 14-11802, SUBSECTION F SATISFIES THE DISCLOSURE REQUIREMENTS OF THIS SUBSECTION.

C. A bank may purchase for its own account any class of equity securities issued by a banker's bank, as defined in section 6-204, if the aggregate investment does not exceed ten per cent of the bank's capital.

Sec. 2. Repeal

Section 14-1108, Arizona Revised Statutes, is repealed.

Sec. 3. Section 14-1201, Arizona Revised Statutes, is amended to read:

14-1201. Definitions

In this title, unless the context otherwise requires:

1. "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, a person who is authorized to make decisions concerning another person's health care and a person who is authorized to make decisions for another person under a natural death act.
2. "Application" means a written request to the registrar for an order of informal probate or appointment under chapter 3, article 3 of this title.
3. "Beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer. As it relates to a charitable trust, beneficiary includes any person entitled to enforce the trust. As it relates to a beneficiary of a beneficiary designation, beneficiary refers to a beneficiary of an insurance or annuity policy, an account with pay on death designation, a security registered in beneficiary form or a pension, profit sharing, retirement or similar benefit plan, or any other nonprobate transfer at death. As it relates to a beneficiary designated in a governing instrument, beneficiary includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee or taker in default of a power of appointment and a person in whose favor a power of attorney or a power held in any person, fiduciary or representative capacity is exercised.
4. "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with pay on death designation, of a security registered in beneficiary form or of a pension, profit sharing, retirement or similar benefit plan, or any other nonprobate transfer at death.

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

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

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

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

9. "Court" means the superior court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. "Person" means a person or an organization.

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

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

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

41. "Property" has the same meaning prescribed in section 14-11103.

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

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

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

45. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in

payments out of production under that title or lease, collateral trust certificate, transferable share, OR voting trust certificate and, in general, includes any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of these securities.

46. "Separate property" means that property of a husband or wife that is his or her separate property as defined in section 25-213.

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

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

49. "State" has the same meaning prescribed in section 14-11103.

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

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

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

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

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

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

56. "Trust" includes an express trust, private or charitable, with any additions, wherever and however created. Trust also includes a trust created or determined by judgment or decree under

which the trust is to be administered in the manner of an express trust. Trust excludes other constructive trusts and excludes resulting trusts, conservatorship, personal representatives, trust accounts, custodial arrangements pursuant to chapter 7, article 7 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

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

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

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

Sec. 4. Section 14-1403, Arizona Revised Statutes, is amended to read:

14-1403. Pleadings

In formal proceedings involving trusts or estates of decedents, minors, protected persons or incapacitated persons, interests to be affected MUST be described in pleadings THAT give reasonable information to owners by name or class, by reference to the instrument creating the interests or in SOME other appropriate manner.

Sec. 5. Title 14, chapter 1, article 4, Arizona Revised Statutes, is amended by adding sections 14-1404 through 14-1408, to read:

14-1404. Representation; basic effect

A. NOTICE TO A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS ARTICLE HAS THE SAME EFFECT AS IF NOTICE WERE GIVEN DIRECTLY TO THE OTHER PERSON.

B. EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-11602, SUBSECTION E, A PERSON WHO UNDER THIS ARTICLE MAY REPRESENT A SETTLOR WHO LACKS CAPACITY MAY RECEIVE NOTICE AND GIVE A BINDING CONSENT ON THE SETTLOR'S BEHALF. THE CONSENT OF A PERSON WHO MAY REPRESENT AND BIND ANOTHER PERSON UNDER THIS ARTICLE IS BINDING ON THE PERSON REPRESENTED UNLESS THE PERSON REPRESENTED OBJECTS TO THE REPRESENTATION BEFORE THE CONSENT WOULD OTHERWISE HAVE BECOME EFFECTIVE.

C. FOR THE PURPOSES OF THIS SECTION, NOTICE TO A PERSON MUST INCLUDE ANY DOCUMENT REQUIRED TO BE SENT TO A PERSON PURSUANT TO THIS ARTICLE.

D. A PERSON RECEIVING NOTICE ON BEHALF OF ANOTHER PERSON PURSUANT TO THIS SECTION SHALL NOT BE LIABLE TO THE OTHER PERSON UNLESS SUCH PERSON RECEIVING NOTICE IS GROSSLY NEGLIGENT OR ACTS OR FAILS TO ACT WITH THE INTENT TO HARM THE OTHER PERSON.

14-1405. Representation by holder of general power of appointment

THE HOLDER OF A GENERAL POWER OF APPOINTMENT, INCLUDING A GENERAL TESTAMENTARY POWER OF APPOINTMENT, MAY REPRESENT AND BIND PERSONS WHOSE INTERESTS, AS PERMISSIBLE APPOINTEES, TAKERS IN DEFAULT, OR OTHERWISE, ARE SUBJECT TO THE POWER.

14-1406. Representation by fiduciaries and parents

TO THE EXTENT THERE IS NO MATERIAL CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED OR AMONG THOSE BEING REPRESENTED WITH RESPECT TO A PARTICULAR QUESTION OR DISPUTE:

1. A CONSERVATOR MAY REPRESENT AND BIND THE ESTATE THAT THE CONSERVATOR CONTROLS.

2. A GUARDIAN MAY REPRESENT AND BIND THE WARD IF A CONSERVATOR OF THE WARD'S ESTATE HAS NOT BEEN APPOINTED.

3. AN AGENT WHO HAS AUTHORITY TO ACT WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE MAY REPRESENT AND BIND THE PRINCIPAL.

4. A TRUSTEE MAY REPRESENT AND BIND THE BENEFICIARIES OF THE TRUST.

5. A PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE MAY REPRESENT AND BIND PERSONS INTERESTED IN THE ESTATE.

6. A PARENT MAY REPRESENT AND BIND THE PARENT'S MINOR OR UNBORN CHILD IF A CONSERVATOR OR GUARDIAN FOR THE CHILD HAS NOT BEEN APPOINTED; EXCEPT THAT THE PARENT MAY NOT REPRESENT SUCH CHILD TO CONSENT TO MODIFICATION OR TERMINATION OF A TRUST IF THE PARENT IS THE SETTLOR OF THE TRUST.

14-1407. Representation by person having substantially identical interest

UNLESS OTHERWISE REPRESENTED, A MINOR, INCAPACITATED PERSON, UNBORN CHILD OR PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN AND NOT REASONABLY ASCERTAINABLE, MAY BE REPRESENTED BY AND BOUND BY ANOTHER PERSON WHO HAS A SUBSTANTIALLY IDENTICAL INTEREST WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE, BUT ONLY TO THE EXTENT THERE IS NO MATERIAL CONFLICT OF INTEREST BETWEEN THE REPRESENTATIVE AND THE PERSON REPRESENTED WITH RESPECT TO THE PARTICULAR QUESTION OR DISPUTE.

14-1408. Appointment of representative

A. IF THE COURT DETERMINES THAT AN INTEREST IS NOT REPRESENTED UNDER THIS ARTICLE OR THAT THE OTHERWISE AVAILABLE REPRESENTATION MIGHT BE INADEQUATE, THE COURT MAY APPOINT A REPRESENTATIVE TO RECEIVE NOTICE, GIVE CONSENT AND OTHERWISE REPRESENT, BIND AND ACT ON BEHALF OF A MINOR, INCAPACITATED PERSON, UNBORN CHILD OR PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN. THE COURT MAY APPOINT A REPRESENTATIVE FOR SEVERAL PERSONS OR INTERESTS.

B. A REPRESENTATIVE MAY ACT ON BEHALF OF THE PERSON REPRESENTED WITH RESPECT TO ANY MATTER ARISING UNDER THIS TITLE, WHETHER OR NOT A JUDICIAL PROCEEDING CONCERNING THE TRUST OR ESTATE IS PENDING.

C. IN MAKING DECISIONS, A REPRESENTATIVE MAY CONSIDER GENERAL BENEFIT ACCRUING TO THE LIVING MEMBERS OF THE FAMILY OF THE PERSON REPRESENTED.

Sec. 6. Section 14-2901, Arizona Revised Statutes, is amended to read:

14-2901. Nonvested property interest; general power of appointment; validity; exception

A. A nonvested property interest is invalid unless at least one of the following is true:

1. At the time the interest is created it is certain to vest or to terminate not later than twenty-one years after the death of a person who is then alive.
2. The interest either vests or terminates within five hundred years after its creation.
3. The interest is under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest.

B. A general power of appointment that is not presently exercisable because of a condition precedent is invalid unless at least one of the following is true:

1. At the time the power is created the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one years after the death of a person who is then alive.
2. The condition precedent either is satisfied or becomes impossible to satisfy within five hundred years after its creation.
3. The power is with respect to an interest under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest.

C. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless at least one of the following is true:

1. At the time the power is created it is certain to be irrevocably exercised or otherwise to terminate not later than twenty-one years after the death of a person who is then alive.
2. The power is irrevocably exercised or otherwise terminates within five hundred years after its creation.
3. The power is with respect to an interest under a trust whose trustee has the expressed or implied power to sell the trust assets and at one or more times after the creation of the interest one or more persons who are living when the trust is created have an unlimited power to terminate the interest.

D. In determining whether a nonvested property interest or a power of appointment is valid under subsection A, Paragraph 1, Subsection B, Paragraph 1 or Subsection C, Paragraph 1, the possibility that a child will be born to a person after that person's death is disregarded.

E. If the governing instrument seeks to do either of the following after the expiration of the latest period described by Subparagraphs 1, 2, and 3 of each of Subsections A, B, and C of this Section then that language is inoperative to the extent that it produces a period of time that exceeds five hundred years from the creation of the trust:

1. Disallow the vesting or termination of an interest or trust beyond that time.
2. Postpone the vesting or termination of an interest or trust until that time.

Sec. 7A. Section 14-2905, Arizona Revised Statutes, is amended to read:

14-2905. Nonvested property interest or power of appointment; creation; effective date; judicial reformation

A. Except as otherwise provided, this article applies to a nonvested property interest or a power of appointment that is created on or after December 31, 1994.

B. If a nonvested property interest or a power of appointment is determined in a judicial proceeding, to violate this state's rule against perpetuities as that rule existed when the nonvested property interest or power of appointment was created, a court on the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the limits of the provisions of ARS Section 14-2901.

C. For purposes of this article, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

Sec. 7B. Section 14-3703, Arizona Revised Statutes, is amended to read:

14-3703. General duties; relation and liability to persons interested in estate; standing to sue

A. A personal representative is a fiduciary who, EXCEPT AS PROVIDED IN THE WILL OF THE DECEDENT, shall observe the standards of care applicable to trustees as described by SECTIONS 14-11804 AND 14-11806 and the duties of accounting applicable to trustees as provided in SECTION 14-11813, SUBSECTION C. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this title, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred by this title, the terms of the will, if any, and any order in proceedings to which the personal representative is a party for the best interests of successors to the estate.

B. A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the

decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor children, any dependent children and any pretermitted child of the decedent as described elsewhere in this title.

C. Except as to proceedings THAT do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.

Sec. 7C. Section 14-3913, Arizona Revised Statutes, is amended to read:

14-3913. Distributions to trustee

A. Before distributing to a trustee, the personal representative may require that the trustee inform the beneficiaries as provided in section 14-10813, SUBSECTION B, PARAGRAPH 3, and if the state in which it is to be administered provides for registration, that the trust be registered.

B. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if THE PERSONAL REPRESENTATIVE apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

C. No inference of negligence on the part of the personal representative shall be drawn from THE PERSONAL REPRESENTATIVE'S failure to exercise the authority conferred by subsections A and B of this section.

Sec. 8. Section 14-3933, Arizona Revised Statutes, is amended to read:

14-3933. Closing estates; statement of personal representative

A. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than four months after the date of original appointment of a general personal representative for the estate a verified statement stating that the personal representative, or a previous personal representative has:

1. Determined that the time limit for presentation of creditors' claims has expired.

2. Fully administered the estate of the decedent by making payment, settlement or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements THAT have been made to accommodate outstanding liabilities.

3. Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.

B. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

Sec. 9. Section 14-5417, Arizona Revised Statutes, is amended to read:

14-5417. General duty of conservator

In exercising powers, a conservator is to act as a fiduciary and shall observe the standard of care applicable to trustees as described by SECTIONS 14-11804 AND 14-11806.

Sec. 10. Section 14-5419, Arizona Revised Statutes, is amended to read:

14-5419. Accounts

A. Every conservator must account to the court for the administration of the estate not less than annually on the anniversary date of qualifying as conservator and also on resignation or removal, and on termination of the protected person's minority or disability, except that for good cause shown on the application of an interested person, the court may relieve the conservator of filing annual or other accounts by an order entered in the minutes.

B. The court may take any appropriate action on filing of annual or other accounts. In connection with any account, the court may require a conservator to submit to a physical check of the estate in the conservator's control, to be made in any manner the court may specify.

C. An adjudication allowing an intermediate or final account can be made only on petition, notice and a hearing. Notice must be given to:

1. The protected person.

2. A guardian of the protected person if one has been appointed, unless the same person is serving as both guardian and conservator.

3. If no guardian has been appointed or the same person is serving as both guardian and conservator, a spouse or, if the spouse is the conservator, there is no spouse or the spouse is incapacitated, a parent or an adult child who is not serving as a conservator.

4. A representative appointed for the protected person, if the court determines in accordance with section 14-1408 that representation of the interest of the protected person would otherwise be inadequate.

D. An order, made on notice and a hearing, allowing an intermediate account of a conservator, adjudicates as to the conservator's liabilities concerning the matters considered in connection therewith. An order, made on notice and a hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or the protected person's successors relating to the conservatorship.

E. In any case in which the estate consists, in whole or in part, of benefits paid by the veterans administration to the conservator or the conservator's predecessor for the benefit of the protected

person, the veterans administration office that has jurisdiction over the area is entitled to a copy of any account filed under chapter 5, article 4 of this title. Each year in which an account is not filed with the court, the conservator, if requested, shall submit an account to the appropriate veterans administration office. If an account is not submitted as requested, or if it is found unsatisfactory by the veterans administration, the court on receipt of notice shall require the conservator to immediately file an account with the court.

Sec. 11. Section 14-5603, Arizona Revised Statutes, is amended to read:

14-5603. Deposit of funds; investment plan

A. All funds coming into the custody of the public fiduciary shall be deposited in the county treasury and disbursed at the direction of the public fiduciary or shall be deposited or invested in one or more insured banks or in one or more insured credit unions authorized to do business in the county or in one or more insured savings and loan associations authorized to do business in the county, and if there are no such insured banks, insured credit unions or insured savings and loan associations in the county, then the public fiduciary may deposit the funds in any insured bank or insured credit union or insured savings and loan association in the state. Money deposited with the county treasurer or deposited or invested with an insured bank, insured credit union or insured savings and loan association shall be withdrawn only at the direction of the public fiduciary.

B. The public fiduciary may establish or continue an estate or investment plan of THE PUBLIC FIDUCIARY'S ward if all of the following apply:

1. The public fiduciary receives the approval of the court for the plan.
2. The plan is consistent with the standard of care imposed on trustees in SECTIONS 14-11804 AND 14-11806.
3. The public fiduciary has obtained a surety bond in the amount of the assets within the plan if the court finds that a surety bond is necessary or desirable to protect the assets within the plan.

Sec. 12. Title 14, chapter 7, Article 1 is amended by adding Section 14-7001 to read:

14-7001 FIDUCIARY DUTIES OF ATTORNEY FOR FIDUCIARY, SETTLOR OR TESTATOR AND ATTORNEY ACTING AS FIDUCIARY.

A. ABSENT AN EXPRESS AGREEMENT TO THE CONTRARY, AN ATTORNEY WHO PERFORMS LEGAL SERVICES FOR A FIDUCIARY, SETTLOR OR TESTATOR, BY REASON OF THE ATTORNEY PERFORMING THOSE LEGAL SERVICES FOR THE FIDUCIARY, SETTLOR OR TESTATOR, HAS NO DUTY OR OBLIGATION IN CONTRACT, TORT, OR OTHERWISE TO ANY THIRD PARTY.

B. FOR PURPOSES OF THIS SECTION, THE TERM THIRD PARTY SHALL NOT APPLY TO THE PERSONAL REPRESENTATIVE, THE SETTLOR OR TESTATOR.

C. AN ATTORNEY WHO ACTS AS A PERSONAL REPRESENTATIVE OR TRUSTEE SHALL DISCLOSE TO ALL ADULT PERSONS WHO HAVE AN INTEREST IN THE ESTATE OR TRUST THE NAMES OF ANY PERSON WHO HAS AN INTEREST IN SUCH ESTATE OR TRUST TO WHOM THE ATTORNEY IS CURRENTLY OR HAS IN THE PAST RENDERED LEGAL SERVICES. SUCH DISCLOSURE SHALL BE MADE IN WRITING WITHIN A REASONABLE TIME AFTER LEARNING THAT A CLIENT OR FORMER CLIENT HAS AN INTEREST IN THE ESTATE OR TRUST. THE REPRESENTATION OF AN INTERESTED PERSON BY SUCH ATTORNEY SHALL NOT BE GROUNDS FOR REMOVING THE ATTORNEY AS THE PERSONAL REPRESENTATIVE OR TRUSTEE UNLESS THE ATTORNEY IS UNABLE TO PERFORM THE FIDUCIARY DUTIES AS PERSONAL REPRESENTATIVE OR TRUSTEE WITHOUT VIOLATING THE ATTORNEY'S ETHICAL RESPONSIBILITIES TO SUCH CLIENT OR FORMER CLIENT.

Sec. 13. Repeal

Title 14, chapter 7, articles 2, 2.1, 3, 6 and 8, Arizona Revised Statutes, are repealed.

Sec. 14. Title 14, Arizona Revised Statutes, is amended by adding chapter 11, to read:

CHAPTER 11

ARIZONA TRUST CODE

ARTICLE 1. GENERAL PROVISIONS

14-11101. Short title

THIS CHAPTER MAY BE CITED AS THE ARIZONA TRUST CODE.

14-11102. Scope

THIS CHAPTER APPLIES TO EXPRESS TRUSTS, CHARITABLE OR NONCHARITABLE TRUSTS AND TRUSTS CREATED PURSUANT TO A STATUTE, JUDGMENT OR DECREE THAT REQUIRES THE TRUST TO BE ADMINISTERED IN THE MANNER OF AN EXPRESS TRUST.

14-11103. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ACTION", WITH RESPECT TO AN ACT OF A TRUSTEE, INCLUDES A FAILURE TO ACT.

2. " BENEFICIARY" MEANS A PERSON WHO EITHER:

(a) HAS A PRESENT OR FUTURE BENEFICIAL INTEREST IN A TRUST, VESTED OR CONTINGENT.

(b) IN A CAPACITY OTHER THAN THAT OF A TRUSTEE, HOLDS A POWER OF APPOINTMENT OVER TRUST PROPERTY.

3. "CHARITABLE TRUST" MEANS A TRUST, OR PORTION OF A TRUST, CREATED FOR A CHARITABLE PURPOSE DESCRIBED IN SECTION 14-11405, SUBSECTION A.

4. "CONSERVATOR" MEANS A PERSON APPOINTED BY THE COURT TO ADMINISTER THE ESTATE OF A MINOR OR AN ADULT.

5. "ENVIRONMENTAL LAW" MEANS A FEDERAL, STATE OR LOCAL LAW, RULE, REGULATION OR ORDINANCE RELATING TO PROTECTION OF THE ENVIRONMENT.

6. "GUARDIAN" MEANS A PERSON APPOINTED BY THE COURT TO MAKE DECISIONS REGARDING THE SUPPORT, CARE, EDUCATION, HEALTH AND WELFARE OF A MINOR OR AN ADULT. GUARDIAN DOES NOT INCLUDE A GUARDIAN AD LITEM.

7. "INTERESTS OF THE BENEFICIARIES" MEANS THE BENEFICIAL INTERESTS PROVIDED IN THE TERMS OF THE TRUST.

8. " JURISDICTION", WITH RESPECT TO A GEOGRAPHIC AREA, INCLUDES A STATE OR COUNTRY.

9. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE, GOVERNMENT, GOVERNMENTAL SUBDIVISION, AGENCY OR INSTRUMENTALITY, PUBLIC CORPORATION OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

10. "POWER OF WITHDRAWAL" MEANS A PRESENTLY EXERCISABLE GENERAL POWER OF APPOINTMENT OTHER THAN A POWER: (A) EXERCISABLE BY A TRUSTEE AND LIMITED BY AN ASCERTAINABLE STANDARD; OR (B) EXERCISABLE BY A PERSON OTHER THAN IN A FIDUCIARY CAPACITY ONLY UPON CONSENT OF THE TRUSTEE OR A PERSON HOLDING AN ADVERSE INTEREST.

11. "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP, WHETHER REAL OR PERSONAL, LEGAL OR EQUITABLE, OR ANY INTEREST IN ANYTHING THAT MAY BE THE SUBJECT OF OWNERSHIP.

12. "QUALIFIED BENEFICIARY" MEANS A BENEFICIARY WHO, ON THE DATE THE BENEFICIARY'S QUALIFICATION IS DETERMINED:

(a) IS A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL.

(b) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE INTERESTS OF THE DISTRIBUTES DESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH TERMINATED ON THAT DATE.

(c) WOULD BE A DISTRIBUTE OR PERMISSIBLE DISTRIBUTE OF TRUST INCOME OR PRINCIPAL IF THE TRUST TERMINATED ON THAT DATE.

13. "REVOCABLE", AS APPLIED TO A TRUST OR A PORTION THEREOF, MEANS REVOCABLE BY A SETTLOR WITHOUT THE CONSENT OF ANY PERSON OR PERSONS, INCLUDING, WITHOUT LIMITATION, THE TRUSTEE OR A PERSON HOLDING AN INTEREST, WHETHER OR NOT ADVERSE.

14. "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, WHO CREATES OR CONTRIBUTES PROPERTY TO A TRUST. IF MORE THAN ONE PERSON CREATES OR CONTRIBUTES PROPERTY TO A TRUST, EACH PERSON IS A SETTLOR OF THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION EXCEPT TO THE EXTENT ANOTHER PERSON HAS THE POWER TO REVOKE OR WITHDRAW THAT PORTION.

15. "SPENDTHRIFT PROVISION" MEANS A TERM OF A TRUST THAT RESTRAINS EITHER VOLUNTARY OR INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

16. "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. STATE INCLUDES AN INDIAN TRIBE OR BAND RECOGNIZED BY FEDERAL LAW OR FORMALLY ACKNOWLEDGED BY A STATE.

17. "TERMS OF A TRUST" MEANS THE MANIFESTATION OF THE SETTLOR' S INTENT REGARDING A TRUST'S PROVISIONS AS EXPRESSED IN THE TRUST INSTRUMENT OR AS MAY BE ESTABLISHED BY OTHER EVIDENCE THAT WOULD BE ADMISSIBLE IN A JUDICIAL PROCEEDING.

18. "TRUST INSTRUMENT" MEANS AN INSTRUMENT EXECUTED BY THE SETTLOR THAT CONTAINS TERMS OF THE TRUST, INCLUDING ANY AMENDMENTS TO THAT TRUST.

19. "TRUSTEE" INCLUDES AN ORIGINAL, ADDITIONAL AND SUCCESSOR TRUSTEE AND A COTRUSTEE.

