START\_STATUTE14-11014.  Total return trusts; definitions

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

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

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

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

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

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

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

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

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

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

(ii)  All qualified beneficiaries of the trust.

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

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

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

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

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

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

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

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

(i)  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.

(ii)  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.

(iii)  That the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust, or both, 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:

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

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

(iii)  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 the written policy and this section, and the determinations of the disinterested person to:

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

(ii)  All qualified beneficiaries of the trust.

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

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

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

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

D.  The fair market value of the trust shall be determined at least annually, using a 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 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.

E.  The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, but not less than three per cent or more than five per cent, 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.

F.  A trustee may act pursuant to subsection A or B 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 subsection A, paragraph 3, subdivision (b), item (ii) of this section or pursuant to subsection B, paragraph 3, subdivision (c), item (ii) of this section, as the case may be, the trustee shall send the 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 that income, to the attorney general of this state.

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

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

G.  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 section 1222(9) of the internal revenue code, may consider the unitrust amount as paid from net short-term capital gain described in section 1222(5) of the internal revenue code and then from net long-term capital gain described in section 1222(7) of the internal revenue code.

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

H.  In administering a total return unitrust, the trustee, in its sole discretion but subject to the provisions of the governing instrument, may 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 the reconversion.

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

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

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

K.  This section pertains to the administration of a trust and is available to any trust that is administered in this state 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 section 642(c)(5) of the internal revenue code or a charitable remainder annuity trust described in section 664(d) of the internal revenue code.

3.  The governing instrument expressly prohibits use of this section by specific reference to this 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 Arizona Revised Statutes, section 14‑11014, 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.

L.  Any trustee or disinterested person who in good faith takes or fails to take any action under this section is not liable to any person affected by that action or inaction, regardless of whether the person received written notice as prescribed in this section and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The person's exclusive remedy is to obtain a court order 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.

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

N.  For the purposes of this section:

1.  "Disinterested person" means a person who is not a related or subordinate party pursuant to section 672(c) of the internal revenue code 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 that is created by either an inter vivos or a testamentary instrument and that directs or permits the trustee to distribute the net income of the trust to one 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 one or more of these persons.

3.  "Interested distributee" 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 pursuant to section 672(c) of the internal revenue code with respect to that distributee.

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 distributee.

(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 requirements of this section.

6.  "Trustee" means any person acting as trustee of the trust, unless expressly noted otherwise, whether acting in that person's discretion or on the direction of one 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. END\_STATUTE