

THE ARIZONA

ESTATE PLANNING

Effective January 1, 2009, the new Arizona Trust Code (ATC) arrives in all its glory. Any discussion of this lengthy legislation (53 pages in a standard 12-point Word document) depends on the depth to which the writer anticipates the reader is willing to descend. The purpose of this article is to give a more generalized overview of the ATC and some “black letter law” statements regarding it. Therefore, there are nuances and detail that cannot be pursued, but this article mentions a few of the many issues that are part and parcel with the Model Uniform Trust Code in general and the unique provisions added in this Arizona legislation.

A brief history of how the new code arrived in Arizona is on page 23. But let’s get to its provisions.

TRUST CODE

ATC Provisions

The following are provisions that are formally part of the Arizona Trust Code (Title 14, Chapter 11). Three of the areas of the ATC that had received the most attention are: (1) the provisions of the ATC that can and cannot be “drafted around” by the settlor (the default and mandatory rules), (2) required notice to beneficiaries, and (3) the rights and limitations of creditors of beneficiaries of trusts. These areas are addressed first.

Default and Mandatory Rules.

Section 14-10105 provides that the settlor can set the terms for all provisions of a trust except, among other things:

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 power of the court to modify or terminate a trust
4. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5
5. The duty to respond to requests for information by certain irrevocable trust beneficiaries
6. The limitation on the power to relieve the trustee of liabilities or duties
7. The rights of a person other than a trustee or beneficiary regarding the dealings with, or the liability of, trustees
8. Periods of limitation for commencing a judicial proceeding
9. The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice
10. The subject matter jurisdiction of the court and venue for commencing a proceeding

11. The notice of new charitable trusts required to be given to the Attorney General

Creditors’ Claims; Spendthrift and Discretionary Trusts. Article 5 (§ 14-10501 *et seq.*) governs the right of creditors of trust beneficiaries to reach trust assets.¹ A legislative intent in enacting the ATC was specifically to make Arizona a “trust friendly” jurisdiction to increase the desirability of using trustees whose situs is in Arizona and not run off trust money with hostile laws that frustrate the wishes of trust settlors. It is in that spirit that the Legislature increased the protection of trust beneficiaries.

For example, a spendthrift clause is now specifically presumed to be a material provision of the trust. Also, no class of creditors of a beneficiary has any special rights to trust assets, except for (1) children for child support owed by a beneficiary, (2) persons who have acted to protect the beneficiary’s interest in the trust, and (3) the Arizona and federal governments and their agencies for claims against a beneficiary, but then only if a statute so provides. Other new provisions are:

- a. The trustee will have no liability to any creditor of a beneficiary for any distributions made to the beneficiary if the interest is protected by a spendthrift provision or is a discretionary trust (§ 14-10501).
- b. The trustee owes no duties to third parties and only owes duties to beneficiaries of the trust and creditors of the trust, subject only to the extent that creditors of beneficiaries are entitled to attachment (§ 14-10814).
- c. A creditor of a beneficiary cannot reach assets of the trust even if trustee had abused discretionary distribution

- d. Life insurance policy rights of a debtor are exempt from creditor claims if the beneficiary is a trust so long as the beneficiaries of those trusts are persons who, if named directly as the beneficiaries of the policy, would have caused the policy rights to be exempt from creditors under A.R.S. § 20-1131 (§ 14-10504(D)(2)).
- e. A trustee may delay a distribution to protect the beneficiary’s interest in the distribution, if the delay is authorized under the trust agreement (§ 14-10506).

Unchanged is the general rule that a creditor of a settlor or the settlor’s estate can reach trust assets if (1) the trust is a revocable trust or (2) to the extent the trustee is then required or has discretion to make distributions to the settlor (§ 14-10505(A)). More exceptions to the general rule are added by the ATC, two of which are:

- a. The power of a trustee to reimburse the settlor for taxes paid on trust income, whether or not paid or whether or not paid directly to the taxing authority. This provision is to permit settlors to realize the benefit of Revenue Ruling 2004-64, in which the I.R.S. would not treat the trust as being includable in the estate of a settlor solely because the trustee, in its discretion, may reimburse the settlor for such taxes, so long as the right of reimbursement does not create rights of creditors of the settlor in the trust assets. This is an important provision for purposes of estate planning for larger estates and stops the out-migra-

tion of larger estates to take advantage of this provision contained in other states' trust laws.