20. "INTERNAL REVENUE CODE" MEANS THE INTERNAL REVENUE CODE AS DEFINED IN TITLE 43 OF THE ARIZONA REVISED STATUTES.

14-11104. Knowledge

A. SUBJECT TO SUBSECTION B, A PERSON HAS KNOWLEDGE OF A FACT IF ANY OF THE FOLLOWING APPLY:

1. THE PERSON HAS ACTUAL KNOWLEDGE OF IT.

2. THE PERSON HAS RECEIVED A NOTICE OR NOTIFICATION OF IT.

3. FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE PERSON AT THE TIME IN QUESTION, THE PERSON HAS REASON TO KNOW IT.

B. AN ORGANIZATION THAT CONDUCTS ACTIVITIES THROUGH EMPLOYEES HAS NOTICE OR KNOWLEDGE OF A FACT INVOLVING A TRUST ONLY FROM THE TIME THE INFORMATION WAS RECEIVED BY AN EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE TRUST OR WOULD HAVE BEEN BROUGHT TO THE EMPLOYEE'S ATTENTION IF THE ORGANIZATION HAD EXERCISED REASONABLE DILIGENCE. AN ORGANIZATION EXERCISES REASONABLE DILIGENCE IF IT MAINTAINS REASONABLE ROUTINES FOR COMMUNICATING SIGNIFICANT INFORMATION TO THE EMPLOYEE HAVING RESPONSIBILITY TO ACT FOR THE TRUST AND THERE IS REASONABLE COMPLIANCE WITH THE ROUTINES. REASONABLE DILIGENCE DOES NOT REQUIRE AN EMPLOYEE OF THE ORGANIZATION TO COMMUNICATE INFORMATION UNLESS THE COMMUNICATION IS PART OF THE INDIVIDUAL'S REGULAR DUTIES OR THE INDIVIDUAL KNOWS A MATTER INVOLVING THE TRUST WOULD BE MATERIALLY AFFECTED BY THE INFORMATION.

14-11105. Default and mandatory rules

A. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, THIS CHAPTER GOVERNS THE DUTIES, POWERS, EXERCISE OF POWERS, RESIGNATION, APPOINTMENT OF A TRUSTEE AND CONFLICTS OF INTEREST OF A TRUSTEE, RELATIONS AMONG TRUSTEES, MERGERS OR DIVISIONS OF TRUSTS AND THE RIGHTS AND INTERESTS OF A BENEFICIARY.

B. THE TERMS OF A TRUST PREVAIL OVER ANY PROVISION OF THIS CHAPTER EXCEPT:

1. THE REQUIREMENTS FOR CREATING A TRUST.

2. THE DUTY OF A TRUSTEE TO ACT IN GOOD FAITH AND IN ACCORDANCE WITH THE PURPOSES OF THE TRUST.

3. THE REQUIREMENT THAT A TRUST AND ITS TERMS BE FOR THE BENEFIT OF ITS BENEFICIARIES AND THAT THE TRUST HAVE A PURPOSE THAT IS LAWFUL, NOT CONTRARY TO PUBLIC POLICY AND POSSIBLE TO ACHIEVE.

4. THE POWER OF THE COURT TO MODIFY OR TERMINATE A TRUST UNDER SECTIONS 14-11410 THROUGH 14-11416.

5. THE EFFECT OF A SPENDTHRIFT PROVISION AND THE RIGHTS OF CERTAIN CREDITORS AND ASSIGNEES TO REACH A TRUST AS PROVIDED IN ARTICLE 5 OF THIS CHAPTER.

6. THE POWER OF THE COURT UNDER SECTION 14-11702 TO REQUIRE, DISPENSE WITH OR MODIFY OR TERMINATE A BOND.

7. THE POWER OF THE COURT UNDER SECTION 14-11708, SUBSECTION B TO ADJUST A TRUSTEE'S COMPENSATION SPECIFIED IN THE TERMS OF THE TRUST THAT IS UNREASONABLY LOW OR HIGH.

8. THE DUTY TO RESPOND TO THE REQUEST OF A QUALIFIED BENEFICIARY OF AN IRREVOCABLE TRUST FOR TRUSTEE'S REPORTS AND OTHER INFORMATION REASONABLY RELATED TO THE ADMINISTRATION OF A TRUST.

9. THE EFFECT OF AN EXCULPATORY TERM UNDER SECTION 14-12008.

10. THE RIGHTS UNDER SECTIONS 14-12010 THROUGH 14-12013 OF A PERSON OTHER THAN A TRUSTEE OR BENEFICIARY.

11. PERIODS OF LIMITATION FOR COMMENCING A JUDICIAL PROCEEDING.

12. THE POWER OF THE COURT TO TAKE ACTION AND EXERCISE JURISDICTION AS MAY BE NECESSARY IN THE INTERESTS OF JUSTICE.

13. THE SUBJECT MATTER JURISDICTION OF THE COURT AND VENUE FOR COMMENCING A PROCEEDING AS PROVIDED IN SECTIONS 14-11203 AND 14-11204.

14-11106. Common law of trusts; principles of equity

THE COMMON LAW OF TRUSTS AND PRINCIPLES OF EQUITY SUPPLEMENT THIS CHAPTER, EXCEPT TO THE EXTENT MODIFIED BY THIS CHAPTER OR ANOTHER STATUTE OF THIS STATE; PROVIDED THAT THE COURT SHALL LOOK TO THE RESTATEMENT, SECOND, TRUSTS FOR INTERPRETATION OF THE COMMON LAW AND NOT TO SUBSEQUENT RESTATEMENTS OF TRUSTS (I) IN DETERMINING THE RIGHTS AND POWERS OF CREDITORS OF BENEFICIARIES, (II) IN DETERMINING THE DUTIES OF TRUSTEES TO DISTRIBUTE TO THOSE TO WHOM A BENEFICIARY OWES ANY DUTIES, (III) IN DETERMINING WHETHER PUBLIC POLICY MAY AFFECT ENFORCEABILITY AND EFFECTIVENESS OF THE TERMS OF THE TRUST, AND (IV) IN DETERMINING AND EFFECTUATING THE SETTLOR'S INTENT.

14-11107. Governing law

THE MEANING AND EFFECT OF THE TERMS OF A TRUST ARE DETERMINED BY EITHER:

1. THE LAW OF THE JURISDICTION DESIGNATED IN THE TERMS OF THE TRUST INSTRUMENT.

2. IN THE ABSENCE OF A CONTROLLING DESIGNATION IN THE TERMS OF THE TRUST, THE LAW OF THE JURISDICTION WHERE THE TRUST WAS EXECUTED SHOULD DETERMINE THE VALIDITY OF THE TRUST AND THE LAWS OF DESCENT AND THE LAW OF THE PRINCIPAL PLACE OF ADMINISTRATION SHOULD DETERMINE THE ADMINISTRATION OF THE TRUST.

14-11108. Principal place of administration

A. WITHOUT PRECLUDING OTHER MEANS FOR ESTABLISHING A SUFFICIENT CONNECTION WITH THE DESIGNATED JURISDICTION, TERMS OF A TRUST DESIGNATING THE PRINCIPAL PLACE OF ADMINISTRATION ARE VALID AND CONTROLLING IF EITHER:

1. A TRUSTEE'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN OR A TRUSTEE IS A RESIDENT OF THE DESIGNATED JURISDICTION.

2. ALL OR PART OF THE ADMINISTRATION OCCURS IN THE DESIGNATED JURISDICTION.

B. A TRUSTEE IS UNDER A CONTINUING DUTY TO ADMINISTER THE TRUST AT A PLACE APPROPRIATE TO ITS PURPOSES, ITS ADMINISTRATION, AND THE INTERESTS OF THE BENEFICIARIES.

C. WITHOUT PRECLUDING THE RIGHT OF THE COURT TO ORDER, APPROVE OR DISAPPROVE A TRANSFER, THE TRUSTEE, IN FURTHERANCE OF THE DUTY PRESCRIBED BY SUBSECTION B OF THIS SECTION, MAY TRANSFER THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TO ANOTHER STATE OR TO A JURISDICTION OUTSIDE OF THE UNITED STATES.

D. THE TRUSTEE SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF A PROPOSED TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION NOT LESS THAN SIXTY DAYS BEFORE INITIATING THE TRANSFER. UNLESS A CORPORATE TRUSTEE INDICATES AN INTENT TO CHANGE THE PRINCIPAL PLACE OF BUSINESS IN A NOTICE TO QUALIFIED BENEFICIARIES. A TRANSFER BY THE CORPORATE TRUSTEE OF SOME OF THE FUNCTIONS OF A TRUST TO ANOTHER STATE OR STATES IS NOT A TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF BUSINESS IF THE CORPORATE TRUSTEE MAINTAINS AN OFFICE IN THIS STATE. THE NOTICE OF PROPOSED TRANSFER MUST INCLUDE:

1. THE NAME OF THE JURISDICTION TO WHICH THE PRINCIPAL PLACE OF ADMINISTRATION IS TO BE TRANSFERRED.

2. THE ADDRESS AND TELEPHONE NUMBER AT THE NEW LOCATION AT WHICH THE TRUSTEE CAN BE CONTACTED.

3. AN EXPLANATION OF THE REASONS FOR THE PROPOSED TRANSFER.

4. THE DATE ON WHICH THE PROPOSED TRANSFER IS ANTICIPATED TO OCCUR.

5. THE DATE, NOT LESS THAN SIXTY DAYS AFTER THE GIVING OF THE NOTICE, BY WHICH THE QUALIFIED BENEFICIARY MUST NOTIFY THE TRUSTEE OF AN OBJECTION TO THE PROPOSED TRANSFER.

E. THE AUTHORITY OF A TRUSTEE UNDER THIS SECTION TO TRANSFER A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION TERMINATES IF A QUALIFIED BENEFICIARY NOTIFIES THE TRUSTEE IN WRITING OF AN OBJECTION TO THE PROPOSED TRANSFER ON OR BEFORE THE DATE SPECIFIED IN THE NOTICE.

F. IN CONNECTION WITH A TRANSFER OF THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION, THE TRUSTEE MAY TRANSFER SOME OR ALL OF THE TRUST PROPERTY TO A SUCCESSOR TRUSTEE DESIGNATED IN THE TERMS OF THE TRUST OR APPOINTED PURSUANT TO SECTION 14-11704.

14-11109. Methods and waiver of notice

A. NOTICE TO A PERSON UNDER THIS CHAPTER OR THE SENDING OF A DOCUMENT TO A PERSON UNDER THIS CHAPTER MUST BE ACCOMPLISHED IN A MANNER REASONABLY SUITABLE UNDER THE CIRCUMSTANCES AND LIKELY TO RESULT IN RECEIPT OF THE NOTICE OR DOCUMENT. PERMISSIBLE METHODS OF NOTICE OR FOR SENDING A DOCUMENT INCLUDE FIRST CLASS MAIL, PERSONAL DELIVERY, DELIVERY TO THE PERSON'S LAST KNOWN PLACE OF RESIDENCE OR PLACE OF BUSINESS OR A PROPERLY DIRECTED ELECTRONIC MESSAGE.

B. NOTICE OTHERWISE REQUIRED UNDER THIS CHAPTER OR A DOCUMENT OTHERWISE REQUIRED TO BE SENT UNDER THIS CHAPTER NEED NOT BE PROVIDED TO A PERSON WHOSE IDENTITY OR LOCATION IS UNKNOWN TO AND NOT REASONABLY ASCERTAINABLE BY THE TRUSTEE.

C. NOTICE UNDER THIS CHAPTER OR THE SENDING OF A DOCUMENT UNDER THIS CHAPTER MAY BE WAIVED BY THE PERSON TO BE NOTIFIED OR SENT THE DOCUMENT.

D. NOTICE OF A JUDICIAL PROCEEDING MUST BE GIVEN PURSUANT TO SECTION 14-1401.

14-11110. Others treated as qualified beneficiaries

A CHARITABLE ORGANIZATION EXPRESSLY AND IRREVOCABLY DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF A CHARITABLE TRUST OR A PERSON APPOINTED TO ENFORCE A TRUST CREATED FOR THE CARE OF AN ANIMAL OR ANOTHER NONCHARITABLE PURPOSE AS PROVIDED IN SECTION 14-11408 OR 14-11409 HAS THE RIGHTS OF A QUALIFIED BENEFICIARY UNDER THIS CHAPTER.

14-11111. Nonjudicial settlement agreements: definition

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, AND EXCEPT FOR MODIFICATION OR TERMINATION OF A TRUST AS OTHERWISE PERMITTED PURSUANT TO THE TRUST INSTRUMENT, INTERESTED PERSONS MAY ENTER

INTO A BINDING NONJUDICIAL SETTLEMENT AGREEMENT WITH RESPECT TO ANY MATTER INVOLVING A TRUST.

B. A NONJUDICIAL SETTLEMENT AGREEMENT IS VALID ONLY TO THE EXTENT IT DOES NOT VIOLATE A MATERIAL PURPOSE OF THE TRUST, AND INCLUDES TERMS AND CONDITIONS THAT COULD BE PROPERLY APPROVED BY THE COURT UNDER THIS CHAPTER OR OTHER APPLICABLE LAW.

C. MATTERS THAT MAY BE RESOLVED BY A NONJUDICIAL SETTLEMENT AGREEMENT INCLUDE:

1. THE INTERPRETATION OR CONSTRUCTION OF THE TERMS OF THE TRUST.
2. THE APPROVAL OF A TRUSTEE'S REPORT OR ACCOUNTING.
3. DIRECTION TO A TRUSTEE TO REFRAIN FROM PERFORMING A PARTICULAR ACT OR THE GRANT TO A TRUSTEE OF ANY NECESSARY OR DESIRABLE POWER.
4. THE RESIGNATION OR APPOINTMENT OF A TRUSTEE AND THE DETERMINATION OF A TRUSTEE'S COMPENSATION.
5. THE TRANSFER OF A TRUST'S PRINCIPAL PLACE OF ADMINISTRATION.
6. THE LIABILITY OF A TRUSTEE FOR AN ACTION RELATING TO THE TRUST.

D. ANY INTERESTED PERSON MAY REQUEST THE COURT TO APPROVE A NONJUDICIAL SETTLEMENT AGREEMENT TO DETERMINE WHETHER THE REPRESENTATION AS PROVIDED IN ARTICLE 3 OF THIS CHAPTER WAS ADEQUATE AND TO DETERMINE WHETHER THE AGREEMENT CONTAINS TERMS AND CONDITIONS THE COURT COULD HAVE PROPERLY APPROVED.

E. THIS SECTION APPLIES ONLY TO ANY TRUST THAT BECOMES IRREVOCABLE ON OR AFTER JANUARY 1, 2009.

F. FOR THE PURPOSES OF THIS SECTION, "INTERESTED PERSONS" HAS THE SAME MEANING PRESCRIBED IN SECTION 14-1201.

14-11112. Rules of construction

THE RULES OF CONSTRUCTION THAT APPLY IN THIS STATE TO THE INTERPRETATION OF AND DISPOSITION OF PROPERTY BY WILL ALSO APPLY AS APPROPRIATE TO THE INTERPRETATION OF THE TERMS OF A TRUST AND THE DISPOSITION OF THE TRUST PROPERTY.

ARTICLE 2. JUDICIAL PROCEEDINGS

14-11201. Role of court in administration of trust

A. THE COURT MAY INTERVENE IN THE ADMINISTRATION OF A TRUST TO THE EXTENT ITS JURISDICTION IS INVOKED BY AN INTERESTED PERSON OR AS PROVIDED BY LAW.

B. A TRUST IS NOT SUBJECT TO CONTINUING JUDICIAL SUPERVISION UNLESS ORDERED BY THE COURT.

C. A JUDICIAL PROCEEDING INVOLVING A TRUST MAY RELATE TO ANY MATTER INVOLVING THE TRUST'S ADMINISTRATION, INCLUDING A REQUEST FOR INSTRUCTIONS AND AN ACTION TO DECLARE RIGHTS.

14-11202. Jurisdiction over trustee and beneficiary

A. BY ACCEPTING THE TRUSTEESHIP OF A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE OR BY MOVING THE PRINCIPAL PLACE OF ADMINISTRATION TO THIS STATE, THE TRUSTEE SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST.

B. WITH RESPECT TO THEIR INTERESTS IN THE TRUST, THE BENEFICIARIES OF A TRUST HAVING ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE ARE SUBJECT TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST. BY ACCEPTING A DISTRIBUTION FROM SUCH A TRUST, THE RECIPIENT SUBMITS PERSONALLY TO THE JURISDICTION OF THE COURTS OF THIS STATE REGARDING ANY MATTER INVOLVING THE TRUST.

C. THIS SECTION DOES NOT PRECLUDE OTHER METHODS OF OBTAINING JURISDICTION OVER A TRUSTEE, BENEFICIARY OR OTHER PERSON RECEIVING PROPERTY FROM THE TRUST.

14-11203. Subject matter jurisdiction

A. THE SUPERIOR COURT HAS EXCLUSIVE JURISDICTION OF PROCEEDINGS IN THIS STATE BROUGHT BY A TRUSTEE OR BENEFICIARY CONCERNING THE ADMINISTRATION OF A TRUST.

B. THE SUPERIOR COURT HAS CONCURRENT JURISDICTION WITH OTHER COURTS OF THIS STATE OF OTHER PROCEEDINGS INVOLVING A TRUST.

14-11204. Venue

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, VENUE FOR A JUDICIAL PROCEEDING INVOLVING A TRUST IS IN THE COUNTY OF THIS STATE IN WHICH THE TRUST'S PRINCIPAL PLACE OF ADMINISTRATION IS OR WILL BE LOCATED AND, IF THE TRUST IS CREATED BY WILL AND THE ESTATE IS NOT YET CLOSED, IN THE COUNTY IN WHICH THE DECEDENT'S ESTATE IS BEING ADMINISTERED.

B. IF A TRUST HAS NO TRUSTEE, VENUE FOR A JUDICIAL PROCEEDING FOR THE APPOINTMENT OF A TRUSTEE IS IN A COUNTY OF THIS STATE IN WHICH A BENEFICIARY RESIDES, IN A COUNTY IN WHICH ANY TRUST PROPERTY IS LOCATED, AND IF THE TRUST IS CREATED BY WILL, IN THE COUNTY IN WHICH THE DECEDENT'S ESTATE WAS OR IS BEING ADMINISTERED.

14-11205. ALTERNATIVE DISPUTE RESOLUTION

A TRUST INSTRUMENT MAY PROVIDE MANDATORY, EXCLUSIVE, REASONABLE PROCEDURES TO RESOLVE ISSUES BETWEEN THE TRUSTEE AND INTERESTED PERSONS OR AMONG INTERESTED PERSONS WITH REGARD TO THE ADMINISTRATION OR DISTRIBUTION OF THE TRUST.

ARTICLE 3. REPRESENTATION

14-11301. Representation

SECTIONS 14-1404 THROUGH 14-1408 APPLY TO TRUSTS GOVERNED BY THIS CHAPTER.

ARTICLE 4. CREATION, VALIDITY, MODIFICATION

AND TERMINATION OF TRUST

14-11401. Methods of creating trust

A TRUST MAY BE CREATED BY:

1. TRANSFER OF PROPERTY TO ANOTHER PERSON AS TRUSTEE DURING THE SETTLOR' S LIFETIME OR BY WILL OR OTHER DISPOSITION TAKING EFFECT ON THE SETTLOR' S DEATH.
2. DECLARATION BY THE OWNER OF PROPERTY THAT THE OWNER HOLDS IDENTIFIABLE PROPERTY AS TRUSTEE.
3. EXERCISE OF A POWER OF APPOINTMENT IN FAVOR OF A TRUSTEE.

14-11402. Requirements for creation

A. EXCEPT AS PROVIDED IN SECTION 14-5409, A TRUST IS CREATED ONLY IF ALL OF THE FOLLOWING ARE TRUE:

1. THE SETTLOR HAS CAPACITY TO CREATE A TRUST.

2. THE SETTLOR INDICATES AN INTENTION TO CREATE THE TRUST.

3. THE TRUST HAS A DEFINITE BENEFICIARY OR IS:

(a) A CHARITABLE TRUST.

(b) A TRUST FOR THE CARE OF AN ANIMAL, AS PROVIDED IN SECTION 14-11408.

(c) A TRUST FOR A NONCHARITABLE PURPOSE, AS PROVIDED IN SECTION 14-11409.

4. THE TRUSTEE HAS DUTIES TO PERFORM.

5. THE SAME PERSON IS NOT THE SOLE TRUSTEE AND SOLE BENEFICIARY.

B. A BENEFICIARY IS DEFINITE IF THE BENEFICIARY CAN BE ASCERTAINED NOW OR IN THE FUTURE, SUBJECT TO ANY APPLICABLE RULE AGAINST PERPETUITIES.

C. A POWER IN A TRUSTEE OR OTHER PERSON TO SELECT A BENEFICIARY FROM AN INDEFINITE CLASS IS VALID. IF THE POWER IS NOT EXERCISED WITHIN A REASONABLE TIME, THE POWER FAILS AND THE PROPERTY SUBJECT TO THE POWER PASSES TO THE PERSONS WHO WOULD HAVE TAKEN THE PROPERTY HAD THE POWER NOT BEEN CONFERRED.

14-11403. Trusts created in other jurisdictions

A TRUST NOT CREATED BY WILL IS VALIDLY CREATED IF ITS CREATION COMPLIES WITH THE LAW OF THE JURISDICTION IN WHICH THE TRUST INSTRUMENT WAS EXECUTED OR THE LAW OF THE JURISDICTION IN WHICH, AT THE TIME OF CREATION, EITHER:

1. THE SETTLOR WAS DOMICILED, HAD A PLACE OF ABODE OR WAS A NATIONAL.
2. A TRUSTEE WAS DOMICILED OR HAD A PLACE OF BUSINESS.
3. ANY TRUST PROPERTY WAS LOCATED.

14-11404. Trust purposes

A TRUST MAY BE CREATED ONLY TO THE EXTENT ITS PURPOSES ARE LAWFUL, NOT CONTRARY TO PUBLIC POLICY AND POSSIBLE TO ACHIEVE. A TRUST AND ITS TERMS MUST BE FOR THE BENEFIT OF ITS BENEFICIARIES.

14-11405. Charitable purposes; enforcement

A. A CHARITABLE TRUST MAY BE CREATED FOR THE RELIEF OF POVERTY, THE ADVANCEMENT OF EDUCATION, RELIGION, OR SCIENCE, THE PROMOTION OF HEALTH, GOVERNMENTAL OR MUNICIPAL PURPOSES OR OTHER PURPOSES, THE ACHIEVEMENT OF WHICH IS BENEFICIAL TO THE COMMUNITY, OR FOR THE SUPPORT OF ONE OR MORE ORGANIZATIONS HAVING SUCH PURPOSES EXCLUSIVELY.

B. IF THE TERMS OF A CHARITABLE TRUST DO NOT INDICATE A PARTICULAR CHARITABLE PURPOSE OR BENEFICIARY, THE COURT MAY SELECT ONE OR MORE CHARITABLE PURPOSES OR BENEFICIARIES. THE SELECTION MUST BE CONSISTENT WITH THE SETTLOR' S INTENTION TO THE EXTENT IT CAN BE ASCERTAINED.

C. THE SETTLOR OF A CHARITABLE TRUST, AMONG OTHERS, MAY MAINTAIN A PROCEEDING TO ENFORCE THE TRUST.

14-11406. Creation of trust induced by fraud, duress or undue influence

A TRUST IS VOID, IN WHOLE OR IN PART, TO THE EXTENT ITS CREATION WAS INDUCED BY FRAUD, DURESS OR UNDUE INFLUENCE.

