

ARIZONA'S VERSION OF THE UNIFORM TRUST CODE (UTC) WAS SIGNED BY GOVERNOR NAPOLITANO ON MAY 12, 2003, AND WILL BECOME THE LAW ON JAN. 1, 2004. THIS IS THE MOST IMPORTANT TRUST LAW DEVELOPMENT IN ARIZONA HISTORY. THE NEW LAW WILL AFFECT THE PRACTICE OF EVERY ARIZONA LAWYER WHO REGULARLY—OR EVEN ON OCCASION—REPRESENTS TRUSTEES, BENEFICIARIES, TRUST CREDITORS OR CREDITORS OF BENEFICIARIES.

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# THE UNIFORM TRUST CODE IS ARIZONA-BOUND

## WHERE IS IT FROM? WHY IS IT HERE?

Arizona is the fifth state to enact the UTC. It has also been enacted in Kansas, Nebraska, New Mexico and Wyoming and is currently under consideration in 30 other states. Ten other states may introduce it next year.

In recent decades, the use of trusts has exploded.<sup>1</sup> This increase has resulted largely from their use for tax planning, the use of revocable trusts as will substitutes and the trend toward the use of the trust as the entity of choice to avoid probate and conservatorship proceedings. We also have witnessed an increase in the use of trusts for commercial transactions, such as pension trusts and mutual funds for the pooling of investments.

States such as California, Texas, New York and Massachusetts have well-developed trust laws. Most states, however, such as Arizona, must look to limited statutory authority, a few reported cases, the Restatement of Trusts and treatises such as Scott and Bogert.<sup>2</sup> These sources are helpful, but they do not approach the value and convenience provided by statutory authority. The UTC gives us one authoritative source that will answer most of the day-to-day questions practitioners face.

The UTC applies to all trusts (revocable or irrevocable) created before or after January 1, 2004, the effective date.<sup>3</sup> It is intended to have the widest possible effect within constitutional limitations. It applies to all judicial proceedings commenced on or after the effective date and to judicial proceedings commenced before the effective date unless the court finds that application of a particular provision would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties. Of course, constitutional limitations will prevent the application of the law to affect property rights under trusts that were irrevocable prior to the effective date.

Although the UTC makes many significant changes in the law, equally important to practitioners is the clarity provided to many areas of Arizona trust law that may have been in doubt. This article includes a discussion of areas where important changes have been made or where needed clarity is provided:

- Nonjudicial settlements are now available using virtual representation or other representation provisions previously only available in formal proceedings.
- Guidelines are established for the creation of trusts.
- New rules are established for spendthrift trusts and the rights of creditors.

- Needed flexibility for amending and terminating trusts is provided.
- The novel idea of classifying beneficiaries as either “qualified” or “nonqualified” is introduced, allowing different trustee duties as well as different beneficiary rights to apply to each class of beneficiaries.
- Trustees and beneficiaries now have a legal framework determining the extent beneficiaries will be entitled to information about the administration of the trust and financial reports.
- Liberal trustee removal provisions are now available.
- The UTC provides a new set of trustees’ powers and other rules affecting the trustee that will be applicable to every trust document unless an overriding provision is included in that document.

#### **THE ROLE OF THE RESTATEMENT OF TRUSTS AND OTHER SOURCES**

The RESTATEMENT (THIRD) OF TRUSTS, covering the prudent investor rule, was completed and approved by the American Law Institute in 1990. The THIRD RESTATEMENT, Volumes 1 and 2, was adopted in 2001, published on Feb. 24, 2003, and covers the creation of trusts and their interpretation. Still in process are chapters on trust administration.

The UTC was drafted in close coordination with the THIRD RESTATEMENT, which will continue to be a useful supplement to the UTC. The prudent investor rule has been incorporated into the UTC and now appears in Art. 9, ARS §§ 14-10901 through 14-10917, and in Art. 10, ARS § 14-11001 *et seq.* As customary with uniform acts, the UTC is accompanied by the comments of the Reporter.<sup>4</sup>

It is worth noting that a provision was added to the Arizona version of the UTC requiring that consideration be given to the comments adopted by the National Conference of Commissioners on Uniform State Laws and the Executive Council of the Probate and Trust Law Section of the State Bar of Arizona.<sup>5</sup>

#### **MANDATORY PROVISIONS**

For the most part, the UTC is a set of default rules. The drafter is free to design the trust to include the terms under which the trust is to be administered, with UTC provisions filling gaps not covered in the document.