- b. If a settlor creates a trust for the spouse, when the spouse dies the trust will not be deemed to be created by the settlor so as to be reachable by his or her creditors.

Notice Requirements. The default and mandatory notice requirements of the Arizona UTC generated great hostility against its enactment and fueled the effort for its repeal. There were mandatory notice provisions that had to be made to beneficiaries that could not be overridden by anyone, including the settlor. As revised, A.R.S. § 14-10813, in conjunction with § 14-10105, permits a settlor to draft a trust to require no affirmative notice to beneficiaries, except that, at a minimum, § 14-10105(B)(8) mandates the trustees must respond to a request of a Qualified Beneficiary of an irrevocable trust for "trustees reports and other information reasonably related to the administration of a trust." The term "Qualified Beneficiary" is defined in § 14-10103(13) to be a beneficiary who is any of: (a) a permissible distributee of trust income, (b) would be a distributee if the interest of a distributee described in clause a had terminated on that date, or (c) would be a permissible distributee if the trust terminated on that date. Absent modification by the terms of the trust instrument, A.R.S. § 14-10813 provides a laundry list of required notification provisions applicable to irrevocable trusts. One such provision now permits the trustee to send only a copy of the relevant portions of the trust instrument to the beneficiary requesting it, rather than a copy of the entire document.

A very important issue is what notice requirements are applicable to existing trusts as of the effective date of the ATC, Jan. 1, 2009. With respect to wholly revo-

cable trusts, the answer is simple: There are no notice requirements. This is because, while the trust is revocable, all of the trustee's duties are solely to the settlor, which would include the duty of notice (§ 14-10603(A)). The drafters' stated intent was that the notice requirements are not intended to be different for existing irrevocable trusts. It is important to note that existing revocable trusts, upon becoming irrevocable, will be subject to the new

A very important issue is what notice requirements are applicable to existing trusts as of the effective date of the ATC, Jan. 1, 2009. With respect to wholly revocable trusts, the answer is simple: There are no notice requirements.

notice requirements unless amended by the settlors.

The author strongly recommends that practitioners drafting trusts or advising clients with respect to them thoroughly review § 14-10813 (the notice section), especially subsections B and C, and § 14-10105 (the default and mandatory rules section), as well as the repealed notice provision, § 14-7303, to become familiar with the transition to the new law.

Modification or Termination of Trusts. Historically, if a trust is revocable by the settlor, the settlor can modify or terminate it. If the trust is irrevocable and unamendable, under the common law beneficiaries could still cause modification or termination if all beneficiaries consent and one of the following con-

ditions is met: (1) the modification or termination does not violate a material purpose, (2) the settlor consents, or the settlor is dead and a court order is obtained. The ATC codifies these rules, but it specifically omits the express power of the settlor to act with all the beneficiaries to modify or terminate a trust² (§ 14-10411). In addition, an irrevocable trust can be modified, albeit generally with court approval, as follows:

- a. By modifying administrative or dispositive terms, because of circumstances not anticipated by the settlor (§ 14-10412).
- b. When certain conditions akin to those of *cy pres* arise (§ 14-10413).
- c. By termination, without court approval, if it has property having a total value of less than \$100,000 or is uneconomic to administer and notice is given to beneficiaries (§ 14-10414).
- d. To correct the terms 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 (§ 14-10415).

- e. By modifying the terms of the trust, retroactively if necessary, to achieve the settlor's tax objectives (§ 14-10416).

Alternative Dispute Resolution.

The trust instrument may provide for mandatory exclusive procedures for resolution of issues between the trustee and interested persons or among interested persons as long as reasonable (§ 14-10205). This is intended to

reverse the result in *Schoneberger v. Schoneberger*.³ In *Schoneberger*, the court held that a trust agreement provision requiring arbitration between the trustee and beneficiaries was unenforceable because the statute permitting arbitration applies only to parties to the contract who had agreed to such procedure. Beneficiaries had made no such agreement and therefore were not bound by the clause.