14-11407. Evidence of oral trust

EXCEPT AS REQUIRED BY A STATUTE OTHER THAN THIS CHAPTER, A TRUST NEED NOT BE EVIDENCED BY A TRUST INSTRUMENT, BUT THE CREATION OF AN ORAL TRUST SHALL BE ESTABLISHED ONLY BY CLEAR AND CONVINCING EVIDENCE, AND ITS TERMS SHALL BE ESTABLISHED BY A PROPONDERANCE OF THE EVIDENCE.

14-11408. Trust for care of animal

A. A TRUST MAY BE CREATED TO PROVIDE FOR THE CARE OF AN ANIMAL ALIVE DURING THE SETTLOR'S LIFETIME. THE TRUST TERMINATES ON THE DEATH OF THE ANIMAL OR, IF THE TRUST WAS CREATED TO PROVIDE FOR THE CARE OF MORE THAN ONE ANIMAL ALIVE DURING THE SETTLOR' S LIFETIME, ON THE DEATH OF THE LAST SURVIVING ANIMAL.

B. A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO APPOINTED, BY A PERSON APPOINTED BY THE COURT. A PERSON HAVING AN INTEREST IN THE WELFARE OF THE ANIMAL MAY REQUEST THE COURT TO APPOINT A PERSON TO ENFORCE THE TRUST OR TO REMOVE A PERSON APPOINTED.

C. PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED USE. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE MUST BE

DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR OTHERWISE TO THE SETTLOR 'S SUCCESSORS IN INTEREST.

14-11409. Noncharitable trust without ascertainable beneficiary

EXCEPT AS OTHERWISE PROVIDED IN SECTION 14-11408 OR BY ANOTHER STATUTE, THE FOLLOWING RULES APPLY:

1. A TRUST MAY BE CREATED FOR A NONCHARITABLE PURPOSE WITHOUT A DEFINITE OR DEFINITELY ASCERTAINABLE BENEFICIARY OR FOR A NONCHARITABLE BUT OTHERWISE VALID PURPOSE TO BE SELECTED BY THE TRUSTEE, PROVIDED THAT SUCH TRUST MAY NOT BE ENFORCED FOR MORE THAN NINETY YEARS AFTER ITS CREATION.

2. A TRUST AUTHORIZED BY THIS SECTION MAY BE ENFORCED BY A PERSON APPOINTED IN THE TERMS OF THE TRUST OR, IF NO PERSON IS SO APPOINTED, BY A PERSON APPOINTED BY THE COURT.

3. PROPERTY OF A TRUST AUTHORIZED BY THIS SECTION MAY BE APPLIED ONLY TO ITS INTENDED USE, EXCEPT TO THE EXTENT THE COURT DETERMINES THAT THE VALUE OF THE TRUST PROPERTY EXCEEDS THE AMOUNT REQUIRED FOR THE INTENDED USE. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF THE TRUST, PROPERTY NOT REQUIRED FOR THE INTENDED USE MUST BE DISTRIBUTED TO THE SETTLOR, IF THEN LIVING, OR OTHERWISE TO THE SETTLOR' S SUCCESSORS IN INTEREST.

14-11410. Modification or termination of trust; proceedings for approval or disapproval

A. IN ADDITION TO THE METHODS OF TERMINATION PRESCRIBED BY SECTIONS 14-11411 THROUGH 14-11414, A TRUST TERMINATES TO THE EXTENT THE TRUST IS REVOKED OR EXPIRES PURSUANT TO ITS TERMS, NO PURPOSE OF THE TRUST REMAINS TO BE ACHIEVED OR THE PURPOSES OF THE TRUST HAVE BECOME UNLAWFUL, CONTRARY TO PUBLIC POLICY OR IMPOSSIBLE TO ACHIEVE.

B. A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED MODIFICATION OR TERMINATION UNDER SECTIONS 14-11411 THROUGH 14-11416, OR TRUST

COMBINATION OR DIVISION UNDER SECTION 14-11417, MAY BE COMMENCED BY A TRUSTEE OR BENEFICIARY, AND A PROCEEDING TO APPROVE OR DISAPPROVE A PROPOSED MODIFICATION OR TERMINATION UNDER SECTION 14-11411 MAY BE COMMENCED BY THE SETTLOR. THE SETTLOR OF A CHARITABLE TRUST MAY MAINTAIN A PROCEEDING TO MODIFY THE TRUST UNDER SECTION 14-11413.

14-11411. Modification or termination of noncharitable irrevocable trust by consent

A. A NONCHARITABLE IRREVOCABLE TRUST MAY BE TERMINATED ON CONSENT OF ALL OF THE BENEFICIARIES IF THE COURT CONCLUDES THAT CONTINUANCE OF THE TRUST IS NOT NECESSARY TO ACHIEVE ANY MATERIAL PURPOSE OF THE TRUST. A NONCHARITABLE IRREVOCABLE TRUST MAY BE MODIFIED ON CONSENT OF ALL OF THE BENEFICIARIES IF THE COURT CONCLUDES THAT MODIFICATION IS NOT INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST.

B. ON TERMINATION OF A TRUST UNDER SUBSECTION A, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY AS AGREED BY THE BENEFICIARIES.

C. IF NOT ALL OF THE BENEFICIARIES CONSENT TO A PROPOSED MODIFICATION OR TERMINATION OF THE TRUST UNDER SUBSECTION A, THE MODIFICATION OR TERMINATION MAY BE APPROVED BY THE COURT IF THE COURT IS SATISFIED THAT:

1. IF ALL OF THE BENEFICIARIES HAD CONSENTED, THE TRUST COULD HAVE BEEN MODIFIED OR TERMINATED UNDER THIS SECTION.

2. THE INTERESTS OF A BENEFICIARY WHO DOES NOT CONSENT WILL BE ADEQUATELY PROTECTED.

14-11412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively

A. THE COURT MAY MODIFY THE ADMINISTRATIVE OR DISPOSITIVE TERMS OF A TRUST OR TERMINATE THE TRUST IF, BECAUSE OF CIRCUMSTANCES NOT ANTICIPATED BY THE SETTLOR, MODIFICATION OR TERMINATION WILL

FURTHER THE PURPOSES OF THE TRUST. TO THE EXTENT PRACTICABLE, THE MODIFICATION MUST BE MADE IN ACCORDANCE WITH THE SETTLOR' S PROBABLE INTENTION.

B. THE COURT MAY MODIFY THE ADMINISTRATIVE TERMS OF A TRUST IF CONTINUATION OF THE TRUST ON ITS EXISTING TERMS WOULD BE IMPRACTICABLE OR WASTEFUL OR WOULD IMPAIR THE TRUST'S ADMINISTRATION.

C. ON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE TRUST.

14-11413. Cy pres

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION B, IF A PARTICULAR CHARITABLE PURPOSE BECOMES UNLAWFUL, IMPRACTICABLE, IMPOSSIBLE TO ACHIEVE OR WASTEFUL:

1. THE TRUST DOES NOT FAIL IN WHOLE OR IN PART.

2. THE TRUST PROPERTY DOES NOT REVERT TO THE SETTLOR OR THE SETTLOR' S SUCCESSORS IN INTEREST.

3. THE COURT MAY APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST BY DIRECTING THAT THE TRUST PROPERTY BE APPLIED OR DISTRIBUTED IN WHOLE OR IN PART IN A MANNER CONSISTENT WITH THE SETTLOR' S CHARITABLE PURPOSES.

B. A PROVISION IN THE TERMS OF A CHARITABLE TRUST THAT WOULD RESULT IN DISTRIBUTION OF THE TRUST PROPERTY TO A NONCHARITABLE BENEFICIARY PREVAILS OVER THE POWER OF THE COURT UNDER SUBSECTION A TO APPLY CY PRES TO MODIFY OR TERMINATE THE TRUST ONLY IF, WHEN THE PROVISION TAKES EFFECT:

1. THE TRUST PROPERTY IS TO REVERT TO THE SETTLOR AND THE SETTLOR IS STILL LIVING.

2. FEWER THAN TWENTY-ONE YEARS HAVE ELAPSED SINCE THE DATE OF THE TRUST'S CREATION.

14-11414. Modification or termination of uneconomic trust

A. AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, THE TRUSTEE OF A TRUST CONSISTING OF TRUST PROPERTY HAVING A TOTAL VALUE OF LESS THAN ONE HUNDRED THOUSAND DOLLARS OR IS UNECONOMIC TO ADMINISTER MAY TERMINATE, BUT IS NOT REQUIRED TO TERMINATE, THE TRUST IF THE TRUSTEE CONCLUDES THAT THE VALUE OF THE TRUST PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION. THIS SUBSECTION SHALL NOT APPLY TO AN INTERESTED TRUSTEE AS DEFINED IN SECTION 14-12014.

B. THE COURT MAY MODIFY OR TERMINATE A TRUST OR REMOVE THE TRUSTEE AND APPOINT A DIFFERENT TRUSTEE IF IT DETERMINES THAT THE VALUE OF THE TRUST PROPERTY IS INSUFFICIENT TO JUSTIFY THE COST OF ADMINISTRATION.

C. ON TERMINATION OF A TRUST UNDER THIS SECTION, THE TRUSTEE SHALL DISTRIBUTE THE TRUST PROPERTY IN A MANNER CONSISTENT WITH THE PURPOSES OF THE TRUST.

D. THIS SECTION DOES NOT APPLY TO AN EASEMENT FOR CONSERVATION OR PRESERVATION.

14-11415. Reformation to correct mistakes

THE COURT MAY REFORM THE TERMS OF A TRUST, EVEN IF UNAMBIGUOUS, TO CONFORM THE TERMS TO THE SETTLOR' S INTENTION IF IT IS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT BOTH THE SETTLOR' S INTENT AND THE TERMS OF THE TRUST WERE AFFECTED BY A MISTAKE OF FACT OR LAW, WHETHER IN EXPRESSION OR INDUCEMENT.

14-11416. Modification to achieve settlor's tax objectives

TO ACHIEVE THE SETTLOR' S TAX OBJECTIVES, THE COURT MAY MODIFY THE TERMS OF A TRUST IN A MANNER THAT IS NOT CONTRARY TO THE SETTLOR' S PROBABLE INTENTION. THE COURT MAY PROVIDE THAT THE MODIFICATION HAS RETROACTIVE EFFECT.

14-11417. Combination and division of trusts

UNLESS THE TRUST INSTRUMENT PROVIDES THAT NOTICE IS NOT REQUIRED, AFTER NOTICE TO THE QUALIFIED BENEFICIARIES, A TRUSTEE MAY COMBINE TWO OR MORE TRUSTS INTO A SINGLE TRUST OR DIVIDE A TRUST INTO TWO OR MORE SEPARATE TRUSTS, IF THE RESULT DOES NOT IMPAIR RIGHTS OF ANY BENEFICIARY OR ADVERSELY AFFECT ACHIEVEMENT OF THE PURPOSES OF THE TRUST.

ARTICLE 5. CREDITOR'S CLAIMS;

SPENDTHRIFT AND DISCRETIONARY TRUSTS

14-11501. Rights of beneficiary's creditor or assignee

(A) EXCEPT AS PROVIDED IN SUBSECTION (B), THE COURT MAY AUTHORIZE A CREDITOR OR ASSIGNEE OF THE BENEFICIARY TO REACH THE BENEFICIARY'S INTEREST BY ATTACHMENT OF PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY OR BY OTHER MEANS. THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES.

(B) THIS SECTION SHALL NOT APPLY AND A TRUSTEE SHALL HAVE NO LIABILITY TO ANY CREDITOR OF A BENEFICIARY FOR ANY DISTRIBUTIONS MADE TO OR FOR THE BENEFIT OF THE BENEFICIARY TO THE EXTENT A BENEFICIARY'S INTEREST:

(1) IS PROTECTED BY A SPENDTHRIFT PROVISION, OR

(2) IS A DISCRETIONARY TRUST INTEREST AS REFERRED TO IN SECTION 14-11504.

14-11502. Spendthrift provision

A. A SPENDTHRIFT PROVISION IS VALID ONLY IF IT RESTRAINS EITHER VOLUNTARY OR INVOLUNTARY TRANSFER OF A BENEFICIARY'S INTEREST.

B. A TERM OF A TRUST PROVIDING THAT THE INTEREST OF A BENEFICIARY IS HELD SUBJECT TO A SPENDTHRIFT TRUST, OR WORDS OF SIMILAR IMPORT, IS SUFFICIENT TO RESTRAIN BOTH VOLUNTARY AND INVOLUNTARY TRANSFER OF THE BENEFICIARY'S INTEREST.

C. A BENEFICIARY MAY NOT TRANSFER AN INTEREST IN A TRUST IN VIOLATION OF A VALID SPENDTHRIFT PROVISION AND, EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, A CREDITOR OR ASSIGNEE OF THE BENEFICIARY MAY NOT ATTACH, GARNISH, EXECUTE UPON OR OTHERWISE REACH THE INTEREST OR A DISTRIBUTION BY THE TRUSTEE BEFORE ITS RECEIPT BY THE BENEFICIARY.

14-11503. Exceptions to spendthrift provision; definition

A. EVEN IF A TRUST CONTAINS A SPENDTHRIFT PROVISION, A BENEFICIARY'S CHILD WHO HAS A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR SUPPORT OR MAINTENANCE, OR A JUDGMENT CREDITOR WHO HAS PROVIDED SERVICES RELATING TO THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE TRUST, MAY OBTAIN FROM A COURT AN ORDER ATTACHING PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE BENEFICIARY SOLELY FOR SUCH MATTERS.

B. THE EXCEPTION IN SUBSECTION (A) IS UNENFORCEABLE AGAINST A SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST ESTABLISHED FOR A DISABLED PERSON IF THE APPLICABILITY OF SUCH A PROVISION COULD INVALIDATE SUCH A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME (SSI) PURPOSES OR IF THE APPLICABILITY OF SUCH A PROVISION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING SUCH DISABLED PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING, BUT NOT LIMITED TO, MEDICAID AND SSI.

C. IN THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR WHOM AN ORDER OR JUDGMENT FOR CHILD SUPPORT HAS BEEN VALIDLY ENTERED IN THIS OR ANOTHER STATE.

D. A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST A CLAIM OF THIS STATE OR THE UNITED STATES ONLY TO THE EXTENT A STATUTE OF THIS STATE OR FEDERAL LAW SO PROVIDES.

14-11504. Discretionary trusts; effect of standard; definition of child

A. EXCEPT AS PROVIDED IN SUBSECTION B, WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR OF A BENEFICIARY MAY NOT COMPEL A DISTRIBUTION THAT IS SUBJECT TO THE TRUSTEE'S DISCRETION, EVEN IF EITHER:

1. THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF DISTRIBUTION; OR

2. THE TRUSTEE HAS NOT COMPLIED WITH THE APPLICABLE STANDARD OF DISTRIBUTION OR HAS ABUSED THE DISCRETION REGARDING DISTRIBUTIONS.

B. TO THE EXTENT A TRUSTEE HAS NOT COMPLIED WITH THE APPLICABLE STANDARD OF DISTRIBUTION OR HAS ABUSED THE DISCRETION REGARDING DISTRIBUTIONS:

1. EXCEPT AS PROVIDED IN A.R.S. SECTION 14-11503.B., A DISTRIBUTION MAY BE ORDERED BY THE COURT TO SATISFY A JUDGMENT OR COURT ORDER AGAINST THE BENEFICIARY FOR SUPPORT OR MAINTENANCE OF THE BENEFICIARY'S CHILD; AND

2. THE COURT SHALL DIRECT THE TRUSTEE TO PAY TO THE CHILD AN AMOUNT AS IS EQUITABLE UNDER THE CIRCUMSTANCES BUT NOT MORE THAN THE AMOUNT THE TRUSTEE WOULD HAVE BEEN REQUIRED TO DISTRIBUTE TO OR FOR THE BENEFIT OF THE BENEFICIARY HAD THE TRUSTEE COMPLIED WITH THE STANDARD OR NOT ABUSED THE DISCRETION.

C. THIS SECTION DOES NOT LIMIT THE RIGHT OF A BENEFICIARY TO MAINTAIN A JUDICIAL PROCEEDING AGAINST A TRUSTEE FOR AN ABUSE OF DISCRETION OR FAILURE TO COMPLY WITH A STANDARD FOR DISTRIBUTION; PROVIDED HOWEVER, THIS RIGHT MAY NOT BE EXERCISED BY A CREDITOR OF THE BENEFICIARY.

D. WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION:

(i) A CREDITOR OF A TRUST BENEFICIARY MAY NOT COMPEL A DISTRIBUTION FROM INSURANCE PROCEEDS PAYABLE TO THE TRUSTEE AS BENEFICIARY TO THE EXTENT STATE LAW EXEMPTS SUCH INSURANCE PROCEEDS FROM CREDITORS' CLAIMS IF IT HAD BEEN PAID DIRECTLY TO THE TRUST BENEFICIARY.

(ii) TO THE EXTENT THAT UNDER ARIZONA LAW LIFE INSURANCE PROCEEDS, POLICY CASH SURRENDER VALUES OR OTHER DISTRIBUTIONS OR PAYMENTS ARE EXEMPT FROM ATTACHMENT OR GARNISHMENT BY, EXECUTION UPON, OR OTHERWISE THE REACH OF, CREDITORS, WHEN THE DEATH BENEFIT IS PAYABLE TO AN INDIVIDUAL BENEFICIARY, SUCH LIFE INSURANCE PROCEEDS, POLICY CASH SURRENDER VALUES OR OTHER DISTRIBUTIONS OR PAYMENTS SHALL ALSO BE EXEMPT FROM ATTACHMENT OR GARNISHMENT BY, EXECUTION UPON, OR OTHERWISE THE REACH OF, CREDITORS WHEN PAYABLE TO A TRUST FOR SUCH INDIVIDUAL.

E. A CREDITOR OF A BENEFICIARY, WHETHER OR NOT SUCH BENEFICIARY IS ALSO A TRUSTEE OR CO-TRUSTEE, MAY NOT REACH THE BENEFICIARY'S BENEFICIAL INTEREST OR OTHERWISE COMPEL A DISTRIBUTION IF EITHER THE TRUSTEE'S DISCRETION TO MAKE DISTRIBUTIONS FOR THE TRUSTEE'S OWN BENEFIT IS PURELY DISCRETIONARY OR IS LIMITED BY AN ASCERTAINABLE STANDARD, INCLUDING, WITHOUT LIMITATION, A STANDARD RELATING TO THE BENEFICIARY'S HEALTH, EDUCATION, SUPPORT OR MAINTENANCE OR SIMILAR LANGUAGE WITHIN THE MEANING OF SECTION 2041(b)(1)(A) OR 2514(b)(1) OF THE INTERNAL REVENUE CODE.

F. IN THIS SECTION, "CHILD" INCLUDES ANY PERSON FOR WHOM AN ORDER OR JUDGMENT FOR CHILD SUPPORT HAS BEEN ENTERED IN THIS OR ANOTHER STATE.

14-11505. Creditor's claim against settlor

A. WHETHER OR NOT THE TERMS OF A TRUST CONTAIN A SPENDTHRIFT PROVISION, THE FOLLOWING RULES APPLY:

1. DURING THE LIFETIME OF THE SETTLOR, THE PROPERTY OF A REVOCABLE TRUST IS SUBJECT TO CLAIMS OF THE SETTLOR'S CREDITORS. IF A TRUST HAS MORE THAN ONE SETTLOR OR CONTRIBUTOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION, PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT ABROGATE OTHERWISE APPLICABLE RULES OF COMMUNITY PROPERTY.

2. WITH RESPECT TO AN IRREVOCABLE TRUST, SUBJECT TO THE PROVISIONS OF THIS SECTION 14-11505, A CREDITOR OR ASSIGNEE OF THE SETTLOR MAY REACH THE MAXIMUM AMOUNT THAT CAN BE DISTRIBUTED TO OR FOR THE SETTLOR'S BENEFIT. THE FOREGOING SENTENCE DOES NOT APPLY TO ANY TRUST FROM WHICH ANY DISTRIBUTION TO THE SETTLOR CAN BE MADE PURSUANT TO THE EXERCISE OF A POWER OF APPOINTMENT HELD BY A THIRD PARTY. IF A TRUST HAS MORE THAN ONE SETTLOR OR CONTRIBUTOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A PARTICULAR SETTLOR MAY REACH IS FURTHER LIMITED TO THE SETTLOR'S INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION, PROVIDED, HOWEVER, THAT THIS SENTENCE SHALL NOT ABROGATE OTHERWISE APPLICABLE RULES OF COMMUNITY PROPERTY. NO CREDITOR OF A SETTLOR (i) SHALL BE ENTITLED TO REACH ANY TRUST PROPERTY BASED UPON A TRUSTEE'S, TRUST PROTECTOR'S, OR THIRD PARTY'S POWER, WHETHER OR NOT DISCRETIONARY, TO PAY OR REIMBURSE THE SETTLOR, FOR ANY INCOME TAX ON TRUST INCOME OR TRUST PRINCIPAL THAT IS PAYABLE BY THE SETTLOR UNDER THE LAW IMPOSING SUCH TAX, OR TO PAY SUCH TAX DIRECTLY TO TAXING AUTHORITIES, OR (ii) SHALL BE ENTITLED TO SUCH PAYMENT OR REIMBURSEMENT THAT IS TO BE MADE DIRECTLY TO TAXING AUTHORITIES.

3. AFTER THE DEATH OF A SETTLOR, AND SUBJECT TO THE SETTLOR'S RIGHT TO DIRECT THE SOURCE FROM WHICH LIABILITIES WILL BE PAID, THE PROPERTY OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR'S DEATH IS SUBJECT TO CLAIMS OF THE SETTLOR'S CREDITORS, COSTS OF ADMINISTRATION OF THE SETTLOR'S ESTATE, THE EXPENSES OF THE SETTLOR'S FUNERAL AND DISPOSAL OF REMAINS AND STATUTORY ALLOWANCES TO A SURVIVING SPOUSE AND CHILDREN TO THE EXTENT THE SETTLOR'S PROBATE ESTATE IS INADEQUATE TO SATISFY THOSE CLAIMS, COSTS, EXPENSES AND ALLOWANCES, EXCEPT TO THE EXTENT THAT STATE OR FEDERAL LAW EXEMPTS ANY PROPERTY OF THE TRUST FROM SUCH CLAIMS, COSTS, EXPENSES OR ALLOWANCES.

B. FOR THE PURPOSES OF THIS SECTION:

1. DURING THE PERIOD THE POWER MAY BE EXERCISED, THE HOLDER OF A POWER OF WITHDRAWAL IS TREATED IN THE SAME MANNER AS THE SETTLOR OF A REVOCABLE TRUST TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

2. ON THE LAPSE, RELEASE OR WAIVER OF A POWER OF WITHDRAWAL, THE HOLDER IS TREATED AS THE SETTLOR OF THE TRUST ONLY TO THE EXTENT THE VALUE OF THE PROPERTY AFFECTED BY THE LAPSE, RELEASE OR WAIVER EXCEEDS THE GREATER OF THE AMOUNT SPECIFIED IN SECTION 2041(b)(2) OR 2514(e) OF THE INTERNAL REVENUE CODE, OR SECTION 2503(b) OF THE INTERNAL REVENUE CODE. ON THE LAPSE, RELEASE OR WAIVER OF A POWER OF WITHDRAWAL IN THE CASE OF A TRUST CREATED UNDER SECTION 2503(c) OF THE INTERNAL REVENUE CODE THE HOLDER WILL NOT BE TREATED AS THE SETTLOR OF SUCH TRUST.