One of the innovative provisions in the UTC is a list of mandatory rules of trust law that cannot be overridden by the trust terms.<sup>6</sup> The mandatory provisions include the requirements for creating a trust, such as the requirement of settlor capacity and that the trust have a legal purpose; the duty of the trustee to act in good faith and in accordance with the purposes of the trust; the power of the court to modify or terminate a trust; the effect of spendthrift provisions; and the power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice. Other mandatory rules will be mentioned in the context of the discussion that follows.

#### **REPRESENTATION RULES EXTENDED**

The Uniform Probate Code includes a set of representation rules applicable to formal proceedings involving trusts, decedents’ estates, minors and protected persons and in judicially supervised settlements.<sup>7</sup>

For example, in certain circumstances, orders binding a conservator bind the person whose estate the conservator controls; orders binding a trustee bind beneficiaries; and orders binding a personal representative bind the persons interested in the estate. Also, an unborn or unascertained person who is not otherwise represented is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding, which is the concept of virtual representation.

These concepts have been retained<sup>8</sup> and are made applicable to many matters that can be accomplished without court intervention based only upon notice to beneficiaries. For example, the representation concepts are applicable to such matters as

giving notice to qualified beneficiaries of a proposed transfer of the trustee's principal place of administration,<sup>9</sup> giving notice of a trustee's resignation,<sup>10</sup> notice of a trustee's report<sup>11</sup> and notice of a trustee's proposed plan of distribution.<sup>12</sup> The representation provisions also apply to facilitate the consent of beneficiaries.<sup>13</sup> For example, consent may be required for the modification or termination of a trust<sup>14</sup> or the agreement of the qualified beneficiaries to the appointment of a successor trustee.<sup>15</sup> All of the representation rules still require that there be no conflict of interest between the representative and the person represented, except that the conflict of interest requirement is not applicable with respect to the representation by a holder of a general power of appointment of the permissible appointees and takers in default of the power.

#### **NONJUDICIAL SETTLEMENTS**

Although the court may intervene any time in the administration of a trust when its jurisdiction is invoked,<sup>16</sup> the UTC facilitates the use of nonjudicial settlements to resolve disputes. Interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust provided that the agreement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court.<sup>17</sup>

In nearly all settlements, there are contingent beneficiaries who must be represented by application of the virtual representation provisions or minor beneficiaries who must be represented by a conservator or a court-appointed guardian. Before the UTC, the representation provisions applied only to formal proceedings and judicially supervised settlements.<sup>18</sup> The extension of the representation provisions to nonjudicial settlements will simplify the settlement process in those cases when the settlement could have been properly approved by a court.

In Arizona, the nonjudicial settlement provisions will apply only to trusts that

become irrevocable on or after Jan. 1, 2004.

### CREATION AND VALIDITY

The UTC does not require that a trust be evidenced by a writing as long as the trust can be established by clear and convincing evidence.<sup>19</sup> Consistent with the Uniform Testamentary Additions to Trusts Act,<sup>20</sup> the UTC provides that a trust created by a trust instrument is not invalid because the trustee receives property at a later date, such as by a will or insurance contract.<sup>21</sup>

Although trusts for pets are permitted under the Uniform Probate Code,<sup>22</sup> the UTC nudges the law here to permit trusts for all animals, not only pets or domesticated animals.<sup>23</sup> Any wild animal can be the

and Trust Law Section is in progress to develop a comprehensive statute establishing capacity for other dispository documents.

### CREDITOR'S CLAIMS AND SPENDTHRIFT

The UTC continues the traditional concept that a spendthrift trust cannot be created for the benefit of the settlor. The law now found in the creditor protection statutes of Alaska, Delaware, Nevada, Rhode Island and South Dakota allows a spendthrift trust for the benefit of the settlor under certain circumstances; that was specifically rejected. After the death of the settlor, the property of a revocable trust is subject to the claims of the settlor's credi-

spouse who has a judgment or court order against the beneficiary for support, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain a court order attaching present or future distributions from a spendthrift trust.