Trust Protector. This is a new provision that specifically recognizes the unique status of a trust protector. A trust protector is one who is specifically designated as such or it is “a person designated with a status or title, other than that of a beneficiary, with powers similar to” any one or

more of the power to remove and appoint trustees, modify or amend the trust for valid tax or other purposes, changing the interest of beneficiaries, modifying powers of appointment, and the selection of the choice of law of the trust. Importantly, for trusts that become irrevocable after 2008, the trust protector is not a fiduciary and is not liable as a fiduciary for performing or failing to perform acts or duties of the trust protector unless the trust instrument provides otherwise (§ 14-10818).

Prudent Investor Rule. The prudent investor rule applies to trusts (Article 9).

Limitation of Action Against Trustee. A beneficiary may not commence a proceeding against a trustee more than a year after the date that the beneficiary was sent a report that adequately discloses the existence of a potential claim and inform the beneficiary of the time allowed for commencing a proceeding. If there is no adequate report, then the beneficiary’s claim period continues up to two years after the

ATC HISTORY

Originally, the Arizona Uniform Trust Code was to be effective on and after Dec. 31, 2003. The Legislature delayed the effective date and then, before it became effective, it was unanimously repealed by the House and Senate and the repeal signed by the Governor.

Some of the principal contentious provisions of the Arizona UTC were:

1. Legislation was almost completely retroactive. In most instances, retroactivity was not perceived as negative. However, there were areas in which retroactivity created unanticipated burdens or was likely not what the settlors of trusts would have desired had they been able to anticipate the changed rule.
2. Trustees of all existing irrevocable trusts, within 60 days of enactment, must provide all “Qualified Beneficiaries” notice of the trust’s existence. Regardless of whether the settlor prohibits it, such persons must receive notice of the right to receive financial statements annually and the trust agreement. In addition, if a charity is such a beneficiary or the beneficiary is a charitable remainder trust or charitable lead trust, then arguably the Arizona Attorney General also must receive the notice and has the right to demand the same information.
3. The UTC would have codified the common law regarding the power of settlors to agree with the beneficiary to change or terminate an irrevocable trust, and gave a settlor the power in certain circumstances to act for his or her own minor children to amend the trust unilaterally. This was perceived by many to enhance a risk of unanticipated estate tax inclusion.
4. The UTC presumed that a spendthrift protection provision for beneficiaries of the trust provision was not a material purpose of the trust. It was feared that creditors of trust beneficiaries could more easily reach into trusts to satisfy claims owed by the beneficiaries, in spite of the settlor’s intent.

incorporating much of it. A lot of effort was expended in the new legislation, the principal sponsor of which was Rep. Tom Boone. Hundreds of significant changes were made from the original Arizona UTC. The work finally culminated in the unanimous vote of the Legislature, and the Governor signing HB 2806 into law May 27, 2008.

The ATC legislation also includes other related legislation. Amendments to the rule against perpetuities are included (see p. 26). Also included is legislation that recognizes the concept of a “trust protector” (see above) for trusts (§ 14-10818) and “total return unitrusts” (p. 24), which would permit income trusts to be converted to trusts that pay fixed amounts or certain percentages of value, regardless of income (§ 14-11014).

Much of the UTC is very good, if not excellent. Perhaps the best result of such legislation is that estate planning attorneys can know, with reasonable certainty, that the provisions of the trust will be effective due to clear statutory authorization. And the proposed ATC was very well organized into Articles (a separate index of the A.R.S. sections affected or added by the legislation is available at www.myazbar.org/AZAttorney). So there continued to be a desire to enact trust legislation

AN ATC TRUST AGREEMENT
DRAFTING

The Arizona Trust Code
is powerful legislation—
it lets the settlor be in control.

checklist

It is clear that there are now more areas in which the settlor can fine-tune the trust instruments. The following are many of the areas in which specific drafting can be undertaken.