C. FOR THE PURPOSES OF THIS SECTION, A TRUST SETTLED OR ESTABLISHED BY A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, GOVERNMENTAL ENTITY, TRUST, FOUNDATION OR OTHER ENTITY IS NOT DEEMED TO BE SETTLED OR ESTABLISHED BY ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, BENEFICIARIES OR AGENTS.

D. FOR THE PURPOSES OF THIS SECTION, AMOUNTS CONTRIBUTED TO A TRUST BY A CORPORATION, PROFESSIONAL CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, GOVERNMENTAL ENTITY, TRUST, FOUNDATION OR OTHER ENTITY ARE NOT DEEMED TO HAVE BEEN CONTRIBUTED BY ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, EMPLOYEES, BENEFICIARIES OR AGENTS. POWERS, DUTIES OR RESPONSIBILITIES GRANTED TO OR RESERVED BY THE SETTLOR PURSUANT TO THE TRUST AND ANY ACTIONS OR OMISSIONS TAKEN PURSUANT TO THE TRUST ARE DEEMED TO BE THE POWERS, RESPONSIBILITIES, DUTIES, ACTIONS OR OMISSIONS OF THE SETTLOR AND NOT THOSE OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, PARTNERS, EMPLOYEES, BENEFICIARIES OR AGENTS.

E. FOR THE PURPOSES OF THIS SECTION, AMOUNTS CONTRIBUTED TO AN INTER VIVOS MARITAL TRUST THAT IS TREATED AS QUALIFIED TERMINABLE INTEREST

PROPERTY UNDER SECTION 2523(F) OF THE INTERNAL REVENUE CODE; OR TO AN INTER VIVOS MARITAL TRUST THAT IS TREATED AS A GENERAL POWER OF APPOINTMENT TRUST UNDER SECTION 2523(E) OF THE INTERNAL REVENUE CODE AND OVER WHICH THE BENEFICIARY HOLDS A LIMITED POWER OF APPOINTMENT AND/OR A GENERAL POWER OF APPOINTMENT EXERCISABLE IN FAVOR OF THE HOLDER'S ESTATE ARE NOT DEEMED TO HAVE BEEN CONTRIBUTED BY THE SETTLOR EVEN IF THE SETTLOR IS A BENEFICIARY OF THE TRUST FOLLOWING THE DEATH OF HIS OR HER SPOUSE.

F. SUBSECTIONS C AND D DO NOT APPLY TO:

1. A TRUST THAT HAS NO VALID BUSINESS PURPOSE AND THAT HAS AS ITS PRINCIPAL PURPOSE THE EVASION OF THE CLAIMS OF THE CREDITORS OF THE PERSONS OR ENTITIES LISTED IN THOSE SUBSECTIONS.

2. A TRUST THAT WOULD BE TREATED AS A GRANTOR TRUST PURSUANT TO SECTIONS 671 THROUGH 679 OF THE INTERNAL REVENUE CODE. THIS PARAGRAPH DOES NOT APPLY TO A QUALIFIED SUBCHAPTER S TRUST THAT IS TREATED AS A GRANTOR TRUST SOLELY BY APPLICATION OF SECTION 1361(d) OF THE INTERNAL REVENUE CODE.

14-11506. Overdue distribution

(A) IN THIS SECTION, "MANDATORY DISTRIBUTION" MEANS A DISTRIBUTION OF INCOME OR PRINCIPAL THAT THE TRUSTEE IS REQUIRED TO MAKE TO A BENEFICIARY UNDER THE TERMS OF THE TRUST, INCLUDING A DISTRIBUTION UPON TERMINATION OF THE TRUST. THE TERM DOES NOT INCLUDE A DISTRIBUTION SUBJECT TO THE EXERCISE OF THE TRUSTEE'S DISCRETION EVEN IF (1) THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF DISTRIBUTION, OR (2) THE TERMS OF THE TRUST AUTHORIZING A DISTRIBUTION COUPLE LANGUAGE OF DISCRETION WITH LANGUAGE OF DIRECTION.

(B) WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION, A CREDITOR OR ASSIGNEE OF A BENEFICIARY MAY REACH A MANDATORY DISTRIBUTION OF INCOME OR PRINCIPAL, INCLUDING A DISTRIBUTION ON TERMINATION OF THE TRUST, IF THE TRUSTEE HAS NOT MADE THE DISTRIBUTION TO THE BENEFICIARY WITHIN A REASONABLE TIME AFTER THE MANDATED DISTRIBUTION DATE, UNLESS THE TERMS OF THE TRUST EXPRESSLY

AUTHORIZE THE TRUSTEE TO DELAY THE DISTRIBUTION TO PROTECT THE BENEFICIARY'S INTEREST IN THE DISTRIBUTION.

14-11507. Personal obligations of trustee

TRUST PROPERTY IS NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE, EVEN IF THE TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

ARTICLE 6. REVOCABLE TRUSTS

14-11601. Blank

14-11602. Revocation or amendment of revocable trust

A. UNLESS THE TERMS OF A TRUST EXPRESSLY PROVIDE THAT THE TRUST IS IRREVOCABLE, A SETTLOR MAY REVOKE OR AMEND THE TRUST, EXCEPT TO THE EXTENT OTHERWISE PROVIDED BY THE TERMS OF THE TRUST.

B. IF A REVOCABLE TRUST IS CREATED OR FUNDED BY MORE THAN ONE SETTLOR:

1. TO THE EXTENT THE TRUST CONSISTS OF COMMUNITY PROPERTY, THE TRUST MAY BE REVOKED BY EITHER SPOUSE ACTING ALONE AS TO SUCH SPOUSE'S SHARE OF THE COMMUNITY PROPERTY, BUT MAY BE AMENDED ONLY BY JOINT ACTION OF BOTH SPOUSES.

2. TO THE EXTENT THE TRUST CONSISTS OF PROPERTY OTHER THAN COMMUNITY PROPERTY, EACH SETTLOR MAY REVOKE OR AMEND THE TRUST WITH REGARD TO THE PORTION OF THE TRUST PROPERTY ATTRIBUTABLE TO THAT SETTLOR'S CONTRIBUTION.

C. THE SETTLOR MAY REVOKE OR AMEND A REVOCABLE TRUST EITHER:

1. BY SUBSTANTIAL COMPLIANCE WITH A METHOD PROVIDED IN THE TERMS OF THE TRUST.

2. IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY EITHER:

(a) A LATER WILL OR CODICIL THAT EXPRESSLY REFERS TO THE TRUST OR SPECIFICALLY DEVISES PROPERTY THAT WOULD OTHERWISE HAVE PASSED ACCORDING TO THE TERMS OF THE TRUST.

(b) ANY OTHER WRITING SIGNED BY THE SETTLOR MANIFESTING CLEAR AND CONVINCING EVIDENCE OF THE SETTLOR'S INTENT.

D. ON REVOCATION OF A REVOCABLE TRUST, THE TRUSTEE SHALL DELIVER THE TRUST PROPERTY AS THE SETTLOR DIRECTS.

E. A SETTLOR'S POWERS WITH RESPECT TO REVOCATION, AMENDMENT OR DISTRIBUTION OF TRUST PROPERTY MAY BE EXERCISED BY AN AGENT UNDER A POWER OF ATTORNEY ONLY TO THE EXTENT EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST OR, IF THE TERMS OF THE TRUST DO NOT PROHIBIT AN AGENT FROM EXERCISING POWERS ON BEHALF OF THE SETTLOR, TO THE EXTENT EXPRESSLY AUTHORIZED UNDER THE POWER OF ATTORNEY. IF AN AGENT IS NOT SO AUTHORIZED AND THE TERMS OF THE TRUST DO NOT PROHIBIT A CONSERVATOR FROM EXERCISING POWERS ON BEHALF OF A SETTLOR, A SETTLOR'S POWER TO REVOKE, AMEND OR DISTRIBUTE MAY BE EXERCISED BY THE SETTLOR'S CONSERVATOR WITH THE APPROVAL OF THE COURT SUPERVISING THE CONSERVATORSHIP OR BY THE SETTLOR'S GUARDIAN WITH THE APPROVAL OF THE COURT SUPERVISING THE GUARDIANSHIP IF AN AGENT IS NOT SO AUTHORIZED AND A CONSERVATOR HAS NOT BEEN APPOINTED.

F. A TRUSTEE WHO DOES NOT KNOW THAT A TRUST HAS BEEN REVOKED OR AMENDED IS NOT LIABLE TO THE SETTLOR OR SETTLOR' S SUCCESSORS IN INTEREST FOR DISTRIBUTIONS MADE AND OTHER ACTIONS TAKEN ON THE ASSUMPTION THAT THE TRUST HAD NOT BEEN AMENDED OR REVOKED.

14-11603. Settlor's powers; powers of withdrawal

A. WHILE AND TO THE EXTENT A TRUST IS REVOCABLE BY THE SETTLOR THE RIGHTS OF THE BENEFICIARIES ARE SUBJECT TO THE CONTROL OF, AND THE DUTIES OF THE TRUSTEE ARE OWED EXCLUSIVELY TO, THE SETTLOR.

B. DURING THE PERIOD A POWER OF WITHDRAWAL MAY BE EXERCISED, THE HOLDER OF THE POWER HAS THE RIGHTS OF A SETTLOR OF A REVOCABLE TRUST UNDER THIS SECTION TO THE EXTENT OF THE PROPERTY SUBJECT TO THE POWER.

14-11604. Limitation on actions contesting validity or revocable trust; distribution of trust property

A. A PERSON MAY COMMENCE A JUDICIAL PROCEEDING TO CONTEST THE VALIDITY OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR' S DEATH WITHIN THE EARLIER OF:

1. ONE YEAR AFTER THE SETTLOR 'S DEATH.

2. FOUR MONTHS AFTER THE TRUSTEE SENT THE PERSON A COPY OF THE TRUST INSTRUMENT AND A NOTICE INFORMING THE PERSON OF THE TRUST'S EXISTENCE, OF THE TRUSTEE'S NAME AND ADDRESS AND OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.

B. ON THE DEATH OF THE SETTLOR OF A TRUST THAT WAS REVOCABLE AT THE SETTLOR' S DEATH, THE TRUSTEE MAY PROCEED TO DISTRIBUTE THE TRUST PROPERTY IN ACCORDANCE WITH THE TERMS OF THE TRUST. THE TRUSTEE IS NOT SUBJECT TO LIABILITY FOR DOING SO UNLESS EITHER:

1. THE TRUSTEE HAS KNOWLEDGE OF A PENDING JUDICIAL PROCEEDING CONTESTING THE VALIDITY OF THE TRUST.

2. A POTENTIAL CONTESTANT HAS NOTIFIED THE TRUSTEE IN WRITING OF A POSSIBLE JUDICIAL PROCEEDING TO CONTEST THE TRUST AND A JUDICIAL

PROCEEDING IS COMMENCED WITHIN SIXTY DAYS AFTER THE CONTESTANT SENT THE NOTIFICATION.

C. A BENEFICIARY OF A TRUST THAT IS DETERMINED TO HAVE BEEN INVALID IS LIABLE TO RETURN ANY DISTRIBUTION RECEIVED; EXCEPT TO THE EXTENT THAT THE BENEFICIARY IS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE.

ARTICLE 7. OFFICE OF TRUSTEE

14-11701. Accepting or declining trusteeship

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION C, A PERSON DESIGNATED AS TRUSTEE ACCEPTS THE TRUSTEESHIP EITHER:

1. BY SUBSTANTIALLY COMPLYING WITH A METHOD OF ACCEPTANCE PROVIDED IN THE TERMS OF THE TRUST.

2. IF THE TERMS OF THE TRUST DO NOT PROVIDE A METHOD OR THE METHOD PROVIDED IN THE TERMS IS NOT EXPRESSLY MADE EXCLUSIVE, BY ACCEPTING DELIVERY OF THE TRUST PROPERTY, EXERCISING POWERS OR PERFORMING DUTIES AS TRUSTEE OR OTHERWISE INDICATING ACCEPTANCE OF THE TRUSTEESHIP.

B. A PERSON DESIGNATED AS TRUSTEE WHO HAS NOT YET ACCEPTED THE TRUSTEESHIP MAY REJECT THE TRUSTEESHIP. A DESIGNATED TRUSTEE WHO DOES NOT ACCEPT THE TRUSTEESHIP WITHIN A REASONABLE TIME AFTER KNOWING OF THE DESIGNATION IS DEEMED TO HAVE REJECTED THE TRUSTEESHIP.

C. A PERSON DESIGNATED AS TRUSTEE, WITHOUT ACCEPTING THE TRUSTEESHIP, MAY:

1. ACT TO PRESERVE THE TRUST PROPERTY IF, WITHIN A REASONABLE TIME AFTER ACTING, THE PERSON SENDS A REJECTION OF THE TRUSTEESHIP TO THE

SETTLOR OR, IF THE SETTLOR IS DEAD OR LACKS CAPACITY, TO A QUALIFIED BENEFICIARY.

2. INSPECT OR INVESTIGATE TRUST PROPERTY TO DETERMINE POTENTIAL LIABILITY UNDER ENVIRONMENTAL OR OTHER LAW OR FOR ANY OTHER PURPOSE.

14-11702. Trustee's bond

A. A TRUSTEE SHALL GIVE BOND TO SECURE PERFORMANCE OF THE TRUSTEE'S DUTIES ONLY IF THE COURT FINDS THAT A BOND IS NEEDED TO PROTECT THE INTERESTS OF THE BENEFICIARIES OR IS REQUIRED BY THE TERMS OF THE TRUST AND THE COURT HAS NOT DISPENSED WITH THE REQUIREMENT.

B. THE COURT MAY SPECIFY THE AMOUNT OF A BOND, ITS LIABILITIES AND WHETHER SURETIES ARE NECESSARY. THE COURT MAY MODIFY OR TERMINATE A BOND AT ANY TIME.

C. NOTWITHSTANDING THE TERMS OF THE TRUST, THE FOLLOWING ARE NOT REQUIRED TO GIVE A BOND:

1. A NATIONAL BANKING ASSOCIATION.

2. A HOLDER OF A BANKING PERMIT UNDER THE LAWS OF THIS STATE.

3. A SAVINGS AND LOAN ASSOCIATION AUTHORIZED TO CONDUCT TRUST BUSINESS IN THIS STATE.

4. A TITLE INSURANCE COMPANY QUALIFIED TO DO BUSINESS UNDER THE LAWS OF THIS STATE.

5. A TRUST COMPANY HOLDING A CERTIFICATE TO ENGAGE IN TRUST BUSINESS FROM THE STATE SUPERINTENDENT OF BANKS.

6. THE PUBLIC FIDUCIARY.

14-11703. Cotrustees

A. COTRUSTEES WHO ARE UNABLE TO REACH A UNANIMOUS DECISION MAY ACT BY MAJORITY DECISION.

B. IF A VACANCY OCCURS IN A COTRUSTEESHIP, THE REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

C. A COTRUSTEE MUST PARTICIPATE IN THE PERFORMANCE OF A TRUSTEE'S FUNCTION UNLESS THE COTRUSTEE IS UNAVAILABLE TO PERFORM THE FUNCTION BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION UNDER OTHER LAW OR OTHER TEMPORARY INCAPACITY OR THE COTRUSTEE HAS PROPERLY DELEGATED THE PERFORMANCE OF THE FUNCTION TO ANOTHER TRUSTEE.

D. IF A COTRUSTEE IS UNAVAILABLE TO PERFORM DUTIES BECAUSE OF ABSENCE, ILLNESS, DISQUALIFICATION UNDER OTHER LAW OR OTHER TEMPORARY INCAPACITY, AND PROMPT ACTION IS NECESSARY TO ACHIEVE THE PURPOSES OF THE TRUST OR TO AVOID INJURY TO THE TRUST PROPERTY, THE REMAINING COTRUSTEE OR A MAJORITY OF THE REMAINING COTRUSTEES MAY ACT FOR THE TRUST.

E. A TRUSTEE MAY DELEGATE TO A COTRUSTEE THE PERFORMANCE OF A FUNCTION UNLESS THE TERMS OF THE TRUST PROVIDE THAT THE TRUSTEES PERFORM JOINTLY. UNLESS A DELEGATION WAS IRREVOCABLE, A TRUSTEE MAY REVOKE A DELEGATION PREVIOUSLY MADE.

F. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION G, A TRUSTEE WHO DOES NOT JOIN IN AN ACTION OF ANOTHER TRUSTEE IS NOT LIABLE FOR THE ACTION.

G. EACH TRUSTEE SHALL EXERCISE REASONABLE CARE TO:

1. PREVENT A COTRUSTEE FROM COMMITTING A MATERIAL BREACH OF TRUST.

2. COMPEL A COTRUSTEE TO REDRESS A MATERIAL BREACH OF TRUST.

H. A DISSENTING TRUSTEE WHO JOINS IN AN ACTION AT THE DIRECTION OF THE MAJORITY OF THE TRUSTEES AND WHO NOTIFIED ANY COTRUSTEE OF THE DISSENT AT OR BEFORE THE TIME OF THE ACTION IS NOT LIABLE FOR THE ACTION UNLESS THE ACTION IS A MATERIAL BREACH OF TRUST.

14-11704. Vacancy in trusteeship; appointment of successor

A. A VACANCY IN A TRUSTEESHIP OCCURS IF:

1. A PERSON DESIGNATED AS TRUSTEE REJECTS THE TRUSTEESHIP.

2. A PERSON DESIGNATED AS TRUSTEE CANNOT BE IDENTIFIED OR DOES NOT EXIST.

3. A TRUSTEE RESIGNS.

4. A TRUSTEE IS DISQUALIFIED OR REMOVED.

5. A TRUSTEE DIES.

6. A GUARDIAN OR CONSERVATOR IS APPOINTED FOR AN INDIVIDUAL SERVING AS TRUSTEE.

B. IF ONE OR MORE COTRUSTEES REMAIN IN OFFICE, A VACANCY IN A TRUSTEESHIP NEED NOT BE FILLED. A VACANCY IN A TRUSTEESHIP MUST BE FILLED IF THE TRUST HAS NO REMAINING TRUSTEE.

C. A VACANCY IN A TRUSTEESHIP OF A NONCHARITABLE TRUST THAT IS REQUIRED TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

1. BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS SUCCESSOR TRUSTEE, OR A PERSON WHO IS APPOINTED BY A PERSON WHO HAS AUTHORITY IN THE TRUST INSTRUMENT TO APPOINT A SUCCESSOR TRUSTEE.

2. BY A PERSON APPOINTED BY UNANIMOUS AGREEMENT OF THE QUALIFIED BENEFICIARIES.

3. BY A PERSON APPOINTED BY THE COURT.

D. A VACANCY IN A TRUSTEESHIP OF A CHARITABLE TRUST THAT IS REQUIRED TO BE FILLED MUST BE FILLED IN THE FOLLOWING ORDER OF PRIORITY:

1. BY A PERSON DESIGNATED IN THE TERMS OF THE TRUST TO ACT AS SUCCESSOR TRUSTEE.

2. BY A PERSON SELECTED BY THE CHARITABLE ORGANIZATIONS EXPRESSLY DESIGNATED TO RECEIVE DISTRIBUTIONS UNDER THE TERMS OF THE TRUST.

3. BY A PERSON APPOINTED BY THE COURT.

E. WHETHER OR NOT A VACANCY IN A TRUSTEESHIP EXISTS OR IS REQUIRED TO BE FILLED, THE COURT MAY APPOINT AN ADDITIONAL TRUSTEE OR SPECIAL FIDUCIARY WHENEVER THE COURT CONSIDERS THE APPOINTMENT NECESSARY FOR THE ADMINISTRATION OF THE TRUST.

14-11705. Resignation of trustee

A. A TRUSTEE MAY RESIGN EITHER:

1. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, ON AT LEAST THIRTY DAYS' NOTICE TO THE QUALIFIED BENEFICIARIES, THE SETTLOR, IF LIVING, AND ALL COTRUSTEES.

2. WITH THE APPROVAL OF THE COURT.

B. IN APPROVING A RESIGNATION, THE COURT MAY ISSUE ORDERS AND IMPOSE CONDITIONS REASONABLY NECESSARY FOR THE PROTECTION OF THE TRUST PROPERTY.

C. ANY LIABILITY OF A RESIGNING TRUSTEE OR OF ANY SURETIES ON THE TRUSTEE'S BOND FOR ACTS OR OMISSIONS OF THE TRUSTEE IS NOT DISCHARGED OR AFFECTED BY THE TRUSTEE'S RESIGNATION.

14-11706. Removal of trustee

A. THE SETTLOR, A COTRUSTEE OR A BENEFICIARY MAY REQUEST THE COURT TO REMOVE A TRUSTEE OR A TRUSTEE MAY BE REMOVED BY THE COURT ON ITS OWN INITIATIVE.

B. THE COURT MAY REMOVE A TRUSTEE IF:

1. THE TRUSTEE HAS COMMITTED A MATERIAL BREACH OF TRUST.

2. LACK OF COOPERATION AMONG COTRUSTEES SUBSTANTIALLY IMPAIRS THE ADMINISTRATION OF THE TRUST.

3. BECAUSE OF UNFITNESS, UNWILLINGNESS OR PERSISTENT FAILURE OF THE TRUSTEE TO ADMINISTER THE TRUST FOR THE BENEFIT OF THE BENEFICIARIES, THE COURT DETERMINES THAT REMOVAL OF THE TRUSTEE BEST SERVES THE INTERESTS OF THE BENEFICIARIES.

4. THERE HAS BEEN A SUBSTANTIAL CHANGE OF CIRCUMSTANCES OR REMOVAL IS REQUESTED BY ALL OF THE QUALIFIED BENEFICIARIES, THE COURT FINDS

THAT REMOVAL OF THE TRUSTEE BEST SERVES THE INTERESTS OF ALL OF THE BENEFICIARIES AND IS NOT INCONSISTENT WITH A MATERIAL PURPOSE OF THE TRUST AND A SUITABLE COTRUSTEE OR SUCCESSOR TRUSTEE IS AVAILABLE.

C. PENDING A FINAL DECISION ON A REQUEST TO REMOVE A TRUSTEE, OR IN LIEU OF OR IN ADDITION TO REMOVING A TRUSTEE, THE COURT MAY ORDER APPROPRIATE RELIEF UNDER SECTION 14-12001, SUBSECTION B AS MAY BE NECESSARY TO PROTECT THE TRUST PROPERTY OR THE INTERESTS OF THE BENEFICIARIES.

14-11707. Delivery of property by former trustee

A. UNLESS A COTRUSTEE REMAINS IN OFFICE OR THE COURT OTHERWISE ORDERS, AND UNTIL THE TRUST PROPERTY IS DELIVERED TO A SUCCESSOR TRUSTEE OR OTHER PERSON ENTITLED TO IT, A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED HAS THE DUTIES OF A TRUSTEE AND THE POWERS NECESSARY TO PROTECT THE TRUST PROPERTY.