Also excepted from the effect of a spendthrift trust are federal claims or State of Arizona claims if the state or federal law so provides.<sup>27</sup> The exception for providers of necessities under current Arizona law has been specifically eliminated.<sup>28</sup>

### TRUST MODIFICATION AND TERMINATION

The UTC provides needed flexibility in amending and terminating irrevocable trusts.

In recent decades, trusts have been designed to last longer. The rule against perpetuities has been liberalized or revoked in many states, including Arizona, permitting trusts for periods of

hundreds of years or in perpetuity. Trusts established to take advantage of the generation-skipping tax exemption are designed for the long term. Trust mills continue to turn out poorly drafted trusts that will require modification.

The UTC recognizes these trends and liberalizes the modification and termination law. Irrevocable trusts may be modified or terminated without court approval with the consent of the settlor and all of the beneficiaries even if the modification is inconsistent with a material purpose of the trust. Without the consent of the settlor but with the consent of all beneficiaries, irrevocable trusts may be modified if the court concludes that modification is not inconsistent with a material purpose of the trust and may be terminated if the court concludes that continuance of the trust is not necessary to achieve any material purpose.<sup>29</sup>

Note that the virtual representation and

**THE FULL TEXT OF THE UNIFORM TRUST CODE AS APPROVED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS ON AUG. 3, 2000, ACCCOMPANIED BY THE REPORTER'S COMMENTS, CAN BE FOUND AT [WWW.LAW.UPENN.EDU/BLL/ULC/ULC.HTM](http://WWW.LAW.UPENN.EDU/BLL/ULC/ULC.HTM). THE TEXT OF THE ARIZONA LAW AND THE STATE BAR'S PROBATE AND TRUST LAW SECTION COMMENTS CAN BE FOUND ON THE SECTION'S WEB SITE AT [WWW.AZBAR.ORG/SECTIONS/PROBATE/PROBATETRUST/HOME.ASP](http://WWW.AZBAR.ORG/SECTIONS/PROBATE/PROBATE/PROBATETRUST/HOME.ASP).**

beneficiary. The animal may be added as a beneficiary at any time prior to the settlor's death, but the animal must be alive during the settlor's lifetime.

Conspicuously absent is a provision relating to the level of the settlor's capacity to create a trust. Section 601 of the UTC, which established the capacity of the settlor, was deleted for further study. There seems to be a consensus now that the following would be acceptable and will be proposed as an amendment: "With respect to provisions relating to disposition of property upon death, the capacity required to create, amend or revoke a revocable trust is the same as that required to make a will." If this amendment is adopted, the level of capacity of the settlor required with respect to other aspects of the trust that are related more to property management, such as adding property or directing the actions of the trustee, will be left to other law. An effort of the Probate

tors, costs of administration, funeral expenses and statutory allowances to the extent the settlor's probate estate is inadequate to satisfy these claims.<sup>24</sup>

Arizona is the first state to adopt the amendments to Uniform Probate Code §§ 6-101 through 6-103.<sup>25</sup> These provisions will work in conjunction with the UTC to establish that other nonprobate transferees—such as beneficiaries of payable-on-death accounts and transferable-on-death registrations—are subject to claims of creditors when probate assets are insufficient and provide procedures for collection of claims.

A spendthrift clause can be as simple as "the interest of the beneficiary is held subject to a spendthrift trust," or words of similar import. This language will restrain both voluntary and involuntary transfers of a beneficiary's interest, a necessary requirement of a spendthrift provision.<sup>26</sup> A beneficiary's child, spouse or former

other representation rules will apply to obtaining beneficiary consent. In addition, even if all the beneficiaries are not in agreement, the court can modify or terminate a trust if the material purpose test is met and the court determines that the interests of the nonconsenting beneficiaries are adequately protected.<sup>30</sup> The court also can 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 and, to the extent practicable, any modification is in accordance with the settlor's probable intention.<sup>31</sup>

When modification or termination is requested, the purposes of the trust and the settlor's intention will be threshold questions. For this and other reasons, trusts in the future will be incorporating more language to express the purposes of the trust and the intention of the settlor.