Notice to Beneficiaries (§ 14-10813)

- a. Trust existence
- b. Change of trustee
- c. Merger or division
- d. Change in trustee compensation
- e. Documents and amount of information
- f. Require or eliminate affirmative notice to beneficiaries

Tax Considerations

- a. Grantor trust status
- b. Reimbursement of settlor income taxes (§ 14-10505(A)(2)(a))
- c. Generation-skipping transfer tax provisions
- d. Income tax generally
- e. Estate tax
- f. Gift tax

Trustees—Successors and Selection

Compensation of Trustees

Trustee Liability—Can eliminate all except duty of good faith, not have reckless indifference, and that the purposes of the trust be lawful (§ 14-10105(B)(2) and (3); § 14-10703; § 14-10801; § 14-11008).

Trust Protector, successor and selection; degree of liability—No liability except to the extent provided otherwise; description of powers (§ 14-10818).

Trustee Power to delegate power and duties; liability and duties of agent (§ 14-10807).

Trustee Power and Duties—Among co-trustees (§ 14-10703).

Investment Parameters

Determine Degree of Power and Liability of Third Parties Who Can Direct Investments—Liability except to the extent provided otherwise (§ 14-10808, especially subsection D).

Right of Attorneys to Reimbursement (§ 14-11004).

Distribution Provisions and Asset Protection for Beneficiaries—Distribution rights can be crafted to offer greater protection against creditor claims of beneficiaries (§§ 14-10501 through 14-10507). Consider special powers of appointment.

Permit, Restrict or Prohibit Nonjudicial Settlements—Select issues subject to settlement. (§ 14-10111).

Requirement To Arbitrate Disputes Between Parties—Select issues subject to arbitration (§ 14-10205).

Power To Select 500-Year Rule Against Perpetuities (§ 14-2901).

Governing Law; Change of Law (§ 14-10107).

— *Les Raatz*

first to occur of the following: (1) when the trustee is no longer serving, (2) the termination of the beneficiary's interest in the trust, or (3) the termination of the trust (§ 14-11005).

Certification of Trust. This provision requires that persons (other than a beneficiary) can and must rely on the certification of trust, provided that the requesting party “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.” The certification must contain the following information and representations:

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 co-trustees 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
8. it must state that the trust has not been revoked, modified or amended in any manner that would cause the representations contained in the certification to be incorrect.

The certification can be signed or otherwise authenticated by any trustee, and apparently does not need to be verified or notarized. One change from the original UTC is to eliminate the requirement to provide a tax identification number of the trust.

A person who demands copies of the trust agreement in addition to the certification or excerpts is liable for damages if the court determines that the person did not act in good faith. A person who in good faith enters into a transaction in reliance on the certification may enforce the transaction against the trust property as if the representations in the certification were correct. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding (§ 14-11013).

Total Return Unitrusts. This is a new section, and it is extensive. It provides a method by which a trustee may cause an income trust to be converted to a trust that pays a fixed percentage of its value annually to beneficiaries in lieu of the income distributions. It provides for a mechanism to convert back to an income trust.

The trustee may initiate the conversion by providing notice to beneficiaries, who have 30 days to object. A spouse of the settlor who is a beneficiary of a qualified interest terminable property (QTIP) trust may prevent the conversion. The trustee has no liability for either attempting to convert or failing to attempt to convert (§14-11014).

Nonjudicial Settlement Agreements.

Effective for a trust that becomes irrevocable on or after Jan. 1, 2009, nonjudicial settlements may be made between any parties to a trust, provided that if the settlement would violate a material purpose of the trust then a court order must be obtained. Whether or not a court order is required, this section permits interested persons to obtain court confirmation. Section 14-10111 enumerates that the matters that may be so resolved 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

Exculpation of Trustee. If a clause relieves a trustee of liability for breach of trust, then the clause is unenforceable to the extent the provision either: (1) was inserted as a result of "an abuse by the trustee of a fiduciary or confidential relationship to the settlor," or (2) "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." For trusts created or amended after 2008, the burden is on the trustee to prove that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor (§ 14-11008).