B. A TRUSTEE WHO HAS RESIGNED OR BEEN REMOVED SHALL PROCEED EXPEDITIOUSLY TO DELIVER THE TRUST PROPERTY WITHIN THE TRUSTEE'S POSSESSION TO THE COTRUSTEE, SUCCESSOR TRUSTEE OR OTHER PERSON ENTITLED TO IT.

14-11708. Compensation of trustee

A. IF THE TERMS OF A TRUST DO NOT SPECIFY THE TRUSTEE'S COMPENSATION, A TRUSTEE IS ENTITLED TO COMPENSATION THAT IS REASONABLE UNDER THE CIRCUMSTANCES.

B. IF THE TERMS OF A TRUST SPECIFY THE TRUSTEE'S COMPENSATION OR REFER TO ANOTHER ASCERTAINABLE SOURCE FOR DETERMINING THAT COMPENSATION, THE TRUSTEE IS ENTITLED TO BE COMPENSATED AS SPECIFIED, BUT THE COURT MAY ALLOW MORE OR LESS COMPENSATION IF EITHER:

1. THE DUTIES OF THE TRUSTEE ARE SUBSTANTIALLY DIFFERENT FROM THOSE CONTEMPLATED WHEN THE TRUST WAS CREATED.

2. THE COMPENSATION SPECIFIED BY THE TERMS OF THE TRUST WOULD BE UNREASONABLY LOW OR HIGH.

14-11709. Reimbursement of expenses

A. A TRUSTEE IS ENTITLED TO BE REIMBURSED OUT OF THE TRUST PROPERTY, WITH REASONABLE INTEREST, FOR:

1. EXPENSES THAT WERE PROPERLY INCURRED IN THE ADMINISTRATION OF THE TRUST.

2. TO THE EXTENT NECESSARY TO PREVENT UNJUST ENRICHMENT OF THE TRUST, EXPENSES THAT WERE NOT PROPERLY INCURRED IN THE ADMINISTRATION OF THE TRUST.

B. AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST GIVES RISE TO A LIEN AGAINST TRUST PROPERTY TO SECURE REIMBURSEMENT WITH REASONABLE INTEREST.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE AND TRUST PROTECTOR

14-11801. Duty to administer trust

ON ACCEPTANCE OF A TRUSTEESHIP, THE TRUSTEE SHALL ADMINISTER THE TRUST IN GOOD FAITH, IN ACCORDANCE WITH ITS TERMS AND PURPOSES AND THE INTERESTS OF THE BENEFICIARIES AND IN ACCORDANCE WITH THIS CHAPTER.

14-11802. Duty of loyalty

A. A TRUSTEE SHALL ADMINISTER THE TRUST SOLELY IN THE INTERESTS OF THE BENEFICIARIES.

B. SUBJECT TO THE RIGHTS OF PERSONS DEALING WITH OR ASSISTING THE TRUSTEE AS PROVIDED IN SECTION 14-12012, A SALE, ENCUMBRANCE OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY ENTERED INTO BY THE TRUSTEE FOR THE TRUSTEE'S OWN PERSONAL ACCOUNT OR THAT IS OTHERWISE AFFECTED BY A CONFLICT BETWEEN THE TRUSTEE'S FIDUCIARY AND PERSONAL INTERESTS IS VOIDABLE BY A BENEFICIARY AFFECTED BY THE TRANSACTION UNLESS EITHER:

1. THE TRANSACTION WAS AUTHORIZED BY THE TERMS OF THE TRUST.
2. THE TRANSACTION WAS APPROVED BY THE COURT.
3. THE BENEFICIARY DID NOT COMMENCE A JUDICIAL PROCEEDING WITHIN THE TIME ALLOWED BY SECTION 14-12005.
4. THE BENEFICIARY CONSENTED TO THE TRUSTEE'S CONDUCT, RATIFIED THE TRANSACTION OR RELEASED THE TRUSTEE IN COMPLIANCE WITH SECTION 14-11009.
5. THE TRANSACTION INVOLVES A CONTRACT ENTERED INTO OR CLAIM ACQUIRED BY THE TRUSTEE BEFORE THE PERSON BECAME OR CONTEMPLATED BECOMING TRUSTEE.

C. A SALE, ENCUMBRANCE OR OTHER TRANSACTION INVOLVING THE INVESTMENT OR MANAGEMENT OF TRUST PROPERTY IS PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF IT IS ENTERED INTO BY THE TRUSTEE WITH:

1. THE TRUSTEE'S SPOUSE.
2. THE TRUSTEE'S DESCENDANTS, SIBLINGS, PARENTS OR THEIR SPOUSES.
3. AN AGENT OR ATTORNEY OF THE TRUSTEE.

4. A CORPORATION OR OTHER PERSON OR ENTERPRISE IN WHICH THE TRUSTEE, OR A PERSON THAT OWNS A SIGNIFICANT INTEREST IN THE TRUSTEE, HAS AN INTEREST THAT MIGHT AFFECT THE TRUSTEE'S BEST JUDGMENT.

D. A TRANSACTION BETWEEN A TRUSTEE AND A BENEFICIARY THAT DOES NOT CONCERN TRUST PROPERTY BUT THAT OCCURS DURING THE EXISTENCE OF THE TRUST OR WHILE THE TRUSTEE RETAINS SIGNIFICANT INFLUENCE OVER THE BENEFICIARY AND FROM WHICH THE TRUSTEE OBTAINS AN ADVANTAGE IS VOIDABLE BY THE BENEFICIARY UNLESS THE TRUSTEE ESTABLISHES THAT THE TRANSACTION WAS FAIR TO THE BENEFICIARY.

E. A TRANSACTION NOT CONCERNING TRUST PROPERTY IN WHICH THE TRUSTEE ENGAGES IN THE TRUSTEE'S INDIVIDUAL CAPACITY INVOLVES A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE TRANSACTION CONCERNS AN OPPORTUNITY PROPERLY BELONGING TO THE TRUST.

F. AN INVESTMENT BY A TRUSTEE IN SECURITIES OF AN INVESTMENT COMPANY OR INVESTMENT TRUST TO WHICH THE TRUSTEE, OR ITS AFFILIATE, PROVIDES SERVICES IN A CAPACITY OTHER THAN AS TRUSTEE IS NOT PRESUMED TO BE AFFECTED BY A CONFLICT BETWEEN PERSONAL AND FIDUCIARY INTERESTS IF THE INVESTMENT OTHERWISE COMPLIES WITH THE PRUDENT INVESTOR RULE OF ARTICLE 9 OF THIS CHAPTER. THE TRUSTEE MAY BE COMPENSATED BY THE INVESTMENT COMPANY OR INVESTMENT TRUST FOR PROVIDING THOSE SERVICES OUT OF FEES CHARGED TO THE TRUST IF THE TRUSTEE AT LEAST ANNUALLY NOTIFIES THE PERSONS ENTITLED UNDER SECTION 14-11813 TO RECEIVE A COPY OF THE TRUSTEE'S ANNUAL REPORT THAT THE BANK OR TRUST COMPANY PROVIDES SERVICES FOR AND RECEIVES FEES FROM THE INVESTMENT COMPANY OR INVESTMENT TRUST. THIS NOTIFICATION MAY BE MADE IN THE TRUSTEE'S STATEMENTS OF THE FIDUCIARY ACCOUNT.

G. IN VOTING SHARES OF STOCK OR IN EXERCISING POWERS OF CONTROL OVER SIMILAR INTERESTS IN OTHER FORMS OF ENTERPRISE, THE TRUSTEE SHALL ACT IN THE BEST INTERESTS OF THE BENEFICIARIES. IF THE TRUST IS THE SOLE OWNER OF A CORPORATION OR OTHER FORM OF ENTERPRISE, THE TRUSTEE SHALL ELECT OR APPOINT DIRECTORS OR OTHER MANAGERS WHO WILL MANAGE THE CORPORATION OR ENTERPRISE IN THE BEST INTERESTS OF THE BENEFICIARIES.

H. THIS SECTION DOES NOT PRECLUDE THE FOLLOWING TRANSACTIONS, IF FAIR TO THE BENEFICIARIES:

1. AN AGREEMENT BETWEEN A TRUSTEE AND A BENEFICIARY RELATING TO THE APPOINTMENT OR COMPENSATION OF THE TRUSTEE.

2. PAYMENT OF REASONABLE COMPENSATION TO THE TRUSTEE.

3. A TRANSACTION BETWEEN A TRUST AND ANOTHER TRUST, DECEDENT'S ESTATE OR CONSERVATORSHIP OF WHICH THE TRUSTEE IS A FIDUCIARY OR IN WHICH A BENEFICIARY HAS AN INTEREST.

4. A DEPOSIT OF TRUST MONEY IN A REGULATED FINANCIAL SERVICE INSTITUTION OPERATED BY THE TRUSTEE.

5. AN ADVANCE BY THE TRUSTEE OF MONEY FOR THE PROTECTION OF THE TRUST.

I. THE COURT MAY APPOINT A SPECIAL FIDUCIARY TO MAKE A DECISION WITH RESPECT TO ANY PROPOSED TRANSACTION THAT MAY VIOLATE THIS SECTION IF ENTERED INTO BY THE TRUSTEE.

14-11803. Impartiality

IF A TRUST HAS TWO OR MORE BENEFICIARIES, THE TRUSTEE SHALL ACT IMPARTIALLY IN INVESTING, MANAGING AND DISTRIBUTING THE TRUST PROPERTY, GIVING DUE REGARD TO THE BENEFICIARIES' RESPECTIVE INTERESTS.

14-11804. Prudent administration

A TRUSTEE SHALL ADMINISTER THE TRUST AS A PRUDENT PERSON WOULD, BY CONSIDERING THE PURPOSES, TERMS, DISTRIBUTIONAL REQUIREMENTS AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD, THE

TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION.

14-11805. Costs of administration

IN ADMINISTERING A TRUST, THE TRUSTEE MAY INCUR ONLY COSTS THAT ARE REASONABLE IN RELATION TO THE TRUST PROPERTY, THE PURPOSES OF THE TRUST AND THE SKILLS OF THE TRUSTEE.

14-11806. Trustee's skills

A TRUSTEE WHO HAS SPECIAL SKILLS OR EXPERTISE, OR WHO IS NAMED TRUSTEE IN RELIANCE ON THE TRUSTEE' S REPRESENTATION THAT THE TRUSTEE HAS SPECIAL SKILLS OR EXPERTISE, SHALL USE THOSE SPECIAL SKILLS OR EXPERTISE.

14-11807. Delegation by trustee

A. A TRUSTEE MAY DELEGATE DUTIES AND POWERS THAT A PRUDENT TRUSTEE OF COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE CIRCUMSTANCES. THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION IN:

1. SELECTING AN AGENT.

2. ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION, CONSISTENT WITH THE PURPOSES AND TERMS OF THE TRUST.

3. PERIODICALLY REVIEWING THE AGENT'S ACTIONS IN ORDER TO MONITOR THE AGENT'S PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

B. IN PERFORMING A DELEGATED FUNCTION, AN AGENT OWES A DUTY TO THE TRUST TO EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

C. A TRUSTEE WHO COMPLIES WITH SUBSECTION A IS NOT LIABLE TO THE BENEFICIARIES OR TO THE TRUST FOR AN ACTION OF THE AGENT TO WHOM THE FUNCTION WAS DELEGATED.

D. BY ACCEPTING A DELEGATION OF POWERS OR DUTIES FROM THE TRUSTEE OF A TRUST THAT IS SUBJECT TO THE LAW OF THIS STATE, AN AGENT SUBMITS TO THE JURISDICTION OF THE COURTS OF THIS STATE.

14-11808. Powers to direct

A. WHILE A TRUST IS REVOCABLE, THE TRUSTEE MAY FOLLOW A DIRECTION OF THE SETTLOR THAT IS CONTRARY TO THE TERMS OF THE TRUST.

B. IF THE TRUST PROVIDES THAT THE ASSETS IN THE TRUST ARE SUBJECT TO THE DIRECTION OF THE SETTLOR, CO-TRUSTEE, BENEFICIARY OR THIRD PARTY, THE TRUSTEE SHALL HAVE NO DUTY TO REVIEW THE DIRECTIONS IT IS DIRECTED TO MAKE OR NOTIFY THE BENEFICIARIES REGARDING ANY INVESTMENT ACTION TAKEN PURSUANT TO SUCH DIRECTION. THE TRUSTEE SHALL NOT BE RESPONSIBLE FOR THE PURCHASE, MONITORING, RETENTION OR SALE OF ASSETS THAT ARE SUBJECT TO THE DIRECTION OF THE SETTLOR, A CO-TRUSTEE, BENEFICIARY OR THIRD PARTY. THE TRUSTEE IS RELIEVED FROM ALL LIABILITY WHEN ACTING PURSUANT TO SUCH DIRECTION, EVEN IF SUCH ACTIONS SHALL CONSTITUTE A BREACH OF FIDUCIARY DUTY, ABSENT BAD FAITH OR RECKLESS INDIFEREENCE BY THE TRUSTEE.

C. THE TERMS OF A TRUST MAY CONFER ON A TRUSTEE OR OTHER PERSON A POWER TO DIRECT THE MODIFICATION OR TERMINATION OF THE TRUST.

D. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, A PERSON, OTHER THAN A BENEFICIARY, WHO HOLDS A POWER TO DIRECT IS PRESUMPTIVELY A FIDUCIARY WHO, AS SUCH, IS REQUIRED TO ACT IN GOOD FAITH WITH REGARD TO THE PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES. THE HOLDER OF A POWER TO DIRECT IS LIABLE FOR ANY LOSS THAT RESULTS FROM BREACH OF A FIDUCIARY DUTY.

14-11809. Control and protection of trust property

A TRUSTEE SHALL TAKE REASONABLE STEPS TO TAKE CONTROL OF AND PROTECT THE TRUST PROPERTY.

14-11810. Record keeping and identification of trust property

A. A TRUSTEE SHALL KEEP ADEQUATE RECORDS OF THE ADMINISTRATION OF THE TRUST.

B. A TRUSTEE SHALL KEEP TRUST PROPERTY SEPARATE FROM THE TRUSTEE' S OWN PROPERTY.

C. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION D, A TRUSTEE SHALL CAUSE THE TRUST PROPERTY TO BE DESIGNATED SO THAT THE INTEREST OF THE TRUST, TO THE EXTENT FEASIBLE, APPEARS IN RECORDS MAINTAINED BY A PARTY OTHER THAN A TRUSTEE OR BENEFICIARY.

D. IF THE TRUSTEE MAINTAINS RECORDS CLEARLY INDICATING THE RESPECTIVE INTERESTS, A TRUSTEE MAY INVEST AS A WHOLE THE PROPERTY OF TWO OR MORE SEPARATE TRUSTS.

14-11811. Enforcement and defense of claims

A TRUSTEE SHALL TAKE REASONABLE STEPS TO ENFORCE CLAIMS OF THE TRUST AND TO DEFEND CLAIMS AGAINST THE TRUST.

14-11812. Collecting trust property

A TRUSTEE SHALL TAKE REASONABLE STEPS TO COMPEL A FORMER TRUSTEE OR OTHER PERSON TO DELIVER TRUST PROPERTY TO THE TRUSTEE AND TO REDRESS A BREACH OF TRUST KNOWN TO THE TRUSTEE TO HAVE BEEN COMMITTED BY A FORMER TRUSTEE.

14-11813. Duty to inform and report

A. UNLESS THE TRUST INSTRUMENT PROVIDES OTHERWISE, A TRUSTEE SHALL KEEP THE QUALIFIED BENEFICIARIES OF THE TRUST REASONABLY INFORMED ABOUT THE ADMINISTRATION OF THE TRUST AND OF THE MATERIAL FACTS NECESSARY FOR THEM TO PROTECT THEIR INTERESTS. UNLESS THE TRUSTEE DETERMINES IT IS UNREASONABLE UNDER THE CIRCUMSTANCES TO DO SO, A TRUSTEE SHALL PROMPTLY RESPOND TO A BENEFICIARY'S REQUEST FOR INFORMATION RELATED TO THE ADMINISTRATION OF THE TRUST.

B. A TRUSTEE:

1. ON REQUEST OF A BENEFICIARY, SHALL PROMPTLY FURNISH TO THE BENEFICIARY A COPY OF THE PORTIONS OF THE TRUST INSTRUMENT NECESSARY TO DESCRIBE THE BENEFICIARY'S INTEREST.

2. WITHIN SIXTY DAYS AFTER ACCEPTING A TRUSTEESHIP, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE ACCEPTANCE AND OF THE TRUSTEE'S NAME, ADDRESS, AND TELEPHONE NUMBER.

3. WITHIN SIXTY DAYS AFTER THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE OF THE CREATION OF AN IRREVOCABLE TRUST OR THE DATE THE TRUSTEE ACQUIRES KNOWLEDGE THAT A FORMERLY REVOCABLE TRUST HAS BECOME IRREVOCABLE, WHETHER BY THE DEATH OF THE SETTLOR OR OTHERWISE, SHALL NOTIFY THE QUALIFIED BENEFICIARIES OF THE TRUST'S EXISTENCE, OF THE IDENTITY OF THE SETTLOR OR SETTLORS, OF THE TRUSTEE'S NAME, ADDRESS AND TELEPHONE NUMBER, OF THE RIGHT TO REQUEST A COPY OF THE RELEVANT PORTIONS OF THE TRUST INSTRUMENT AND OF THE RIGHT TO A TRUSTEE'S REPORT AS PROVIDED IN SUBSECTION C.

4. SHALL NOTIFY THE QUALIFIED BENEFICIARIES NOT LESS THAN THIRTY DAYS IN ADVANCE OF ANY CHANGE IN THE METHOD OR RATE OF THE TRUSTEE'S COMPENSATION.

C. A TRUSTEE SHALL SEND TO THE DISTRIBUTEES OR PERMISSIBLE

DISTRIBUTEES OF TRUST INCOME OR PRINCIPAL AND TO OTHER BENEFICIARIES WHO REQUEST IT, AT LEAST ANNUALLY AND AT THE TERMINATION OF THE TRUST, A REPORT OF THE TRUST PROPERTY, LIABILITIES, RECEIPTS AND DISBURSEMENTS, INCLUDING THE SOURCE AND AMOUNT OF THE TRUSTEE' S COMPENSATION, A LISTING OF THE TRUST ASSETS AND, IF FEASIBLE, THEIR RESPECTIVE MARKET VALUES. ON A VACANCY IN A TRUSTEESHIP, UNLESS A COTRUSTEE REMAINS IN OFFICE, A REPORT MUST BE SENT TO THE QUALIFIED BENEFICIARIES BY THE FORMER TRUSTEE. A PERSONAL REPRESENTATIVE, CONSERVATOR OR GUARDIAN MAY SEND THE QUALIFIED BENEFICIARIES A REPORT ON BEHALF OF A DECEASED OR INCAPACITATED TRUSTEE.

D. A BENEFICIARY MAY WAIVE THE RIGHT TO A TRUSTEE' S REPORT OR OTHER INFORMATION OTHERWISE REQUIRED TO BE FURNISHED UNDER THIS SECTION. A BENEFICIARY, WITH RESPECT TO FUTURE REPORTS AND OTHER INFORMATION, MAY WITHDRAW A WAIVER PREVIOUSLY GIVEN.

E. SUBSECTIONS B(2) AND B(3) OF THIS SECTION SHALL APPLY ONLY TO A TRUSTEE WHO ACCEPTS A TRUSTEESHIP ON OR AFTER JANUARY 1, 2009, TO AN IRREVOCABLE TRUST CREATED ON OR AFTER JANUARY 1, 2009, AND TO A REVOCABLE TRUST WHICH BECOMES IRREVOCABLE ON OR AFTER JANUARY 1, 2009.

14-11814. Discretionary powers; tax savings

A. NOTWITHSTANDING THE BREADTH OF DISCRETION GRANTED TO A TRUSTEE IN THE TERMS OF THE TRUST, INCLUDING THE USE OF TERMS SUCH AS ABSOLUTE, SOLE OR UNCONTROLLED, THE TRUSTEE SHALL EXERCISE A DISCRETIONARY POWER IN GOOD FAITH AS TO ONLY BENEFICIARIES OF THE TRUST AND CREDITORS OF THE TRUST, AND NO OTHER PERSONS, INCLUDING, WITHOUT LIMITATION, CREDITORS OF THE BENEFICIARIES, EXCEPT ONLY TO THE EXTENT THAT CREDITORS OF BENEFICIARIES ARE EXPRESSLY ENTITLED TO ATTACHMENT PURSUANT TO SEC 14-11503(B), OTHERWISE AND IN ACCORDANCE WITH THE TERMS AND PURPOSES OF THE TRUST AND THE INTERESTS OF THE BENEFICIARIES.

B. SUBJECT TO SUBSECTION D, AND UNLESS THE TERMS OF THE TRUST EXPRESSLY INDICATE THAT A RULE IN THIS SUBSECTION DOES NOT APPLY:

1. A PERSON OTHER THAN A SETTLOR WHO IS A BENEFICIARY AND TRUSTEE OF A TRUST THAT CONFERS ON THE TRUSTEE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS TO OR FOR THE TRUSTEE' S PERSONAL BENEFIT MAY EXERCISE THE POWER ONLY IN ACCORDANCE WITH AN ASCERTAINABLE STANDARD RELATING TO THE TRUSTEE' S INDIVIDUAL HEALTH, EDUCATION, SUPPORT OR MAINTENANCE WITHIN THE MEANING OF SECTION 2041(b)(1)(A) OR 2514(b)(1) OF THE INTERNAL REVENUE CODE; PROVIDED THAT THIS PARAGRAPH 1 SHALL NOT EXPAND THE POWER OR DUTY OF A TRUSTEE TO MAKE DISTRIBUTIONS. THIS PARAGRAPH SHALL NOT APPLY WITH RESPECT TO A POWER HELD IN AN INDIVIDUAL CAPACITY.

2. A TRUSTEE MAY NOT EXERCISE A POWER TO MAKE DISCRETIONARY DISTRIBUTIONS TO SATISFY A LEGAL OBLIGATION OF SUPPORT THAT THE TRUSTEE PERSONALLY OWES ANOTHER PERSON.

C. A POWER WHOSE EXERCISE IS LIMITED OR PROHIBITED BY SUBSECTION B MAY BE EXERCISED BY A MAJORITY OF THE REMAINING TRUSTEES WHOSE EXERCISE OF THE POWER IS NOT SO LIMITED OR PROHIBITED. IF THE POWER OF ALL TRUSTEES IS SO LIMITED OR PROHIBITED, THE COURT MAY APPOINT A SPECIAL FIDUCIARY WITH AUTHORITY TO EXERCISE THE POWER.

D. SUBSECTION B DOES NOT APPLY TO:

1. A POWER HELD BY THE SETTLOR' S SPOUSE WHO IS THE TRUSTEE OF A TRUST FOR WHICH A MARITAL DEDUCTION, AS DEFINED IN SECTION 2056(b)(5) OR 2523(e) OF THE INTERNAL REVENUE CODE, WAS PREVIOUSLY ALLOWED.

2. ANY TRUST DURING ANY PERIOD THAT THE TRUST MAY BE REVOKED OR AMENDED BY ITS SETTLOR.

3. A TRUST IF CONTRIBUTIONS TO THE TRUST QUALIFY FOR THE ANNUAL EXCLUSION UNDER SECTION 2503(c) OF THE INTERNAL REVENUE CODE.

