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ARIZONA[1]

State Decanting Summary[2]

STATUTORY HISTORY	
Statutory citation	ARIZ. REV. STAT. ANN. § 14-10819
Effective Date	9/30/09
Amendment Date(s)	7/20/11
ABILITY TO DECANT	
1. Discretionary distribution authority required to decant?	Yes, discretion to distribute income or principal[3]
2. Limitation on trustee who may decant?	No
CHANGES PERMITTED	
3. May new trust eliminate beneficiary's mandatory distribution rights?	No, as to income, annuity, or unitrust[4]
4. May new trust eliminate beneficiary's withdrawal rights?	Silent
5. Must new and old trust beneficiaries be identical?	No[5]
6. Are beneficiaries of new trust limited to current beneficiaries of old trust?	Presumably no[6]
7. May remainder beneficiaries' interests be accelerated?	Silent
8. New and old trust require same distribution standard?	Yes, only when trustee is a possible beneficiary[7]
9. May trustee grant a power of appointment in new trust?	Silent
10. Must new trust grant identical power of appointment as old trust?	Silent
11. Supplemental needs trust exception?	No
TAX RESTRICTIONS	
12. Marital deduction savings provision?	See catch-all
13. Charitable deduction savings provision?	See catch-all
14. Beneficiary/trustee savings provision?	Yes[8]
15. Other tax savings provisions?	Catch-all[9]
16. Non-grantor trust to grantor trust conversion permitted?	Presumably no[10]
OTHER RESTRICTIONS	
17. Rule against perpetuities savings provision?	Yes[11]
18. May trustee increase trustee commission?	Silent
19. Other restrictions	
NOTICE, CONSENT & APPROVAL	
20. Notice to interested parties required prior to decanting?	Silent
21. Is decanting prohibited if a beneficiary objects?	Silent
22. Court approval required to decant?	No, but may seek court approval[12]
FIDUCIARY DUTIES	
23. Provision re: purposes for exercise or explicit fiduciary duty?	No
24. Provision that trustee has no duty to consider decanting?	No
25. Standard of review?	No
TRUSTS SUBJECT TO STATUTE	
26. Provision on trusts subject to statute?	Yes[13]
MISCELLANEOUS	
27. Other unique considerations?	Restating trust provision[14]

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ARIZONA STATUTE
ARIZ. REV. STAT. ANN. § 14-10819

14-10819. Trustee's special power to appoint to other trust

A. Unless the terms of the instrument expressly provide otherwise, a trustee who has the discretion under the terms of a testamentary instrument or irrevocable inter vivos agreement to make distributions, regardless of whether a standard is provided in the instrument or agreement, for the benefit of a beneficiary of the trust may exercise without prior court approval the trustee's discretion by appointing part or all of the estate trust in favor of a trustee of another trust if the exercise of this discretion:

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

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

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

4. Results in any ascertainable standard applicable for distributions from the trust being the same or more restrictive standard applicable for distributions from the recipient trust when the trustee exercising the power described in this subsection is a possible beneficiary under the standard.

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

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

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

C. The exercise of the power to invade the principal of a trust under subsection A of this section is considered to be the exercise of a special power of appointment.

D. The trustee, in the trustee's sole discretion, before or after the exercise of the trustee's discretion under this section, may request the court to approve the exercise.

E. The trustee may exercise the discretion to appoint all of the trust estate pursuant to this section by restating the trust.

[1] Reviewed by Greg Gadarian 9/8/12.

[2] ***Circular 230 Disclosure***. To comply with certain Treasury regulations, we inform you that these materials are not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person, and each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor. These materials do not constitute, and should not be treated as legal advice. Although every effort has been made to assure the accuracy of these materials, the author and Sidley Austin LLP do not assume responsibility for any individual's reliance on these materials. The reader should independently verify all statements made in these materials and should independently determine both the tax and nontax consequences of any particular transaction before recommending or implementing that transaction.

[3] § 14-10819(A).

[4] § 14-10819(A)(1-2).

[5] A trustee may decant "in favor of the beneficiaries of the trust." § 14-10819(A)(3).

[6] § 14-10819(A)(3).

[7] When a trustee is a possible beneficiary, the standard for distributions from the recipient trust must be the same or more restrictive. § 14-10819(A)(4).

[8] When a trustee is a possible beneficiary, the standard for distributions from the recipient trust must be the same or more restrictive. § 14-10819(A)(4).

[9] The decanting cannot "adversely affect the tax treatment of the trust, the trustee, the settlor or the beneficiaries." § 14-10819(A)(5).

[10] § 14-10819(A)(5). Some commentators, however, have suggested that the trust could be converted to a grantor trust prior to decanting by lending the assets to the grantor.

[11] A decanting cannot "violate the limitations on validity under §§ 14-2901 and 14-2905." § 14-10819(A)(6). Section 14-2901 provides a RAP provision for (1) nonvested property interests, (2) general powers of appointment and (3) nongeneral powers of appointment. Section 14-2905 applies to nonvested property interests and powers of appointment created on or after December 31, 1994 and provides for judicial reformation of nonvested property interests and powers of appointment that violate the RAP.

[12] § 14-10819(A); § 14-10819(D).

[13] "This section applies to a trust governed by the laws of this state, including a trust whose governing jurisdiction is transferred to this state." § 14-10819(B).

[14] "The trustee may exercise the discretion to appoint all of the trust estate pursuant to this section by restating the trust." § 14-10819(E).