Charitable Trust Notice to Attorney General.

A charitable trust (defined as an I.R.C § 501(c)(3) charity) that is created on or after Jan. 1, 2009, that is administered in Arizona and is a trust (but not if a corporation or other entity) must provide the Arizona Attorney General notice of its existence and purpose within 60 days of each of its creation and its change of trustee. In addition, it must provide to the Attorney General notice 30 days in advance of: change in its principal place of administration to another state, its dissolution, change in its purpose, any court proceeding in its regard, or change in its method or rate of trustee compensation. Charitable lead trusts and charitable remainder trusts are not within the definition of charitable trusts subject to these requirements (§ 14-10110).

Practitioners are advised to peruse SB 1228, enacted by the Arizona Legislature and signed into law by the Governor in 2008, restating A.R.S. §§ 10-11801, *et seq.*, regulating permissible investments by both private foundations and public charities.

Governing Law. Generally, the provision would permit the trust instrument to designate the choice of law. "In the absence of a controlling designation in the terms of the trust, the laws of the jurisdiction where the trust was executed determine the validity of the trust, and the laws of descent and the law of the principal place of administration determine the administration of the trust" (§ 14-10107).

Definitions. The ATC definitions are found in § 14-10103. Those definitions should not be confused with the general Title 14 definitions that are found in § 14-1201.

Common Law of Trusts. The Act confirms that the RESTATEMENT (SECOND) OF TRUSTS will apply and the RESTATEMENT (THIRD) OF TRUSTS and subsequent restatements will not apply to determine rights, powers and duties in four specific areas:

1. The rights and powers of creditors of beneficiaries
2. The duties of trustees to distribute to

those to whom a beneficiary owes any duties

3. Whether public policy may affect enforceability and effectiveness of the terms of the trust
4. Effectuating the settlor's intent

The purpose of this provision is to provide greater certainty of the law and to provide greater assurance that the settlors' expectations will be realized (§ 14-10106).

Evidence of Oral Trust. Oral trusts may be established by clear and convincing evidence. However, the terms of the oral trust may be established by a preponderance of the evidence (§ 14-10407).

Non-ATC Provisions of HB 2806

Certain provisions in the new Act affecting Title 14 are not technically part of what is the Arizona Trust Code (Chapter 11).

Rule Against Perpetuities. Existing A.R.S. § 14-2901 had permitted alternative permissible periods and methods to avoid exceeding the maximum duration that an estate may remain unvested. To the common law rule against perpetuities (requiring that an interest in property or in trust must vest within the period not to exceed lives of persons in being plus 21 years) were added more liberal vesting rules. One permitted period was a flat 90 years, regardless of "lives in being." Under the ATC, this period of permissible nonvesting has been increased to 500 years.⁴

For Arizona estate planners, this is a great change, because clients now can be told their long-term trust assets will not have to be forced into the estates of descendants for generations. However, the beneficiaries of existing irrevocable trusts probably do not benefit from the change. This is because the vast majority of present trust agreements have savings clauses that required all interests to vest under the traditional common law rule. This change in the rule is not as revolutionary as some may think. Well over a dozen states have either increased in like manner the maximum permissible nonvesting period or eliminated the rule altogether.

Attorneys' Duties. New A.R.S. § 14-5652(A) provides that the attorney for the fiduciary, settlor or testator has no duty to others as a result of such representation. This provision may negate or lessen the affect of Arizona cases *In the Matter of the Estate of Shano*,⁵ *Fickett v. Superior Court*,⁶ and *In the Matter of the Estate of Fogleman*,⁷ which held that attorneys for fiduciaries had varying degrees of duties to those to whom the fiduciaries owed duties.

Subsection B requires an attorney who acts as personal representative or trustee to disclose 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" to those who have an interest in the estate or trust. A creditor of the estate or trust is intended to be included within the definition of such "person who has an interest"; therefore, such persons must receive notice as well. On Jan. 1, 2009, it appears that an attorney fiduciary would have a duty to disclose with respect to the estates and trusts of which the attorney is the personal representative or trustee, as the case may be.