14-11815. General powers of trustee

A. A TRUSTEE, WITHOUT AUTHORIZATION BY THE COURT, MAY EXERCISE:

1. POWERS CONFERRED BY THE TERMS OF THE TRUST.

2. EXCEPT AS LIMITED BY THE TERMS OF THE TRUST:

(A) ALL POWERS OVER THE TRUST PROPERTY THAT AN UNMARRIED COMPETENT OWNER HAS OVER INDIVIDUALLY OWNED PROPERTY.

(B) ANY OTHER POWERS APPROPRIATE TO ACHIEVE THE PROPER INVESTMENT, MANAGEMENT AND DISTRIBUTION OF THE TRUST PROPERTY.

(C) ANY OTHER POWERS CONFERRED BY THIS CHAPTER.

B. THE EXERCISE OF A POWER BY A PERSON ACTING IN A FIDUCIARY CAPICITY IS SUBJECT TO THE FIDUCIARY DUTIES PRESCRIBED BY THIS ARTICLE.

14-11816. Specific powers of trustee

WITHOUT LIMITING THE AUTHORITY CONFERRED BY SECTION 14-11815, A TRUSTEE MAY:

1. COLLECT TRUST PROPERTY AND ACCEPT OR REJECT ADDITIONS TO THE TRUST PROPERTY FROM A SETTLOR OR ANY OTHER PERSON.

2. ACQUIRE OR SELL PROPERTY, FOR CASH OR ON CREDIT, AT PUBLIC OR PRIVATE SALE.

3. EXCHANGE, PARTITION OR OTHERWISE CHANGE THE CHARACTER OF TRUST PROPERTY.

4. DEPOSIT TRUST MONEY IN AN ACCOUNT IN A REGULATED FINANCIAL SERVICE INSTITUTION.

5. BORROW MONEY, WITH OR WITHOUT SECURITY, AND MORTGAGE OR PLEDGE TRUST PROPERTY FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST.

6. WITH RESPECT TO AN INTEREST IN A PROPRIETORSHIP, PARTNERSHIP, LIMITED LIABILITY COMPANY, BUSINESS TRUST, CORPORATION OR OTHER FORM OF BUSINESS OR ENTERPRISE, CONTINUE THE BUSINESS OR OTHER ENTERPRISE AND TAKE ANY ACTION THAT MAY BE TAKEN BY SHAREHOLDERS, MEMBERS OR PROPERTY OWNERS, INCLUDING MERGING, DISSOLVING OR OTHERWISE CHANGING THE FORM OF BUSINESS ORGANIZATION OR CONTRIBUTING ADDITIONAL CAPITAL.

7. WITH RESPECT TO STOCKS OR OTHER SECURITIES, EXERCISE THE RIGHTS OF AN ABSOLUTE OWNER, INCLUDING THE RIGHT TO:

(A) VOTE, GIVE PROXIES TO VOTE, WITH OR WITHOUT POWER OF SUBSTITUTION, OR ENTER INTO OR CONTINUE A VOTING TRUST AGREEMENT.

(B) HOLD A SECURITY IN THE NAME OF A NOMINEE OR IN OTHER FORM WITHOUT DISCLOSURE OF THE TRUST SO THAT TITLE MAY PASS BY DELIVERY.

(C) PAY CALLS, ASSESSMENTS AND OTHER SUMS CHARGEABLE OR ACCRUING AGAINST THE SECURITIES AND SELL OR EXERCISE STOCK SUBSCRIPTION OR CONVERSION RIGHTS.

(D) DEPOSIT THE SECURITIES WITH A DEPOSITARY OR OTHER REGULATED FINANCIAL SERVICE INSTITUTION.

8. WITH RESPECT TO AN INTEREST IN REAL PROPERTY, CONSTRUCT OR MAKE ORDINARY OR EXTRAORDINARY REPAIRS TO, ALTERATIONS TO OR IMPROVEMENTS IN BUILDINGS OR OTHER STRUCTURES, DEMOLISH IMPROVEMENTS, RAZE EXISTING OR ERECT NEW PARTY WALLS OR BUILDINGS, SUBDIVIDE OR DEVELOP LAND, DEDICATE LAND TO PUBLIC USE OR GRANT PUBLIC OR PRIVATE EASEMENTS AND MAKE OR VACATE PLATS AND ADJUST BOUNDARIES.

9. ENTER INTO A LEASE FOR ANY PURPOSE AS LESSOR OR LESSEE, INCLUDING A LEASE OR OTHER ARRANGEMENT FOR EXPLORATION AND REMOVAL OF NATURAL RESOURCES, WITH OR WITHOUT THE OPTION TO PURCHASE OR RENEW, FOR A PERIOD WITHIN OR EXTENDING BEYOND THE DURATION OF THE TRUST.

10. GRANT AN OPTION INVOLVING A SALE, LEASE OR OTHER DISPOSITION OF TRUST PROPERTY OR ACQUIRE AN OPTION FOR THE ACQUISITION OF PROPERTY, INCLUDING AN OPTION EXERCISABLE BEYOND THE DURATION OF THE TRUST, AND EXERCISE AN OPTION SO ACQUIRED.

11. INSURE THE PROPERTY OF THE TRUST AGAINST DAMAGE OR LOSS AND INSURE THE TRUSTEE, THE TRUSTEE' S AGENTS AND BENEFICIARIES AGAINST LIABILITY ARISING FROM THE ADMINISTRATION OF THE TRUST.

12. ABANDON OR DECLINE TO ADMINISTER PROPERTY OF NO VALUE OR OF INSUFFICIENT VALUE TO JUSTIFY ITS COLLECTION OR CONTINUED ADMINISTRATION.

13. WITH RESPECT TO POSSIBLE LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW:

(A) INSPECT OR INVESTIGATE PROPERTY THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD, OR PROPERTY OWNED OR OPERATED BY AN ORGANIZATION IN WHICH THE TRUSTEE HOLDS OR HAS BEEN ASKED TO HOLD AN INTEREST, FOR THE PURPOSE OF DETERMINING THE APPLICATION OF ENVIRONMENTAL LAW WITH RESPECT TO THE PROPERTY.

(B) TAKE ACTION TO PREVENT, ABATE OR OTHERWISE REMEDY ANY ACTUAL OR POTENTIAL VIOLATION OF ANY ENVIRONMENTAL LAW AFFECTING PROPERTY HELD DIRECTLY OR INDIRECTLY BY THE TRUSTEE, WHETHER TAKEN BEFORE OR AFTER THE ASSERTION OF A CLAIM OR THE INITIATION OF GOVERNMENTAL ENFORCEMENT.

(C) DECLINE TO ACCEPT PROPERTY INTO TRUST OR DISCLAIM ANY POWER WITH

RESPECT TO PROPERTY THAT IS OR MAY BE BURDENED WITH LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW.

(D) COMPROMISE CLAIMS AGAINST THE TRUST THAT MAY BE ASSERTED FOR AN ALLEGED VIOLATION OF ENVIRONMENTAL LAW.

(E) PAY THE EXPENSE OF ANY INSPECTION, REVIEW, ABATEMENT OR REMEDIAL ACTION TO COMPLY WITH ENVIRONMENTAL LAW.

14. PAY OR CONTEST ANY CLAIM, SETTLE A CLAIM BY OR AGAINST THE TRUST AND RELEASE IN WHOLE OR IN PART A CLAIM BELONGING TO THE TRUST.

15. PAY TAXES, ASSESSMENTS, COMPENSATION OF THE TRUSTEE AND OF EMPLOYEES AND AGENTS OF THE TRUST AND OTHER EXPENSES INCURRED IN THE ADMINISTRATION OF THE TRUST.

16. EXERCISE ELECTIONS WITH RESPECT TO FEDERAL, STATE AND LOCAL TAXES.

17. SELECT A MODE OF PAYMENT UNDER ANY EMPLOYEE BENEFIT OR RETIREMENT PLAN, ANNUITY OR LIFE INSURANCE PAYABLE TO THE TRUSTEE, EXERCISE RIGHTS THEREUNDER, INCLUDING EXERCISE OF THE RIGHT TO INDEMNIFICATION FOR EXPENSES AND AGAINST LIABILITIES, AND TAKE APPROPRIATE ACTION TO COLLECT THE PROCEEDS.

18. MAKE LOANS OUT OF TRUST PROPERTY, INCLUDING LOANS TO A BENEFICIARY ON TERMS AND CONDITIONS THE TRUSTEE CONSIDERS TO BE FAIR AND REASONABLE UNDER THE CIRCUMSTANCES, AND THE TRUSTEE HAS A LIEN ON FUTURE DISTRIBUTIONS FOR REPAYMENT OF THOSE LOANS.

19. PLEDGE TRUST PROPERTY TO GUARANTEE LOANS MADE BY OTHERS TO THE BENEFICIARY.

20. APPOINT A TRUSTEE TO ACT IN ANOTHER JURISDICTION WITH RESPECT TO TRUST PROPERTY LOCATED IN THE OTHER JURISDICTION, CONFER ON THE

APPOINTED TRUSTEE ALL OF THE POWERS AND DUTIES OF THE APPOINTING TRUSTEE, REQUIRE THAT THE APPOINTED TRUSTEE FURNISH SECURITY AND REMOVE ANY TRUSTEE SO APPOINTED.

21. PAY AN AMOUNT DISTRIBUTABLE TO A BENEFICIARY WHO IS UNDER A LEGAL DISABILITY OR WHO THE TRUSTEE REASONABLY BELIEVES IS INCAPACITATED, BY PAYING IT DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S BENEFIT, OR BY EITHER:

(A) PAYING IT TO THE BENEFICIARY'S CONSERVATOR OR, IF THE BENEFICIARY DOES NOT HAVE A CONSERVATOR, THE BENEFICIARY'S GUARDIAN.

(B) PAYING IT TO THE BENEFICIARY'S CUSTODIAN UNDER THE UNIFORM TRANSFERS TO MINORS ACT OR CUSTODIAL TRUSTEE UNDER THE UNIFORM CUSTODIAL TRUST ACT, AND, FOR THAT PURPOSE, CREATING A CUSTODIANSHIP OR CUSTODIAL TRUST.

(C) IF THE TRUSTEE DOES NOT KNOW OF A CONSERVATOR, GUARDIAN, CUSTODIAN OR CUSTODIAL TRUSTEE, PAYING IT TO AN ADULT RELATIVE OR OTHER PERSON HAVING LEGAL OR PHYSICAL CARE OR CUSTODY OF THE BENEFICIARY TO BE EXPENDED ON THE BENEFICIARY'S BEHALF.

(D) MANAGING IT AS A SEPARATE FUND ON THE BENEFICIARY'S BEHALF, SUBJECT TO THE BENEFICIARY'S CONTINUING RIGHT TO WITHDRAW THE DISTRIBUTION.

22. ON DISTRIBUTION OF TRUST PROPERTY OR THE DIVISION OR TERMINATION OF A TRUST, MAKE DISTRIBUTIONS IN DIVIDED OR UNDIVIDED INTERESTS, ALLOCATE PARTICULAR ASSETS, INCLUDING COMMUNITY PROPERTY, IN PROPORTIONATE OR DISPROPORTIONATE SHARES, VALUE THE TRUST PROPERTY FOR THOSE PURPOSES AND ADJUST FOR RESULTING DIFFERENCES IN VALUATION. IN MAKING A DIVISION OR DISTRIBUTION OF COMMUNITY PROPERTY HELD IN TRUST, THE TRUSTEE MAY CONSIDER COMMUNITY PROPERTY HELD OUTSIDE THE TRUST SO THAT THE DIVISION OF COMMUNITY PROPERTY HELD IN THE TRUST AND OUTSIDE OF THE TRUST IS MADE BASED ON EQUAL VALUE BUT NOT NECESSARILY PROPORTIONATELY.

23. RESOLVE A DISPUTE CONCERNING THE INTERPRETATION OF THE TRUST OR ITS ADMINISTRATION BY MEDIATION, ARBITRATION OR OTHER PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION.

24. PROSECUTE OR DEFEND AN ACTION, CLAIM OR JUDICIAL PROCEEDING IN ANY JURISDICTION TO PROTECT TRUST PROPERTY AND THE TRUSTEE IN THE PERFORMANCE OF THE TRUSTEE'S DUTIES.

25. SIGN AND DELIVER CONTRACTS AND OTHER INSTRUMENTS THAT ARE USEFUL TO ACHIEVE OR FACILITATE THE EXERCISE OF THE TRUSTEE' S POWERS.

26. ON TERMINATION OF THE TRUST, EXERCISE THE POWERS APPROPRIATE TO WIND UP THE ADMINISTRATION OF THE TRUST AND DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT.

14-11817. Distribution on termination

A. ON TERMINATION OR PARTIAL TERMINATION OF A TRUST, THE TRUSTEE MAY SEND TO THE BENEFICIARIES A PROPOSAL FOR DISTRIBUTION. THE RIGHT OF ANY BENEFICIARY TO OBJECT TO THE PROPOSED DISTRIBUTION TERMINATES IF THE BENEFICIARY DOES NOT NOTIFY THE TRUSTEE OF AN OBJECTION WITHIN THIRTY DAYS AFTER THE PROPOSAL WAS SENT BUT ONLY IF THE PROPOSAL INFORMED THE BENEFICIARY OF THE RIGHT TO OBJECT AND OF THE TIME ALLOWED FOR OBJECTION.

B. ON THE OCCURRENCE OF AN EVENT TERMINATING OR PARTIALLY TERMINATING A TRUST, THE TRUSTEE, WITHIN A REASONABLE TIME, SHALL DISTRIBUTE THE TRUST PROPERTY TO THE PERSONS ENTITLED TO IT SUBJECT TO THE RIGHT OF THE TRUSTEE TO RETAIN A REASONABLE RESERVE FOR THE PAYMENT OF DEBTS, EXPENSES AND TAXES.

C. A RELEASE BY A BENEFICIARY OF A TRUSTEE FROM LIABILITY FOR BREACH OF TRUST IS INVALID TO THE EXTENT:

1. IT WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE.

2. THE BENEFICIARY, AT THE TIME OF THE RELEASE, DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

14-11818. Trust protector

A. A TRUST INSTRUMENT MAY PROVIDE FOR THE APPOINTMENT OF A TRUST PROTECTOR. FOR PURPOSES OF THIS SECTION A PERSON DESIGNATED WITH A STATUS OR TITLE, OTHER THAN THAT OF A BENEFICIARY, WITH POWERS SIMILAR TO THOSE SPECIFIED IN SUBSECTION B BELOW IS A TRUST PROTECTOR, EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN THE TRUST INSTRUMENT.

B. A TRUST PROTECTOR APPOINTED BY THE TRUST INSTRUMENT HAS THE POWERS, DELEGATIONS, AND FUNCTIONS CONFERRED ON THE TRUST PROTECTOR BY THE TRUST INSTRUMENT, WHICH MAY INCLUDE, WITHOUT LIMITATION, THE FOLLOWING POWERS:

1. REMOVE AND APPOINT A TRUSTEE;
2. MODIFY OR AMEND THE TRUST INSTRUMENT FOR ANY VALID PURPOSE OR REASON, INCLUDING, WITHOUT LIMITATION, TO ACHIEVE FAVORABLE TAX STATUS OR TO RESPOND TO CHANGES IN 26 U.S.C. (INTERNAL REVENUE CODE) OR STATE LAW, OR THE RULINGS AND REGULATIONS UNDER THOSE LAWS;
3. INCREASE, DECREASE, MODIFY, OR RESTRICT THE INTERESTS OF ANY BENEFICIARY OF THE TRUST;
4. MODIFY THE TERMS OF A POWER OF APPOINTMENT GRANTED BY THE TRUST;
AND
5. CHANGE THE APPLICABLE LAW GOVERNING THE TRUST.

C. EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY PROVIDED IN THE TRUST INSTRUMENT, A MODIFICATION AUTHORIZED UNDER SUBSECTION B OF THIS SECTION MAY NOT:

1. GRANT A BENEFICIAL INTEREST TO AN INDIVIDUAL OR A CLASS OF INDIVIDUALS UNLESS THE INDIVIDUAL OR CLASS OF INDIVIDUALS IS SPECIFICALLY PROVIDED FOR UNDER THE TRUST INSTRUMENT;

2. MODIFY THE BENEFICIAL INTEREST OF A GOVERNMENTAL UNIT IN A MEDICAID QUALIFYING TRUST.

D. ANY PROVISION IN TITLE 14 TO THE CONTRARY, BUT EXCEPT TO THE EXTENT OTHERWISE PROVIDED BY THE TRUST INSTRUMENT, A TRUST PROTECTOR IS NOT A TRUSTEE OR FIDUCIARY AND IS NOT LIABLE OR ACCOUNTABLE AS A TRUSTEE OR FIDUCIARY BECAUSE OF AN ACT OR OMISSION OF THE TRUST PROTECTOR WHEN PERFORMING OR FAILING TO PERFORM THE DUTIES OF A TRUST PROTECTOR UNDER THE TRUST INSTRUMENT. THIS SUBSECTION SHALL NOT APPLY TO TRUST THAT BECOME IRREVOCABLE BEFORE THE EFFECTIVE DATE OF THE ARIZONA TRUST CODE.

ARTICLE 9. PRUDENT INVESTOR RULE

14-11901. Prudent investor rule

A. EXCEPT AS PROVIDED IN SUBSECTION B, A TRUSTEE WHO INVESTS AND MANAGES TRUST ASSETS OWES A DUTY TO THE BENEFICIARIES OF THE TRUST TO COMPLY WITH THE PRUDENT INVESTOR RULE REQUIREMENTS OF THIS ARTICLE.

B. THE PRUDENT INVESTOR RULE IS A DEFAULT RULE AND MAY BE EXPANDED, RESTRICTED, ELIMINATED OR OTHERWISE ALTERED BY THE PROVISIONS OF A TRUST.

C. A TRUSTEE IS NOT LIABLE TO A BENEFICIARY TO THE EXTENT THAT THE TRUSTEE ACTED IN REASONABLE RELIANCE ON THE PROVISIONS OF THE TRUST.

14-11902. Standard of care; portfolio strategy; risk and return objectives

A. A TRUSTEE SHALL INVEST AND MANAGE TRUST ASSETS AS A PRUDENT INVESTOR WOULD BY CONSIDERING THE PURPOSES, TERMS, DISTRIBUTION REQUIREMENTS AND OTHER CIRCUMSTANCES OF THE TRUST. IN SATISFYING THIS STANDARD THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL AND CAUTION.

B. A TRUSTEE'S INVESTMENT AND MANAGEMENT DECISIONS RESPECTING INDIVIDUAL ASSETS SHALL NOT BE EVALUATED IN ISOLATION BUT IN THE CONTEXT OF THE TRUST PORTFOLIO AS A WHOLE AND AS A PART OF AN OVERALL INVESTMENT STRATEGY HAVING RISK AND RETURN OBJECTIVES REASONABLY SUITED TO THE TRUST.

C. AMONG CIRCUMSTANCES THAT A TRUSTEE SHALL CONSIDER IN INVESTING AND MANAGING TRUST ASSETS ARE ANY OF THE FOLLOWING THAT ARE RELEVANT TO THE TRUST OR ITS BENEFICIARIES:

1. GENERAL ECONOMIC CONDITIONS.

2. THE POSSIBLE EFFECT OF INFLATION OR DEFLATION.

3. THE EXPECTED TAX CONSEQUENCES OF INVESTMENT DECISIONS OR STRATEGIES.

4. THE ROLE THAT EACH INVESTMENT OR COURSE OF ACTION PLAYS WITHIN THE OVERALL TRUST PORTFOLIO THAT MAY INCLUDE FINANCIAL ASSETS, INTERESTS IN CLOSELY HELD ENTERPRISES, SPECIALTY ASSETS, ALTERNATIVE INVESTMENTS, TANGIBLE AND INTANGIBLE PERSONAL PROPERTY AND REAL PROPERTY.

5. THE EXPECTED TOTAL RETURN FROM INCOME AND THE APPRECIATION OF CAPITAL.

6. OTHER RESOURCES OF THE BENEFICIARIES.

7. NEEDS FOR LIQUIDITY, REGULARITY OF INCOME AND PRESERVATION OR APPRECIATION OF CAPITAL.

8. AN ASSET'S SPECIAL RELATIONSHIP OR SPECIAL VALUE, IF ANY, TO THE PURPOSES OF THE TRUST OR TO ONE OR MORE OF THE BENEFICIARIES.

D. A TRUSTEE SHALL MAKE A REASONABLE EFFORT TO VERIFY FACTS RELEVANT TO THE INVESTMENT AND MANAGEMENT OF TRUST ASSETS.

E. A TRUSTEE MAY INVEST IN ANY KIND OF PROPERTY OR TYPE OF INVESTMENT CONSISTENT WITH THE STANDARDS OF THIS ARTICLE.

14-11903. Diversification

A TRUSTEE SHALL DIVERSIFY THE INVESTMENTS OF THE TRUST UNLESS THE TRUSTEE REASONABLY DETERMINES THAT, BECAUSE OF SPECIAL CIRCUMSTANCES, THE PURPOSES OF THE TRUST ARE BETTER SERVED WITHOUT DIVERSIFYING.

14-11904. Duties at inception of trusteeship

WITHIN A REASONABLE TIME AFTER ACCEPTING A TRUSTEESHIP OR RECEIVING TRUST ASSETS, A TRUSTEE SHALL REVIEW THE TRUST ASSETS AND MAKE AND IMPLEMENT DECISIONS CONCERNING THE RETENTION AND DISPOSITION OF ASSETS IN ORDER TO BRING THE TRUST PORTFOLIO INTO COMPLIANCE WITH THE PURPOSES, TERMS, DISTRIBUTION REQUIREMENTS AND OTHER CIRCUMSTANCES OF THE TRUST AND WITH THE REQUIREMENTS OF THIS ARTICLE.

14-11905. Reviewing compliance

COMPLIANCE WITH THIS ARTICLE IS DETERMINED IN LIGHT OF THE FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF A TRUSTEE'S DECISION OR ACTION AND NOT BY HINDSIGHT.

14-11906. Delegation

A. A FIDUCIARY MAY DELEGATE INVESTMENT AND MANAGEMENT FUNCTIONS THAT A PRUDENT INVESTOR OF COMPARABLE SKILLS MIGHT

DELEGATE UNDER THE CIRCUMSTANCES.

B. A FIDUCIARY SHALL NOT BE RESPONSIBLE FOR THE INVESTMENT DECISIONS OR ACTIONS OF THE INVESTMENT AGENT TO WHICH THE INVESTMENT FUNCTIONS ARE DELEGATED IF THE FIDUCIARY EXERCISES REASONABLE CARE, SKILL AND CAUTION IN SELECTING THE INVESTMENT AGENT, IN ESTABLISHING THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION AND IN REVIEWING PERIODICALLY THE INVESTMENT AGENT'S ACTIONS IN ORDER TO MONITOR THE INVESTMENT AGENT'S PERFORMANCE AND COMPLIANCE WITH THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION.

C. THE INVESTMENT AGENT SHALL COMPLY WITH THE SCOPE AND TERMS OF THE DELEGATION AND SHALL EXERCISE THE DELEGATED FUNCTION WITH REASONABLE CARE, SKILL AND CAUTION, AND SHALL BE LIABLE TO THE TRUST FOR FAILURE TO DO SO. AN INVESTMENT AGENT WHO REPRESENTS THAT HE HAS SPECIAL INVESTMENT SKILLS SHALL EXERCISE THOSE SKILLS.