A practical provision allows the trustee acting without court approval and without beneficiaries' consent to terminate a trust having a value of less than \$100,000 if the trustee concludes that the value of trust property is insufficient to justify the cost of administration.<sup>32</sup> There are also provisions in the UTC allowing modification or termination by the court when no purpose remains to continue the trust<sup>33</sup> or to achieve the settlor's tax objectives.<sup>34</sup> The UTC also provides for court reformation to correct mistakes<sup>35</sup> and for the combination and division of trusts.<sup>36</sup>

Liberalizing the court's inherent *cy pres* authority, the UTC allows a court to modify or terminate a charitable trust if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve or wasteful. In such a case, the court can direct that the trustee apply or distribute the trust property in a manner consistent with the settlor's charitable objectives.<sup>37</sup>

#### **QUALIFIED BENEFICIARY**

The UTC introduces the novel concept of dividing beneficiaries for certain purposes between "qualified" beneficiaries and "nonqualified" beneficiaries. This distinc-

tion is important to an understanding of the trustee's obligations to beneficiaries and the beneficiaries' right to receive information and reports.

Persons who are qualified beneficiaries have rights not accorded to other beneficiaries. A qualified beneficiary means a beneficiary currently eligible to receive a distribution from the trust and those persons who would be entitled to receive a distribution of income or principal if the trust terminated or if all of the interests of the currently eligible beneficiaries terminated.<sup>38</sup> Generally, qualified beneficiaries are considered to be the income beneficiaries as well as those remainder beneficiaries who would be entitled to receive a trust distribution if the trust terminated.

The UTC uses the term "nonqualified beneficiaries" to describe all other beneficiaries, and both qualified and nonqualified beneficiaries together are referred to as "beneficiaries."<sup>39</sup>

### **DUTY TO PROVIDE INFORMATION AND REPORTS TO BENEFICIARIES**

The UTC clarifies existing law and provides a legal framework by which a beneficiary will have available information and reports in order to properly evaluate the beneficiary's interest in the trust. At the same time, when information is properly made available to the beneficiary, the statute of limitations will protect the trustee from future claims.

The UTC uses the word "report" instead of the word "accounting," because the second word may imply a particular format or formality. The rules relating to providing information differ from the rules relating to providing reports. With respect to general information, the trustee has a duty to keep qualified beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests; this is an affirmative duty.

With respect to nonqualified beneficiaries, the trustee has a duty to promptly respond to the request for information related to administration of the trust. After stating the general rule, the statute sets

forth the specific duties of the trustee for providing information<sup>40</sup>:

1. On request of a beneficiary, the trustee must furnish to the beneficiary a copy of the trust instrument. This requirement refers to the entire instrument because the beneficiary may need to see the entire instrument in order to evaluate the beneficiary's interest.
2. Within 60 days after accepting a trusteeship, the trustee must notify the qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number.
3. Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust or after the date a revocable trust becomes irrevocable, the trustee must notify the qualified beneficiaries of the trust's existence; the identity of the settlor or settlers; the trustee's name, address and telephone number; and the right to request a copy of the trust instrument as well as the trustee's report. Unless a trustee has provided this notice in the past, all qualified beneficiaries must be given this notice on or before Mar. 1, 2004, for all irrevocable trusts in existence on Jan. 1, 2004.<sup>41</sup>
4. The trustee must notice all qualified beneficiaries not fewer than 30 days in advance of any change in the method or rate of the trustee's compensation.

A trustee's report must be sent to all distributees or permissible distributees of trust income or principal at least annually and at the termination of the trust. The document required to be sent is described as 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.

The report is not required to be sent to remainder beneficiaries. However, a report must be sent to any qualified or nonqualified beneficiary who requests a copy. For nonqualified beneficiaries, these duties to inform and report are default rules. One of the exceptions to the default nature of

these rules is the mandatory duty of the trustee 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.<sup>42</sup>

For the Arizona statute,<sup>43</sup> the word "qualified" was added, so that the mandatory rule applies only to qualified beneficiaries. Thus, in Arizona, a practitioner can draft a trust directing or authorizing the trustee to ignore requests of nonqualified beneficiaries for reports and other information relating to the administration of the trust, and, therefore, in Arizona it is possible to keep nonqualified beneficiaries in the dark. When a settlor demands as much secrecy as possible, this is an option.