Vicarious Representation Provisions.

The law recognizes that persons can act for others with respect to interests in estates or trusts under certain circumstances. Vicarious representation provisions were contained in the UTC proper, but in Arizona such language has been changed to apply generally to estates as well as trusts, unless otherwise limited. Much, but not all, of the language is a recodification of old § 14-1403 (that had already applied to estates of minors, incapacitated persons, decedents, and trusts)


into new § 14-1404 through and including § 14-1408. These provisions confirm, among other things:

- a. A person who may bind and represent another person is a proper party for delivery of notice to the other person and that such person receiving notice will not be liable to the other person unless the person receiving notice is grossly negligent or acts with the intent to harm the other person.
- b. 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 the child to consent to a modification or a termination of a trust if the parent is the settlor of the trust. This one of a handful of provisions in the Uniform Trust Code that the National Conference of Commissioners on Uniform State Laws (NCCUSL) changed as a result of the UTC repeal by Arizona.
- c. The holder of a general power of appointment may represent and bind persons who take under the power, whether exercised or not.
- d. 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.

- e. A trustee may represent and bind the beneficiaries of the trust and a personal representative of a decedent's estate may represent and bind persons interested in the estate. A guardian may represent the ward if there is no conservator appointed.
- f. A court may always appoint a representative if it determines the interest is not otherwise adequately represented.
- g. A representative may act on behalf of the person represented with respect to any matter arising under Title 14, whether or not a judicial proceeding concerning the trust or estate is pending.
- h. In making decisions, a representative may consider the general benefit accruing to the living members of the family of the person represented.
- i. In all of the above, the power is conditioned on there being no conflict of interest in so acting by the representative.

Conclusion

Congratulations—or my sympathies—on reaching the end of this. If you did, then you probably are an estate planner or probate attorney. Know that this article does not reference all ATC sections. Of the ones the author does discuss, it is mostly cursory. The ATC adds wonderful new pieces to the estate planner's playground, which is both a blessing and a burden. The checklist of things to potentially discuss as options for the settlor client increases (see p. 24). As with all extensive legislation, it is possible some fog has rolled in with respect to certain provisions. Clearly for probate and trust lawyers, there is much more guidance and certainty. 

endnotes

1. Article 5 is not intended by its drafters to override the Arizona Uniform Fraudulent Transfer Act, Tit. 44, Chap. 8, Art. 1 (A.R.S. § 44-1101 *et seq.*).
2. The fact that the ATC omitted UTC § 411(a) (codifying the express power of the settlor and the beneficiaries to modify an irrevocable trust) does not necessarily result in the loss of the common law right to do so. A.R.S. § 14-10106 provides that the common law of trusts

will supplement the ATC, except to the extent modified by it. NCCUSL's comments to the 2004 amendments to the UTC provide that omission of UTC § 411(a) "mean[s] that the state's prior law would control on this issue." Unless the courts find that the Legislature intended to implicitly negate existing Arizona law by its omission of now optional Model UTC § 411(a), the common law of trusts, evi-

denced by either of the Restatements, still permits modification. *See* RESTATEMENT (SECOND) OF TRUSTS § 338; RESTATEMENT (THIRD) OF TRUSTS § 65; A.R.S. § 14-10106(A). Arizona follows the Restatements. *Olivas v. Board of National Missions of the Presbyterian Church*, 405 P.2d 481, 486 (Ariz. Ct. App. 1965); *In Re Estate of Moore*, 97 P.3d 103 (Ariz. Ct. App. 2004).

3. 96 P.3d 1078 (Ariz. Ct. App. 2004).
4. Art. 2 § 9 of the Arizona Constitution provides: "No hereditary emoluments, privileges, or powers shall be granted or conferred, and no law shall be enacted permitting any perpetuity or entailment in this state."
5. 869 P.2d 1203 (Ariz. Ct. App. 1993).
6. 558 P.2d 988 (Ariz. Ct. App. 1976).
7. 3 P.3d 1172 (Ariz. Ct. App. 2000).