D. AN INVESTMENT AGENT WHO ACCEPTS THE DELEGATION OF A FIDUCIARY'S FUNCTION FROM A FIDUCIARY WHO IS SUBJECT TO THE JURISDICTION OF A COURT OF THIS COMMONWEALTH SHALL BE DEEMED TO HAVE SUBMITTED TO THE JURISDICTION OF THAT COURT EVEN IF THE DELEGATION AGREEMENT PROVIDES FOR A DIFFERENT JURISDICTION OR VENUE.

E. A CO-FIDUCIARY MAY DELEGATE INVESTMENT AND MANAGEMENT FUNCTIONS TO ANOTHER COFIDUCIARY IF THE DELEGATING CO-FIDUCIARY REASONABLY BELIEVES THAT THE OTHER CO-FIDUCIARY HAS GREATER INVESTMENT SKILLS THAN THE DELEGATING CO-FIDUCIARY WITH RESPECT TO THOSE FUNCTIONS. THE DELEGATING CO-FIDUCIARY SHALL NOT BE RESPONSIBLE FOR THE INVESTMENT DECISIONS OR ACTIONS OF THE OTHER CO-FIDUCIARY TO WHICH THE INVESTMENT FUNCTIONS ARE DELEGATED IF THE DELEGATING CO-FIDUCIARY EXERCISES REASONABLE CARE, SKILL AND CAUTION IN ESTABLISHING THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION AND IN REVIEWING PERIODICALLY THE OTHER COFIDUCIARY'S ACTIONS IN ORDER TO MONITOR THE CO-FIDUCIARY'S PERFORMANCE AND COMPLIANCE WITH THE SCOPE AND SPECIFIC TERMS OF THE DELEGATION.

F. INVESTMENT IN A MUTUAL FUND IS NOT A DELEGATION OF INVESTMENT FUNCTION, AND NEITHER THE MUTUAL FUND NOR ITS ADVISOR IS AN INVESTMENT AGENT.

14-11907. Life Insurance

A TRUSTEE MAY ACQUIRE OR RETAIN A CONTRACT OF LIFE INSURANCE UPON THE LIFE OF THE SETTLOR OR THE SETTLOR'S SPOUSE, OR BOTH, WITHOUT LIABILITY FOR A LOSS ARISING FROM THE TRUSTEE'S FAILURE TO:

1. DETERMINE WHETHER THE CONTRACT IS OR REMAINS A PROPER INVESTMENT;
2. INVESTIGATE THE FINANCIAL STRENGTH OF THE LIFE INSURANCE COMPANY;
3. EXERCISE NONFORFEITURE PROVISIONS AVAILABLE UNDER THE CONTRACT; OR
4. DIVERSIFY THE CONTRACT.

14-11908. Prudent investor rule; language to invoke standard

THE FOLLOWING TERMS OR COMPARABLE LANGUAGE IN THE PROVISIONS OF A TRUST, UNLESS OTHERWISE LIMITED OR MODIFIED, AUTHORIZES ANY INVESTMENT OR STRATEGY PERMITTED UNDER THIS ARTICLE:

1. INVESTMENTS PERMISSIBLE BY LAW FOR INVESTMENT OF TRUST FUNDS.
2. LEGAL INVESTMENTS.
3. AUTHORIZED INVESTMENTS.
4. USING THE JUDGMENT AND CARE UNDER THE CIRCUMSTANCES THEN PREVAILING THAT PERSONS OF PRUDENCE, DISCRETION AND INTELLIGENCE EXERCISE IN THE MANAGEMENT OF THEIR OWN AFFAIRS, NOT IN REGARD TO SPECULATION BUT IN REGARD TO THE PERMANENT DISPOSITION OF THEIR FUNDS, CONSIDERING THE PROBABLE INCOME AS WELL AS THE PROBABLE SAFETY OF THEIR CAPITAL.
5. PRUDENT MAN RULE.
6. PRUDENT TRUSTEE RULE.

7. PRUDENT PERSON RULE.

8. PRUDENT INVESTOR RULE.

14-11909. Application to existing trusts

A. THIS ARTICLE APPLIES TO TRUSTS EXISTING ON AND CREATED AFTER JULY 20, 1996.

B. AS APPLIED TO TRUSTS EXISTING ON JULY 20, 1996, THIS ARTICLE GOVERNS ONLY DECISIONS OR ACTIONS OCCURRING AFTER THAT DATE.

ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEES

14-12001. Remedies for breach of trust

A. A VIOLATION BY A TRUSTEE OF A DUTY THE TRUSTEE OWES TO A BENEFICIARY IS A BREACH OF TRUST.

B. EXCEPT AS PROVIDED IN SECTION 14-7404, TO REMEDY A BREACH OF TRUST THAT HAS OCCURRED OR MAY OCCUR, THE COURT MAY:

1. COMPEL THE TRUSTEE TO PERFORM THE TRUSTEE'S DUTIES.

2. ENJOIN THE TRUSTEE FROM COMMITTING A BREACH OF TRUST.

3. COMPEL THE TRUSTEE TO REDRESS A BREACH OF TRUST BY PAYING MONEY, RESTORING PROPERTY OR OTHER MEANS.

4. ORDER A TRUSTEE TO ACCOUNT.

5. APPOINT A SPECIAL FIDUCIARY TO TAKE POSSESSION OF THE TRUST PROPERTY AND ADMINISTER THE TRUST.

6. SUSPEND THE TRUSTEE.

7. REMOVE THE TRUSTEE AS PROVIDED IN SECTION 14-11706.

8. REDUCE OR DENY COMPENSATION TO THE TRUSTEE.

9. SUBJECT TO SECTION 14-11706, VOID AN ACT OF THE TRUSTEE, IMPOSE A LIEN OR A CONSTRUCTIVE TRUST ON TRUST PROPERTY OR TRACE TRUST PROPERTY WRONGFULLY DISPOSED OF AND RECOVER THE PROPERTY OR ITS PROCEEDS.

10. ORDER ANY OTHER APPROPRIATE RELIEF.

14-12002. Damages for breach of trust

A. EXCEPT AS PROVIDED IN SECTION 14-7404, A TRUSTEE WHO COMMITS A BREACH OF TRUST IS LIABLE TO THE BENEFICIARIES AFFECTED FOR THE GREATER OF EITHER:

1. THE AMOUNT REQUIRED TO RESTORE THE VALUE OF THE TRUST PROPERTY AND TRUST DISTRIBUTIONS TO WHAT THEY WOULD HAVE BEEN HAD THE BREACH NOT OCCURRED.

2. THE PROFIT THE TRUSTEE MADE BY REASON OF THE BREACH.

B. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF MORE THAN ONE TRUSTEE IS LIABLE TO THE BENEFICIARIES FOR A BREACH OF TRUST, A TRUSTEE IS ENTITLED TO CONTRIBUTION FROM THE OTHER TRUSTEE OR TRUSTEES. A TRUSTEE IS NOT ENTITLED TO CONTRIBUTION IF THE TRUSTEE WAS SUBSTANTIALLY MORE AT FAULT THAN ANOTHER TRUSTEE OR IF THE

TRUSTEE COMMITTED THE BREACH OF TRUST IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES. A TRUSTEE WHO RECEIVED A BENEFIT FROM THE BREACH OF TRUST IS NOT ENTITLED TO CONTRIBUTION FROM ANOTHER TRUSTEE TO THE EXTENT OF THE BENEFIT RECEIVED.

14-12003. Damages in absence of breach

A. EXCEPT AS PROVIDED IN SECTION 14-7404, A TRUSTEE IS ACCOUNTABLE TO AN AFFECTED BENEFICIARY FOR ANY PROFIT MADE BY THE TRUSTEE ARISING FROM THE ADMINISTRATION OF THE TRUST, EVEN ABSENT A BREACH OF TRUST.

B. ABSENT A BREACH OF TRUST, A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR A LOSS OR DEPRECIATION IN THE VALUE OF TRUST PROPERTY OR FOR NOT HAVING MADE A PROFIT.

14-12004. Attorney fees and costs

A TRUSTEE OR PERSON NOMINATED AS A TRUSTEE IS ENTITLED TO REIMBURSEMENT FROM THE TRUST FOR HIS REASONABLE FEES, EXPENSES, AND DISBURSEMENTS, INCLUDING ATTORNEYS' FEES AND COSTS, ARISING OUT OF AND RELATING TO THE GOOD FAITH DEFENSE OR PROSECUTION OF A JUDICIAL OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING INVOLVING THE ADMINISTRATION OF THE TRUST REGARDLESS OF WHETHER SUCH DEFENSE OR PROSECUTION IS SUCCESSFUL. ADDITIONALLY, AS JUSTICE AND EQUITY REQUIRE, THE COURT OR ARBITRATOR MAY ORDER THAT A PARTY'S REASONABLE FEES, EXPENSES, AND DISBURSEMENTS, INCLUDING ATTORNEYS' FEES AND COSTS, ARISING OUT OF OR RELATING TO THE GOOD FAITH DEFENSE OR PROSECUTION OF A JUDICIAL OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING INVOLVING THE ADMINISTRATION OF A TRUST, REGARDLESS OF WHETHER SUCH DEFENSE OR PROSECUTION IS SUCCESSFUL, BE PAID BY ANY OTHER PARTY OR THE TRUST THAT IS THE SUBJECT OF THE JUDICIAL PROCEEDING.

14-12005. Limitation of action against trustee

A. A BENEFICIARY MAY NOT COMMENCE A PROCEEDING AGAINST A TRUSTEE

FOR BREACH OF TRUST MORE THAN ONE YEAR AFTER THE DATE THE BENEFICIARY OR A REPRESENTATIVE OF THE BENEFICIARY WAS SENT A REPORT THAT ADEQUATELY DISCLOSED THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST AND INFORMED THE BENEFICIARY OF THE TIME ALLOWED FOR COMMENCING A PROCEEDING.

B. A REPORT ADEQUATELY DISCLOSES THE EXISTENCE OF A POTENTIAL CLAIM FOR BREACH OF TRUST IF IT PROVIDES SUFFICIENT INFORMATION SO THAT THE BENEFICIARY OR REPRESENTATIVE KNOWS OF THE POTENTIAL CLAIM OR SHOULD HAVE INQUIRED INTO ITS EXISTENCE.

C. IF SUBSECTION A DOES NOT APPLY, A JUDICIAL PROCEEDING BY A BENEFICIARY AGAINST A TRUSTEE FOR BREACH OF TRUST MUST BE COMMENCED WITHIN TWO YEARS AFTER THE FIRST TO OCCUR OF:

1. THE REMOVAL, RESIGNATION OR DEATH OF THE TRUSTEE.
2. THE TERMINATION OF THE BENEFICIARY'S INTEREST IN THE TRUST.
3. THE TERMINATION OF THE TRUST.

14-12006. Reliance on trust instrument

A TRUSTEE WHO ACTS IN REASONABLE RELIANCE ON THE TERMS OF THE TRUST AS EXPRESSED IN THE TRUST INSTRUMENT IS NOT LIABLE TO A BENEFICIARY FOR A BREACH OF TRUST TO THE EXTENT THE BREACH RESULTED FROM THE RELIANCE.

14-12007. Event affecting administration or distribution

IF THE HAPPENING OF AN EVENT, INCLUDING MARRIAGE, DIVORCE, PERFORMANCE OF EDUCATIONAL REQUIREMENTS OR DEATH, AFFECTS THE ADMINISTRATION OR DISTRIBUTION OF A TRUST, A TRUSTEE WHO HAS EXERCISED REASONABLE CARE TO ASCERTAIN THE HAPPENING OF THE EVENT IS NOT LIABLE FOR A LOSS RESULTING FROM THE TRUSTEE'S LACK OF

KNOWLEDGE.

14-12008. Exculpation of trustee

A. A TERM OF A TRUST RELIEVING A TRUSTEE OF LIABILITY FOR BREACH OF TRUST IS UNENFORCEABLE TO THE EXTENT THAT IT EITHER:

1. RELIEVES THE TRUSTEE OF LIABILITY FOR BREACH OF TRUST COMMITTED IN BAD FAITH OR WITH RECKLESS INDIFFERENCE TO THE PURPOSES OF THE TRUST OR THE INTERESTS OF THE BENEFICIARIES.

2. WAS INSERTED AS THE RESULT OF AN ABUSE BY THE TRUSTEE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE SETTLOR.

B. AN EXCULPATORY TERM DRAFTED OR CAUSED TO BE DRAFTED BY THE TRUSTEE IS INVALID AS AN ABUSE OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP UNLESS THE TRUSTEE PROVES THAT THE EXCULPATORY TERM IS FAIR UNDER THE CIRCUMSTANCES AND THAT ITS EXISTENCE AND CONTENTS WERE ADEQUATELY COMMUNICATED TO THE SETTLOR.

C. SECTION B SHALL NOT APPLY TO IRREVOCABLE TRUSTS CREATED PRIOR TO THE EFFECTIVE DATE OF THIS CHAPTER AND TO REVOCABLE TRUSTS CREATED PRIOR TO THE EFFECTIVE DATE OF THIS CHAPTER THAT HAVE NOT BEEN AMENDED ON OR AFTER THE EFFECTIVE DATE OF THIS CHAPTER.

14-12009. Beneficiary's consent, release or ratification

A TRUSTEE IS NOT LIABLE TO A BENEFICIARY FOR BREACH OF TRUST IF THE BENEFICIARY CONSENTED TO THE CONDUCT CONSTITUTING THE BREACH, RELEASED THE TRUSTEE FROM LIABILITY FOR THE BREACH OR RATIFIED THE TRANSACTION CONSTITUTING THE BREACH, UNLESS EITHER:

1. THE CONSENT, RELEASE OR RATIFICATION OF THE BENEFICIARY WAS INDUCED BY IMPROPER CONDUCT OF THE TRUSTEE.

2. AT THE TIME OF THE CONSENT, RELEASE OR RATIFICATION, THE BENEFICIARY DID NOT KNOW OF THE BENEFICIARY'S RIGHTS OR OF THE MATERIAL FACTS RELATING TO THE BREACH.

14-12010. Limitation on personal liability of trustee

A. EXCEPT AS OTHERWISE PROVIDED IN THE CONTRACT, A TRUSTEE IS NOT PERSONALLY LIABLE ON A CONTRACT PROPERLY ENTERED INTO IN THE TRUSTEE'S FIDUCIARY CAPACITY IN THE COURSE OF ADMINISTERING THE TRUST IF THE TRUSTEE IN THE CONTRACT DISCLOSED THE FIDUCIARY CAPACITY.

B. A TRUSTEE IS PERSONALLY LIABLE FOR TORTS COMMITTED IN THE COURSE OF ADMINISTERING A TRUST OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY, INCLUDING LIABILITY FOR VIOLATION OF ENVIRONMENTAL LAW, ONLY IF THE TRUSTEE IS PERSONALLY AT FAULT.

C. A CLAIM BASED ON A CONTRACT ENTERED INTO BY A TRUSTEE IN THE TRUSTEE' S FIDUCIARY CAPACITY, ON AN OBLIGATION ARISING FROM OWNERSHIP OR CONTROL OF TRUST PROPERTY OR ON A TORT COMMITTED IN THE COURSE OF ADMINISTERING A TRUST MAY BE ASSERTED IN A JUDICIAL PROCEEDING AGAINST THE TRUSTEE IN THE TRUSTEE' S FIDUCIARY CAPACITY, WHETHER OR NOT THE TRUSTEE IS PERSONALLY LIABLE FOR THE CLAIM.

14-12011. Interest as general partner

A. EXCEPT TO THE EXTENT THAT PERSONAL LIABILITY IS IMPOSED IN A CONTRACT, A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IN A GENERAL OR LIMITED PARTNERSHIP IS NOT PERSONALLY LIABLE ON A CONTRACT ENTERED INTO BY THE PARTNERSHIP AFTER THE TRUST'S ACQUISITION OF THE INTEREST IF THE FIDUCIARY CAPACITY WAS DISCLOSED IN THE CONTRACT OR IN A STATEMENT PREVIOUSLY FILED PURSUANT TO THE UNIFORM PARTNERSHIP ACT OR THE UNIFORM LIMITED PARTNERSHIP ACT.

B. A TRUSTEE WHO HOLDS AN INTEREST AS A GENERAL PARTNER IS NOT

PERSONALLY LIABLE FOR TORTS COMMITTED BY THE PARTNERSHIP OR FOR OBLIGATIONS ARISING FROM OWNERSHIP OR CONTROL OF THE INTEREST UNLESS THE TRUSTEE IS PERSONALLY AT FAULT.

14-12012. Protection of person dealing with trustee

A. A PERSON, OTHER THAN A BENEFICIARY, WHO IN GOOD FAITH ASSISTS A TRUSTEE OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEE IS EXCEEDING OR IMPROPERLY EXERCISING THE TRUSTEE' S POWERS, IS PROTECTED FROM LIABILITY AS IF THE TRUSTEE PROPERLY EXERCISED THE POWER.

B. A PERSON, OTHER THAN A BENEFICIARY, WHO IN GOOD FAITH DEALS WITH A TRUSTEE IS NOT REQUIRED TO INQUIRE INTO THE EXTENT OF THE TRUSTEE'S POWERS OR THE PROPRIETY OF THEIR EXERCISE.

C. A PERSON, WHO IN GOOD FAITH, DELIVERS ASSETS TO A TRUSTEE NEED NOT ENSURE THEIR PROPER APPLICATION.

D. A PERSON OTHER THAN A BENEFICIARY WHO IN GOOD FAITH ASSISTS A FORMER TRUSTEE OR WHO IN GOOD FAITH AND FOR VALUE DEALS WITH A FORMER TRUSTEE, WITHOUT KNOWLEDGE THAT THE TRUSTEESHIP HAS TERMINATED, IS PROTECTED FROM LIABILITY AS IF THE FORMER TRUSTEE WERE STILL A TRUSTEE.

E. COMPARABLE PROTECTIVE PROVISIONS OF OTHER LAWS RELATING TO COMMERCIAL TRANSACTIONS OR TRANSFER OF SECURITIES BY FIDUCIARIES PREVAIL OVER THE PROTECTION PROVIDED BY THIS SECTION.

14-12013. Certification of trust

A. INSTEAD OF FURNISHING A COPY OF THE TRUST INSTRUMENT TO A PERSON OTHER THAN A BENEFICIARY, THE TRUSTEE MAY FURNISH TO THE PERSON A CERTIFICATION OF TRUST CONTAINING THE FOLLOWING INFORMATION:

1. THAT THE TRUST EXISTS AND THE DATE THE TRUST INSTRUMENT WAS EXECUTED.

2. THE IDENTITY OF THE SETTLOR.

3. THE IDENTITY AND ADDRESS OF THE CURRENTLY ACTING TRUSTEE.

4. THE POWERS OF THE TRUSTEE.

5. THE REVOCABILITY OR IRREVOCABILITY OF THE TRUST AND THE IDENTITY OF ANY PERSON HOLDING A POWER TO REVOKE THE TRUST.

6. THE AUTHORITY OF COTRUSTEES TO SIGN OR OTHERWISE AUTHENTICATE AND WHETHER ALL OR LESS THAN ALL ARE REQUIRED IN ORDER TO EXERCISE POWERS OF THE TRUSTEE.

7. THE MANNER OF TAKING TITLE TO TRUST PROPERTY.

B. A CERTIFICATION OF TRUST MAY BE SIGNED OR OTHERWISE AUTHENTICATED BY ANY TRUSTEE.

C. A CERTIFICATION OF TRUST MUST STATE THAT THE TRUST HAS NOT BEEN REVOKED, MODIFIED OR AMENDED IN ANY MANNER THAT WOULD CAUSE THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION OF TRUST TO BE INCORRECT.

D. A CERTIFICATION OF TRUST NEED NOT CONTAIN THE DISPOSITIVE TERMS OF A TRUST.

E. A RECIPIENT OF A CERTIFICATION OF TRUST MAY REQUIRE THE TRUSTEE TO FURNISH COPIES OF THOSE EXCERPTS FROM THE ORIGINAL TRUST INSTRUMENT AND LATER AMENDMENTS THAT DESIGNATE THE TRUSTEE AND CONFER ON THE TRUSTEE THE POWER TO ACT IN THE PENDING TRANSACTION.

F. A PERSON WHO ACTS IN RELIANCE ON A CERTIFICATION OF TRUST WITHOUT KNOWLEDGE THAT THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION ARE INCORRECT IS NOT LIABLE TO ANY PERSON FOR SO ACTING AND MAY ASSUME WITHOUT INQUIRY THE EXISTENCE OF THE FACTS CONTAINED IN THE CERTIFICATION. KNOWLEDGE OF THE TERMS OF THE TRUST MAY NOT BE INFERRED SOLELY FROM THE FACT THAT A COPY OF ALL OR PART OF THE TRUST INSTRUMENT IS HELD BY THE PERSON RELYING ON THE CERTIFICATION.

G. A PERSON WHO IN GOOD FAITH ENTERS INTO A TRANSACTION IN RELIANCE ON A CERTIFICATION OF TRUST MAY ENFORCE THE TRANSACTION AGAINST THE TRUST PROPERTY AS IF THE REPRESENTATIONS CONTAINED IN THE CERTIFICATION WERE CORRECT.

H. A PERSON MAKING A DEMAND FOR THE TRUST INSTRUMENT IN ADDITION TO A CERTIFICATION OF TRUST OR EXCERPTS IS LIABLE FOR DAMAGES IF THE COURT DETERMINES THAT THE PERSON DID NOT ACT IN GOOD FAITH IN DEMANDING THE TRUST INSTRUMENT.

I. THIS SECTION DOES NOT LIMIT THE RIGHT OF A PERSON TO OBTAIN A COPY OF THE TRUST INSTRUMENT IN A JUDICIAL PROCEEDING CONCERNING THE TRUST.

14-12014 Total Return Unitrusts

(A) IN THIS SECTION:

(1) "DISINTERESTED PERSON" MEANS A PERSON WHO IS NOT A "RELATED OR SUBORDINATE PARTY" (AS DEFINED IN § 672(C) OF THE UNITED STATES INTERNAL REVENUE CODE (HEREINAFTER REFERRED TO IN THIS SECTION AS THE "I.R.C.)) WITH RESPECT TO THE PERSON THEN ACTING AS TRUSTEE OF THE TRUST AND EXCLUDES THE SETTLOR OF THE TRUST AND ANY INTERESTED TRUSTEE.

(2) "INCOME TRUST" MEANS A TRUST, CREATED BY EITHER AN INTER VIVOS OR A TESTAMENTARY INSTRUMENT, WHICH DIRECTS OR PERMITS THE TRUSTEE TO DISTRIBUTE THE NET INCOME OF THE TRUST TO 1 OR MORE PERSONS, EITHER IN REQUIRED AMOUNTS OR PROPORTIONS OR IN AMOUNTS OR PROPORTIONS DETERMINED BY THE TRUSTEE AND REGARDLESS OF WHETHER THE TRUST DIRECTS OR PERMITS THE TRUSTEE TO DISTRIBUTE THE PRINCIPAL OF THE

TRUST TO 1 OR MORE SUCH PERSONS. (3) "INTERESTED DISTRIBUTE" MEANS A PERSON TO WHOM DISTRIBUTIONS OF INCOME OR PRINCIPAL CAN CURRENTLY BE MADE WHO HAS THE POWER TO REMOVE THE EXISTING TRUSTEE AND DESIGNATE AS SUCCESSOR A PERSON WHO MAY BE A "RELATED OR SUBORDINATE PARTY" (AS DEFINED IN I.R.C. § 672(C) [26 U.S.C. § 672(C)]) WITH RESPECT TO SUCH DISTRIBUTE.