Also mandatory is the requirement to notify qualified beneficiaries of the existence of the trust, of the identity of the trustee, and of the right to request trustee's reports.<sup>44</sup> If a settlor also wants to limit the access of qualified beneficiaries to information and reports, the trust document could eliminate all of these information and report requirements except for the duty to inform the qualified beneficiaries of the existence of the trust and the identity of the trustee, and the duty to provide a qualified beneficiary upon request with such reports as the trustee may have prepared.

For irrevocable trusts not requiring annual reports, such as irrevocable insurance trusts and IRC § 2503(c) trusts, it may be appropriate to include language in the trust document that would limit the requirement of annual reports only to those reports the trustee actually prepares. But a corollary to no information is that the statute of limitations is extended.

### **STATUTE OF LIMITATIONS FOR ACTIONS AGAINST TRUSTEE**

When a report adequately discloses the existence of a potential claim, the statute of limitations is one year after the date the beneficiary (or a representative of the beneficiary) was sent the report, provided that the report informed the beneficiary of the time allowed for the commencement of a

proceeding.<sup>45</sup> Therefore, it is critical that the report be sent with a note in a form that cannot be reasonably overlooked, preferably in bold, approximately as follows:

"Please immediately review the attached report carefully. A claim arising out of any matters included in this report must be commenced within one year after

[insert date

report sent]."

For matters not properly disclosed or with respect to reports not containing the notice, the statute of limitations for actions against the trustee is 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, or (3) the termination of the trust.

#### OFFICE OF THE TRUSTEE AND TRUSTEE REMOVAL

Here, again, the UTC provides guidance in the form of default rules with respect to the acceptance of the office, trustee bond, relationships between co-trustees, appointment of successor trustees, resignation and removal of trustees, and trustee compensation and expenses.

Notable mandatory rules affecting trustees include the power of the court to adjust a trustee's compensation that is unreasonably high or low and the power of the court to require, dispense with, modify or terminate a bond.<sup>46</sup> Unless the trust specifies the amount of compensation, the trustee is entitled to compensation that is reasonable under the circumstances.<sup>47</sup>

A person who is designated as trustee may, without accepting the trusteeship, act to preserve the trust property and may investigate trust property to determine potential environmental liability.<sup>48</sup> Co-trustees may act by majority decision<sup>49</sup> and may delegate functions between themselves except with respect to a function that the settlor reasonably expected the trustees to perform jointly.<sup>50</sup>

A provision that should be of signifi-

cant benefit to beneficiaries is the right of the court to remove a trustee when there has been a substantial change of circumstances or when all qualified beneficiaries request the removal. In either case, the court also must find that the removal is not inconsistent with a material purpose of the trust, that removal best serves the interests of the beneficiaries and that a suitable successor trustee is available.<sup>51</sup>

#### TRUSTEE DUTIES AND POWERS

The overriding mandatory rule is the duty of the trustee to act in good faith and in accordance with the terms of the trust.<sup>52</sup> Reciprocal to the duties of the trustee are the rights of beneficiaries.

The most important protection to beneficiaries is the duty of loyalty expressed as the duty of the trustee to administer the trust solely in the interests of the beneficiaries.<sup>53</sup> The UTC outlines circumstances when transactions involving the trustee and other persons are voidable or presumed to be affected by a conflict of interest.<sup>54</sup> It is specifically provided that there is no conflict of interest when a trustee invests in securities of an investment company or investment trust, commonly in the form of mutual funds, if the investment complies with the prudent investor rule. The trustee may be compensated by the mutual funds for investment advice or other services, such as custody services, as long as the trustee at least annually notifies the beneficiaries who are entitled to a copy of the trustee's report that the bank or trust company provides services for and receives fees from the investment company or trust.<sup>55</sup>

The UTC supersedes and replaces the provisions of the Uniform Trustee's Powers Act, which was adopted in Arizona in 1984. The powers of the trustee enumerated in the UTC will continue to supplement the powers set forth in the trust document. And the trustee, without court authorization, may exercise any other powers appropriate to achieve the proper investment, management and distribution of the trust property.<sup>56</sup>

#### CONCLUSION

The scope and breadth of the UTC is remarkable, yet it will not answer every question. Practitioners will still look to other sources for guidance such as the common law of trusts found in the THIRD RESTATEMENT. Nevertheless, the UTC provides Arizona lawyers with a comprehensive body of law that will be useful for decades.