(4) "INTERESTED TRUSTEE" MEANS :

A. AN INDIVIDUAL TRUSTEE TO WHOM THE NET INCOME OR PRINCIPAL OF THE TRUST CAN CURRENTLY BE DISTRIBUTED OR WOULD BE DISTRIBUTED IF THE TRUST WERE THEN TO TERMINATE AND BE DISTRIBUTED,

B. ANY TRUSTEE WHO MAY BE REMOVED AND REPLACED BY AN INTERESTED DISTRIBUTE AND/OR

C. AN INDIVIDUAL TRUSTEE WHOSE LEGAL OBLIGATION TO SUPPORT A BENEFICIARY MAY BE SATISFIED BY DISTRIBUTIONS OF INCOME AND PRINCIPAL OF THE TRUST.

(5) "TOTAL RETURN UNITRUST" MEANS AN INCOME TRUST THAT HAS BEEN CONVERTED UNDER AND MEETS THE PROVISIONS OF THIS SECTION.

(6) "TRUSTEE" MEANS ALL PERSONS ACTING AS TRUSTEE OF THE TRUST (EXCEPT WHERE EXPRESSLY NOTED OTHERWISE), WHETHER ACTING IN THEIR DISCRETION OR ON THE DIRECTION OF 1 OR MORE PERSONS ACTING IN A FIDUCIARY CAPACITY.

(7) "UNITRUST AMOUNT" MEANS AN AMOUNT COMPUTED AS A PERCENTAGE OF THE FAIR MARKET VALUE OF THE TRUST.

(B) A TRUSTEE, OTHER THAN AN INTERESTED TRUSTEE, OR WHERE 2 OR MORE PERSONS ARE ACTING AS TRUSTEE, A MAJORITY OF THE TRUSTEES WHO ARE NOT AN INTERESTED TRUSTEE (IN EITHER CASE HEREAFTER "TRUSTEE"), MAY, IN ITS SOLE DISCRETION AND WITHOUT THE APPROVAL OF THE PROBATE COURT:

(1) CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST;

(2) RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST; OR

(3) CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT AND/OR THE METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST IF:

A. THE TRUSTEE ADOPTS A WRITTEN POLICY FOR THE TRUST PROVIDING:

1. IN THE CASE OF A TRUST BEING ADMINISTERED AS AN INCOME TRUST, THAT FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE UNITRUST AMOUNTS RATHER THAN NET INCOME;

2. IN THE CASE OF A TRUST BEING ADMINISTERED AS A TOTAL RETURN UNITRUST, THAT FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE NET INCOME RATHER THAN UNITRUST AMOUNTS; OR

3. THAT THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT AND/OR THE METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST WILL BE CHANGED AS STATED IN THE POLICY;

B. THE TRUSTEE SENDS WRITTEN NOTICE OF ITS INTENTION TO TAKE SUCH ACTION, ALONG WITH COPIES OF SUCH WRITTEN POLICY AND THIS SECTION, TO:

1. THE SETTLOR OF THE TRUST, IF LIVING;

2. ALL LIVING PERSONS WHO ARE CURRENTLY RECEIVING OR ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OF THE TRUST;

3. WITHOUT REGARD TO THE EXERCISE OF ANY POWER OF APPOINTMENT, ALL LIVING PERSONS WHO WOULD RECEIVE PRINCIPAL OF THE TRUST IF THE TRUST WERE TO TERMINATE AT THE TIME OF THE GIVING OF SUCH NOTICE AND ALL LIVING PERSONS WHO WOULD RECEIVE OR BE ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OR PRINCIPAL OF THE TRUST IF THE INTERESTS OF ALL OF THE BENEFICIARIES CURRENTLY ELIGIBLE TO RECEIVE INCOME UNDER SUB-SUBPARAGRAPH 2. OF THIS SUBPARAGRAPH B. OF THIS SECTION WERE TO TERMINATE AT THE TIME OF THE GIVING OF SUCH NOTICE; AND

4. ALL PERSONS ACTING AS ADVISER OR TRUST PROTECTOR OF THE TRUST.

C. AT LEAST ONE PERSON RECEIVING NOTICE UNDER EACH OF SUB-SUBPARAGRAPHS 2. AND 3. OF SUBPARAGRAPH B. ABOVE IS LEGALLY COMPETENT; AND

D. NO PERSON RECEIVING SUCH NOTICE OBJECTS, BY WRITTEN INSTRUMENT DELIVERED TO THE TRUSTEE, TO THE PROPOSED ACTION OF THE TRUSTEE WITHIN 30 DAYS OF RECEIPT OF SUCH NOTICE.

(C) IF THERE IS NO TRUSTEE OF THE TRUST OTHER THAN AN INTERESTED TRUSTEE, THE INTERESTED TRUSTEE OR, WHERE TWO OR MORE PERSONS ARE ACTING AS TRUSTEE AND ARE INTERESTED TRUSTEES, A MAJORITY OF SUCH

INTERESTED TRUSTEES MAY, IN ITS SOLE DISCRETION AND WITHOUT THE APPROVAL OF THE PROBATE COURT:

(1) CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST;

(2) RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST; OR

(3) CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT AND/OR THE METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST IF:

A. THE TRUSTEE ADOPTS A WRITTEN POLICY FOR THE TRUST PROVIDING:

1. IN THE CASE OF A TRUST BEING ADMINISTERED AS AN INCOME TRUST, THAT FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE UNITRUST AMOUNTS RATHER THAN NET INCOME;

2. IN THE CASE OF A TRUST BEING ADMINISTERED AS A TOTAL RETURN UNITRUST, THAT FUTURE DISTRIBUTIONS FROM THE TRUST WILL BE NET INCOME RATHER THAN UNITRUST AMOUNTS; OR

3. THAT THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT AND/OR THE METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST WILL BE CHANGED AS STATED IN THE POLICY;

B. THE TRUSTEE APPOINTS A DISINTERESTED PERSON WHO, IN ITS SOLE DISCRETION BUT ACTING IN A FIDUCIARY CAPACITY, DETERMINES FOR THE TRUSTEE:

1. THE PERCENTAGE TO BE USED TO CALCULATE THE UNITRUST AMOUNT;

2. THE METHOD TO BE USED IN DETERMINING THE FAIR MARKET VALUE OF THE TRUST; AND

3. WHICH ASSETS, IF ANY, ARE TO BE EXCLUDED IN DETERMINING THE UNITRUST AMOUNT;

C. THE TRUSTEE SENDS WRITTEN NOTICE OF ITS INTENTION TO TAKE SUCH ACTION, ALONG WITH COPIES OF SUCH WRITTEN POLICY AND THIS SECTION, AND THE DETERMINATIONS OF THE DISINTERESTED PERSON TO:

1. THE SETTLOR OF THE TRUST, IF LIVING;

2. ALL LIVING PERSONS WHO ARE CURRENTLY RECEIVING OR ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OF THE TRUST;

3. WITHOUT REGARD TO THE EXERCISE OF ANY POWER OF APPOINTMENT, ALL LIVING PERSONS WHO WOULD RECEIVE PRINCIPAL OF THE TRUST IF THE TRUST WERE TO TERMINATE AT THE TIME OF THE GIVING OF SUCH NOTICE AND ALL LIVING PERSONS WHO WOULD RECEIVE OR BE ELIGIBLE TO RECEIVE DISTRIBUTIONS OF INCOME OR PRINCIPAL OF THE TRUST IF THE INTERESTS OF ALL OF THE BENEFICIARIES CURRENTLY ELIGIBLE TO RECEIVE INCOME UNDER SUB-SUBPARAGRAPH 2. OF THIS SUBPARAGRAPH C. OF THIS SECTION WERE TO TERMINATE AT THE TIME OF THE GIVING OF SUCH NOTICE; AND

4. ALL PERSONS ACTING AS ADVISER OR PROTECTOR OF THE TRUST;

D. AT LEAST ONE PERSON RECEIVING NOTICE UNDER EACH OF SUBSUBPARAGRAPHS 2. AND 3. OF SUBPARAGRAPH C. OF THIS SUBDIVISION IS LEGALLY COMPETENT; AND

E. NO PERSON RECEIVING SUCH NOTICE OBJECTS, BY WRITTEN INSTRUMENT DELIVERED TO THE TRUSTEE, TO THE PROPOSED ACTION OR THE DETERMINATIONS OF THE DISINTERESTED PERSON WITHIN 30 DAYS OF RECEIPT OF SUCH NOTICE.

(D) IF ANY TRUSTEE DESIRES TO (I) CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST, (II) RECONVERT A TOTAL RETURN UNITRUST TO AN INCOME TRUST, OR (III) CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT AND/OR THE METHOD USED TO DETERMINE THE FAIR MARKET VALUE OF THE TRUST BUT DOES NOT HAVE THE ABILITY TO OR ELECTS NOT TO DO IT UNDER THE PROVISIONS OF SUBSECTION (B) OR (C) ABOVE, THE TRUSTEE MAY PETITION THE PROBATE COURT FOR SUCH ORDER AS THE TRUSTEE DEEMS APPROPRIATE. IN THE EVENT, HOWEVER, THERE IS ONLY ONE TRUSTEE OF SUCH TRUST AND SUCH TRUSTEE IS AN INTERESTED TRUSTEE OR IN THE EVENT THERE ARE TWO OR MORE TRUSTEES OF SUCH TRUST AND A MAJORITY OF THEM ARE INTERESTED TRUSTEES, THE COURT, IN ITS OWN DISCRETION OR ON THE PETITION OF SUCH TRUSTEE OR TRUSTEES OR ANY PERSON INTERESTED IN THE TRUST, MAY APPOINT A DISINTERESTED PERSON WHO, ACTING IN A FIDUCIARY CAPACITY, SHALL PRESENT SUCH INFORMATION TO THE COURT AS SHALL BE NECESSARY TO ENABLE THE COURT TO MAKE ITS DETERMINATIONS HEREUNDER.

(E) THE FAIR MARKET VALUE OF THE TRUST SHALL BE DETERMINED AT LEAST ANNUALLY, USING SUCH VALUATION DATE OR DATES OR AVERAGES OF VALUATION DATES AS ARE DEEMED APPROPRIATE. ASSETS FOR WHICH A FAIR MARKET VALUE CANNOT BE READILY ASCERTAINED SHALL BE VALUED USING SUCH VALUATION METHODS AS ARE DEEMED REASONABLE AND APPROPRIATE.

ASSETS USED BY A TRUST BENEFICIARY, SUCH AS A RESIDENCE PROPERTY OR TANGIBLE PERSONAL PROPERTY, MAY BE EXCLUDED FROM FAIR MARKET VALUE FOR COMPUTING THE UNITRUST AMOUNT.

(F) THE PERCENTAGE TO BE USED IN DETERMINING THE UNITRUST AMOUNT SHALL BE A REASONABLE CURRENT RETURN FROM THE TRUST, IN ANY EVENT NOT LESS THAN THREE (3) PERCENT NOR MORE THAN FIVE (5) PERCENT, TAKING INTO ACCOUNT THE INTENTIONS OF THE SETTLOR OF THE TRUST AS EXPRESSED IN THE GOVERNING INSTRUMENT, THE NEEDS OF THE BENEFICIARIES, GENERAL ECONOMIC CONDITIONS, PROJECTED CURRENT EARNINGS AND APPRECIATION FOR THE TRUST, AND PROJECTED INFLATION AND ITS IMPACT ON THE TRUST.

(G) A TRUSTEE MAY ACT PURSUANT TO SUBSECTION (B) OR SUBSECTION (C) OF THIS SECTION WITH RESPECT TO A TRUST FOR WHICH BOTH INCOME AND PRINCIPAL HAVE BEEN PERMANENTLY SET ASIDE FOR CHARITABLE PURPOSES UNDER THE GOVERNING INSTRUMENT AND FOR WHICH A FEDERAL ESTATE OR GIFT TAX DEDUCTION HAS BEEN TAKEN, PROVIDED, THAT:

(1) INSTEAD OF SENDING WRITTEN NOTICE TO THE PERSONS DESCRIBED IN SUB-SUBPARAGRAPHS 2. AND 3. OF SUBPARAGRAPH B. OF PARAGRAPH (3) OF SUBSECTION (B) OF THIS SECTION OR SUB-SUBPARAGRAPHS 2. AND 3. OF SUBPARAGRAPH C. OF PARAGRAPH (3) OF SUBSECTION (C) OF THIS SECTION, AS THE CASE MAY BE, THE TRUSTEE SHALL SEND SUCH WRITTEN NOTICE TO THE NAMED CHARITY OR CHARITIES THEN ENTITLED TO RECEIVE INCOME OF THE TRUST AND, IF NO NAMED CHARITY OR CHARITIES ARE ENTITLED TO RECEIVE ALL OF SUCH INCOME, TO THE ATTORNEY GENERAL OF THIS STATE;

(2) SUBPARAGRAPH C. OF PARAGRAPH (3) OF SUBSECTION (B) OR SUBPARAGRAPH D. OF PARAGRAPH (3) OF SUBSECTION (C) OF THIS SECTION, AS THE CASE MAY BE, SHALL NOT APPLY TO SUCH ACTION; AND

(3) IN EACH TAXABLE YEAR, THE TRUSTEE SHALL DISTRIBUTE THE GREATER OF THE UNITRUST AMOUNT AND THE AMOUNT REQUIRED BY I.R.C. § 4942 [26 U.S.C. § 4942].

(H) FOLLOWING THE CONVERSION OF AN INCOME TRUST TO A TOTAL RETURN UNITRUST, THE TRUSTEE:

(1) SHALL CONSIDER THE UNITRUST AMOUNT AS PAID FROM NET ACCOUNTING INCOME DETERMINED AS IF THE TRUST WERE NOT A UNITRUST;

(2) SHALL THEN CONSIDER THE UNITRUST AMOUNT AS PAID FROM ORDINARY INCOME NOT ALLOCABLE TO NET ACCOUNTING INCOME;

(3) AFTER CALCULATING THE TRUST'S CAPITAL GAIN NET INCOME DESCRIBED

IN I.R.C. § 1222(9) [26 U.S.C. § 1222(9)], MAY CONSIDER THE UNITRUST AMOUNT AS PAID FROM NET SHORT-TERM CAPITAL GAIN DESCRIBED IN I.R.C. § 1222(5) [26 U.S.C. § 1222(5)] AND THEN FROM NET LONG-TERM CAPITAL GAIN DESCRIBED IN I.R.C. § 1222(7) [26 U.S.C. § 1222(7)]; AND

(4) SHALL THEN CONSIDER THE UNITRUST AMOUNT AS COMING FROM THE PRINCIPAL OF THE TRUST.

(I) IN ADMINISTERING A TOTAL RETURN UNITRUST, THE TRUSTEE MAY, IN ITS SOLE DISCRETION BUT SUBJECT TO THE PROVISIONS OF THE GOVERNING INSTRUMENT, DETERMINE:

(1) THE EFFECTIVE DATE OF THE CONVERSION;

(2) THE TIMING OF DISTRIBUTIONS (INCLUDING PROVISIONS FOR PRORATING A DISTRIBUTION FOR A SHORT YEAR IN WHICH A BENEFICIARY'S RIGHT TO PAYMENTS COMMENCES OR CEASES);

(3) WHETHER DISTRIBUTIONS ARE TO BE MADE IN CASH OR IN KIND OR PARTLY IN CASH AND PARTLY IN KIND;

(4) IF THE TRUST IS RECONVERTED TO AN INCOME TRUST, THE EFFECTIVE DATE OF SUCH RECONVERSION; AND

(5) SUCH OTHER ADMINISTRATIVE ISSUES AS MAY BE NECESSARY OR APPROPRIATE TO CARRY OUT THE PURPOSES OF THIS SECTION.

(J) CONVERSION TO A TOTAL RETURN UNITRUST UNDER THE PROVISIONS OF THIS SECTION SHALL NOT AFFECT ANY OTHER PROVISION OF THE GOVERNING INSTRUMENT, IF ANY, REGARDING DISTRIBUTIONS OF PRINCIPAL.

(K) IN THE CASE OF A TRUST FOR WHICH A MARITAL DEDUCTION HAS BEEN TAKEN FOR FEDERAL TAX PURPOSES UNDER I.R.C. § 2056 OR § 2523 [26 U.S.C. § 2056 OR § 2523], THE SPOUSE OTHERWISE ENTITLED TO RECEIVE THE NET INCOME OF THE TRUST SHALL HAVE THE RIGHT, BY WRITTEN INSTRUMENT DELIVERED TO THE TRUSTEE, TO PROHIBIT CONVERSION TO A TOTAL RETURN UNITRUST AND TO COMPEL THE RECONVERSION DURING HIS OR HER LIFETIME OF THE TRUST FROM A TOTAL RETURN UNITRUST TO AN INCOME TRUST, NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY.

(L) THIS SECTION SHALL BE CONSTRUED AS PERTAINING TO THE ADMINISTRATION OF A TRUST AND SHALL BE AVAILABLE TO ANY TRUST THAT IS ADMINISTERED IN ARIZONA UNDER ARIZONA LAW OR TO ANY TRUST, REGARDLESS OF ITS PLACE OF ADMINISTRATION, WHOSE GOVERNING

INSTRUMENT PROVIDES THAT ARIZONA LAW GOVERNS MATTERS OF CONSTRUCTION OR ADMINISTRATION UNLESS:

(1) THE GOVERNING INSTRUMENT REFLECTS AN INTENTION THAT THE CURRENT BENEFICIARY OR BENEFICIARIES ARE TO RECEIVE AN AMOUNT OTHER THAN A REASONABLE CURRENT RETURN FROM THE TRUST;

(2) THE TRUST IS A POOLED INCOME FUND DESCRIBED IN I.R.C. § 642(C)(5) (26 U.S.C. § 642(C)(5)) OR A CHARITABLE-REMAINDER TRUST DESCRIBED IN I.R.C. § 664(D) (26 U.S.C. 664(D));

(3) THE GOVERNING INSTRUMENT EXPRESSLY PROHIBITS USE OF THIS SECTION BY SPECIFIC REFERENCE TO THE SECTION OR EXPRESSLY STATES THE SETTLOR'S INTENT THAT NET INCOME NOT BE CALCULATED AS A UNITRUST AMOUNT. A PROVISION IN THE GOVERNING INSTRUMENT THAT "THE PROVISIONS OF A.R.S. § 14-12014, AS AMENDED, OR ANY CORRESPONDING PROVISION OF FUTURE LAW, SHALL NOT BE USED IN THE ADMINISTRATION OF THIS TRUST." OR "MY TRUSTEE SHALL NOT DETERMINE THE DISTRIBUTIONS TO THE INCOME BENEFICIARY AS A UNITRUST AMOUNT." OR SIMILAR WORDS REFLECTING SUCH INTENT SHALL BE SUFFICIENT TO PRECLUDE THE USE OF THIS SECTION.

(M) ANY TRUSTEE OR DISINTERESTED PERSON WHO IN GOOD FAITH TAKES OR FAILS TO TAKE ANY ACTION UNDER THIS SECTION SHALL NOT BE LIABLE TO ANY PERSON AFFECTED BY SUCH ACTION OR INACTION, REGARDLESS OF WHETHER SUCH PERSON RECEIVED WRITTEN NOTICE AS PROVIDED IN THIS SECTION AND REGARDLESS OF WHETHER SUCH PERSON WAS UNDER A LEGAL DISABILITY AT THE TIME OF THE DELIVERY OF SUCH NOTICE. SUCH PERSON'S EXCLUSIVE REMEDY SHALL BE TO OBTAIN AN ORDER OF THE COURT DIRECTING THE TRUSTEE TO CONVERT AN INCOME TRUST TO A TOTAL RETURN UNITRUST, TO RECONVERT FROM A TOTAL RETURN UNITRUST TO AN INCOME TRUST OR TO CHANGE THE PERCENTAGE USED TO CALCULATE THE UNITRUST AMOUNT.

(N) THIS SECTION SHALL BE EFFECTIVE UPON ENACTMENT AND SHALL BE AVAILABLE TO TRUSTS IN EXISTENCE AT THE DATE OF ENACTMENT OR CREATED THEREAFTER.

ARTICLE 11. MISCELLANEOUS PROVISIONS

14-12201. Electronic records and signatures

THE PROVISIONS OF THIS CHAPTER GOVERNING THE LEGAL EFFECT, VALIDITY

OR ENFORCEABILITY OF ELECTRONIC RECORDS OR ELECTRONIC SIGNATURES, AND OF CONTRACTS FORMED OR PERFORMED WITH THE USE OF SUCH RECORDS OR SIGNATURES, CONFORM TO THE REQUIREMENTS OF SECTION 102 OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (15 UNITED STATES CODE SECTION 7002) AND SUPERSEDE, MODIFY AND LIMIT THE REQUIREMENTS OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

14-12202. SEVERABILITY CLAUSE

IF ANY PROVISION OF THIS CHAPTER OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS CHAPTER THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS CHAPTER ARE SEVERABLE.

Sec. 14. Application to existing relationships

A. EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, BEGINNING ON JANUARY 1, 2009:

1. THIS ACT APPLIES TO ALL TRUSTS CREATED BEFORE, ON OR AFTER JANUARY 1, 2009.

2. THIS ACT APPLIES TO ALL JUDICIAL PROCEEDINGS CONCERNING TRUSTS COMMENCED ON OR AFTER JANUARY 1, 2009.

3. THIS ACT APPLIES TO JUDICIAL PROCEEDINGS CONCERNING TRUSTS COMMENCED BEFORE JANUARY 1, 2009 UNLESS THE COURT FINDS THAT APPLICATION OF A PARTICULAR PROVISION OF THIS ACT WOULD SUBSTANTIALLY INTERFERE WITH THE EFFECTIVE CONDUCT OF THE JUDICIAL PROCEEDINGS OR PREJUDICE THE RIGHTS OF THE PARTIES, IN WHICH CASE THE PARTICULAR PROVISION OF THIS ACT DOES NOT APPLY AND THE SUPERSEDED LAW APPLIES.

4. ANY RULE OF CONSTRUCTION OR PRESUMPTION PROVIDED IN THIS ACT

APPLIES TO TRUST INSTRUMENTS EXECUTED BEFORE JANUARY 1, 2009, UNLESS THERE IS A CLEAR INDICATION OF A CONTRARY INTENT IN THE TERMS OF THE TRUST.

5. AN ACT DONE BEFORE JANUARY 1, 2009, IS NOT AFFECTED BY THIS ACT.

B. IF A RIGHT IS ACQUIRED, EXTINGUISHED OR BARRED ON THE EXPIRATION OF A PRESCRIBED PERIOD THAT HAS COMMENCED TO RUN UNDER ANY OTHER STATUTE BEFORE JANUARY 1, 2009, THAT STATUTE CONTINUES TO APPLY TO THE RIGHT EVEN IF IT HAS BEEN REPEALED OR SUPERSEDED.

Sec. 15. Delayed effective date

THIS ACT IS EFFECTIVE AFTER DECEMBER 31, 2008.

ATC 8-24a-07