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Many thanks are due to the Executive Committee of the Probate and Trust Law Section, as well as the following members of the committee who served with me and were charged with reviewing and recommending changes to the Uniform Trust Code for adoption in Arizona: Roger D. Curley (who chaired the committee), Linda S. Batts, Brenda Church, David J. Estes, Charles E. Giddings, Jennifer Hartenbower, Jay M. Polk and Robert M. Struse; also Herb Sliger and Kenneth Reeves, who participated in the review.

#### endnotes

1. The trust was first used following the enactment of the Statute of Uses by Parliament under Henry VIII in 1535.
2. GEORGE G. BOGERT & GEORGE T. BOGERT, THE LAW OF TRUSTS AND TRUSTEES (Rev. 2d ed. 1991); WILLIAM F. FRATCHER, SCOTT ON TRUSTS (4th ed. 1989).
3. Sec. S.B. 1351, 46<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess., 2003.
4. The Reporter for the Uniform Trust Code is David M. English, W. F. Fratcher Missouri Endowed Professor of Law, University of Missouri-Columbia; Executive Director, Joint Editorial Board for Uniform Trust and Estate Acts; B.A., Duke University 1974; J.D., Northwestern University, 1979.
5. ARS § 14-11201(2).
6. *Id.* § 14-10105(B).
7. *Id.* § 14-1403.
8. *Id.* § 14-1404 *et seq.*
9. *Id.* § 14-10108(D).
10. *Id.* § 14-10705(A)(1).
11. *Id.* § 14-10813(C).
12. *Id.* § 14-10817(A). Upon termination or par-

tial termination of a trust, the trustee may send the beneficiaries a proposal for distribution, and the right of a beneficiary to object terminates unless the beneficiary objects within 30 days.

13. *Id.* § 14-1404(B).
14. *Id.* § 14-10411(B).
15. *Id.* § 14-10704(C)(2).
16. *Id.* § 14-10121(A).
17. *Id.* § 14-10111.
18. *Id.* § 14-1403.
19. *Id.* § 14-10407.
20. *Id.* § 14-2511.
21. *Id.* § 14-10401(1).
22. *Id.* § 14-2907.
23. *Id.* § 14-10408.
24. *Id.* § 14-10505(A)(3).
25. *Id.* §§ 14-601, 14-602 and 14-603.
26. *Id.* § 14-10502(B).
27. *Id.* § 14-10503(C).
28. *Id.* § 14-10503(B).
29. *Id.* § 14-10411(B).
30. *Id.* § 14-10411(D).
31. *Id.* § 14-10412(A).
32. *Id.* § 14-10414.
33. *Id.* § 14-10410.
34. *Id.* § 14-10416.
35. *Id.* § 14-10415.
36. *Id.* § 14-10417.
37. *Id.* § 14-10413(A).
38. *Id.* § 14-10103(12).
39. UTC § 103 cmt. Qualified beneficiaries also include persons who will take in default of the exercise of a power of appointment unless the power is a presently exercisable power and the power has been exercised to appoint all of the property subject to the power. Qualified beneficiaries include appointees under a presently exercisable power of appointment, but not appointees of a testamentary power of appointment because the exercise of a testamentary power is not effective until the death of the holder of the power.
40. ARS § 14-10813(B).
41. Senate Bill 1351, § 15(c).
42. ARS § 14-10105(B)(9).
43. Uniform Trust Code § 105(b)(9) sets forth the mandatory rule as “the duty under Section 813(a) to respond to the request of a beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of the trust.”
44. ARS § 14-10105(B)(8).
45. *Id.* § 14-11005(A). Reference to a beneficiary’s representative relates back to the persons who can receive notice for and bind a beneficiary under the new representation provisions found in the Uniform Probate Code in ARS §§ 14-1404 *et seq.*
46. *Id.* §§ 14-10105(B)(6) and (7).
47. *Id.* § 14-10708(A).
48. *Id.* § 14-10701(C).
49. *Id.* § 14-10703(A).
50. *Id.* § 14-10703(E).
51. *Id.* § 14-10706(B)(4).
52. *Id.* § 14-10105(B)(2).
53. *Id.* § 14-10802(A).
54. *Id.* §§ 14-10802(B), (C), (D) and (E).
55. *Id.* § 14-10802(F).
56. *Id.* § 14-10815(A).